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Form letter no. 35/2009 of October 1, 2009 regarding the level of the **reference interest rate** of the National Bank, valid in October 2009 – sets out the level of the interest reference interest rate for the month of October at 8.50% per annum. The normative act was published in the *Official Gazette no. 648/ October 1, 2009*.

Emergency Ordinance no. 109/2009 of October 7, 2009 for the **amendment and supplementing of Law no. 571/2003 on the Tax Code** with respect to **terms and definitions, VAT, the profit tax, the tax on income and excises**.

1. Definitions, other general regulations

Additions are brought to the definition of the Romanian legal entity, the foreign legal entity, the resident person, the legal entity established in accordance with the European legislation.

The definition of marketable titles is implemented. The category of marketable titles also includes derivative financial instruments.

A mention is also inserted in the Tax Code with respect to the obligation to declare any services agreements concluded with non-residents, provided that such agreements are carried out (even partially) on the Romanian territory.

2. The income tax

The income tax shall be called **tax return**. The date for declaring and paying the final tax on the income obtained during the tax year shall be May the 25th of the year following the year for which the tax return is submitted.

The incomes obtained up to January 1, 2010, shall be declared and subject to taxation according to the legislation in force up to said date.

The following items shall not be included in the category of salary-related incomes, therefore they are not subject to taxation in the sense of the income tax: holiday tickets awarded under the law, as well as any benefits in the form of a right to a stock options plan at the time of awarding and at the time of exercise thereof.

If the incomes obtained from transferring the use of goods are obtained on the basis of over 5 lease agreements at the end of a tax year, beginning from the following year, the taxpayer shall include such incomes in the category of incomes obtained from independent activities.

3. Tax on the incomes of non-resident persons

The provisions of the Tax Code with respect to the incomes obtained by non-residents in Romania are supplemented by specific provisions referring to legal entities having their headquarters in Romania, established according to European legislation. According to this normative act, no tax is payable for the dividends paid by a Romanian legal entity or a foreign legal entity having its headquarters located in Romania, established in accordance with European legislation, to a legal entity residing in another EU

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member state, provided that certain requirements are met.

Beginning from 2010, the interest and/or dividends paid to pension funds, as the same are defined in the legislation of the EU member state, are tax exempt.

Non-residents must submit to the income payer a tax residence certificate, as well as an affidavit attesting to the fulfillment of certain requirements in view of applying the more favorable provisions of European legislation.

The term for submitting the declaration regarding the taxes withheld by the payers of such incomes shall be June the 30th of the current tax year, for the previous year.

4. The revenue tax

The amendments and additions brought by this ordinance to the revenue tax refer to: the inclusion of a new category of taxpayers (legal entity having its headquarters located in Romania, established in accordance with European legislation), the setting out of new terms for declaring and paying the revenue tax (on April the 25th of the following year for declaring the annual income statement, and February the 25th of the following year, inclusively, for submitting and paying the annual tax, in the event that the closing of the previous tax year is completed by said date), and the tax on dividends, respectively (on January the 25th of the following year, in the event that the distributed dividends have not been paid by the end of the year during which the annual financial statements were approved).

The category of incomes that are not subject to taxation also includes incomes obtained from the reimbursement or the annulment of the interest and penalties for which no deductions were awarded.

The increases and the penalties resulting from economic agreements concluded with foreign legal entities are no longer considered non-deductible expenses.

It is expressly specified that in the event that the degree of indebtedness exceeds three, the expenses with the interest and the net loss resulting from exchange rate differences, related to the loans taken into consideration at the calculation of the degree of indebtedness are non-deductible and may be carried forward into the following period until they become fully deductible.

In article 24, the accounting value of an asset is replaced by the notion of tax value of such asset at the time of its inclusion in the patrimony.

5. The value-added tax

The amendments brought by this ordinance with respect to the value-added tax refer to the following issues: § The amendment/supplementing of the significance of certain terms in the Tax Code and the provision of new terms (established in Romania, fixed head office).

- The location where the services are performed, which is set out in accordance with the **nature of the beneficiary of the services** (a taxable person, in which case the location where the services are performed shall be the place where the beneficiary has the headquarters where it carries out its business activity, or a fixed head office towards

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which the services are being performed, or a non-taxable person, respectively, in which case the location where the services are performed is the place where the supplier has established the headquarters for carrying out its business activity, or a fixed head office from which the services are being performed).

There are exceptions from this rule, set forth in the Emergency Ordinance (services performed with respect to real estate goods, passenger transportation services, the leasing of means of transportation, cultural, artistic services, services performed to non-taxable persons, etc).

- The triggering event and exigibility – setting forth the exceptions from the rule according to which the triggering event occurs on the date of delivery/performance of the goods/services, and the exigibility, respectively, occurs on the date when the triggering event (goods in consignment, stocks at the client's disposal, goods sent for testing purposes, etc).
- The deduction right: in the event of the delivery/performance of goods/services for which the beneficiary is obligated to pay VAT, the registration of the tax as a tax collected in the VAT statement pertaining to the tax period during which the tax becomes payable, no longer represents a mandatory requirement for the exercise of the deduction right.
- The reimbursement of the value-added tax: the persons who have not settled and have not been registered in Romania may request the reimbursement of the value-added tax, under the terms of, and in compliance with the procedure to be detailed in the norms.
- Turnover: when computing of the turnover (by reference to the EUR 35,000 limit – a requirement in order to benefit from the tax exemption) one shall also take into consideration the operations resulting from business activities for which the place of delivery/performance is considered to be abroad.
- Registration for VAT purposes: one shall register, for VAT purposes, such persons who are not registered and who are to further perform services or to receive services for which the beneficiary who is established in the Community is obligated to pay the tax.

Order no. 2861/2009 of October 9, 2009 for the **approval of the Norms for organizing and conducting the annual patrimony count** of assets, liabilities and equity elements – the Norms for organizing and conducting the annual patrimony count of assets, liabilities and equity elements are approved.

The normative act was published in the Official Gazette no. 704/October 20, 2009 and comes into force as of November 4, 2009, on which date Order 1753/2004 of the Finance minister for the approval of the Norms for organizing and conducting the annual patrimony count of assets and liabilities will be repealed, published in the Romanian Official Gazette, Part I, no. 1.174 of December 13, 2004, as

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subsequently amended.

Law no. 324/2009 of October 20, 2009 for the approval of the Government Emergency Ordinance no. 46/2009 on the **improvement of the tax procedures and the diminishing of tax evasion**

This normative act approves Government Emergency Ordinance no. 46/2009 on the improvement of the tax procedures and the diminishing of tax evasion, with its amendments and additions with respect to the reinstatement of the facilities for the payment of tax obligations. The facilities for the outstanding amounts shall be maintained until December 25, 2009 (according to the previous legislation, the term had expired on July 31, 2009). The normative act was published in the Official Gazette no. 713/October 22, 2009.

Order 2578/2009 of October 1, 2009 for the approval of the Norms on the access of business operators to the ICS-RO national application for the import control System.

The norm approved by this order provides for certain specifications with respect to the Procedure for the authorizing of the access to the ICS-RO application, by using the DTI solution, the Procedure for the authorizing of the access to the ICS-RO application, by using the EDI solution, the technical requirements for the access and the use of the ICS-RO application etc. The normative act was published in the Official Gazette no. 669/October 7, 2009.

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