

# The Brief

June 2011

## Romania – Corporate Law

### VAT Registration

Order No. 1984/11 May 2011 of the Ministry of Public Finances setting criteria for VAT registration (hereinafter "**Order no. 1984/2011**") published in the Official Gazette of Romania No. 361 on 24 May 2011 and in force as of 24 May 2011 provides for a special procedure to be followed by companies in view of VAT registration.

Unlike the previous VAT registration procedure, by virtue of which companies used to be automatically registered based on a simple statement, the new VAT registration procedure set forth by Order No. 1984/2011 is more complex and conditions such registration upon the compliance with multiple criteria, under the direct supervision of the fiscal authorities.

#### I. Scope of application of Order No. 1984/2011

Companies registered with the Trade Registry which intend to register for VAT purposes and

- prior to conducting any business, state that they will record a turnover equal to or higher than the current VAT exemption threshold (i.e. EUR 35,000)<sup>(1)</sup> or opt for the normal VAT regime although their turnover is stated to be lower than such threshold; or
- opt for the normal VAT regime, although their annual turnover is lower than the current VAT exemption threshold (i.e. EUR 35,000).

#### II. Procedure

Documents to be submitted to the public finances administration having jurisdiction over the applicant's registered office (hereinafter "**AFP**"):

- standard statement 010 duly filled in with the requested VAT regime;
- an annex having the content provided in Annex No. 1 to the Order No. 1984/2011, duly filled in;
- the certificate ("*certificat constatator*") issued by the Trade Registry in respect of the activities stated to be effectively carried on at its registered office and secondary offices, as the case may be;
- copies of documents evidencing title to its registered office/secondary offices;
- legalized copies of identity papers of directors.

<sup>(1)</sup> The VAT exemption threshold is determined pro rata with the period between the date of incorporation and the end of the calendar year, the fractions of month being deemed a full calendar month.



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Within **three (3) business days** as of the submission of all the above documents, AFP will check whether:

- the applicant stated that it carries on one or several activities at its registered office and secondary offices, as the case may be; and
- the applicant itself, all its shareholders and/or directors<sup>(2)</sup> have clear fiscal criminal records, are not held jointly liable with an insolvent debtor and are not fiscally dormant, as set out in article 2 (2) of the Government Ordinance No. 75/2001 on the fiscal record.

Should any of the above criteria not be met, AFP shall reject the VAT registration application by a decision providing the grounds for such a rejection issued within a maximum of **fifteen (15) business days** as of the submission of all required documents.

Provided that both of the two criteria set out above are met, AFP will, **within 24 hours**, ask the Financial Guard to inspect the applicant's registered office/secondary offices in order to confirm the existence of the space serving as registered office/fiscal domicile or as secondary offices and its adequacy to the applicant's purpose of business. The Financial Guard will proceed to such an inspection within a maximum of **four (4) business days** as of receipt of AFP's request and will propose the approval or rejection of the VAT registration application.

Should the Financial Guard propose the rejection of the VAT registration application, AFP shall reject the VAT registration by a decision providing the grounds for such a rejection.

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<sup>(2)</sup> In cases of joint stock companies and partnerships limited by shares, only directors have to comply with such conditions, whereas in cases of any other type of companies, such as limited liability companies, directors and shareholders holding at least 15% of the share capital must comply with the same. This rule applies to any further reference herein to directors/shareholders.

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If the Financial Guard proposes the approval of the VAT registration application, AFP shall further check, within **fifteen (15) business days** as of the submission of all required documents, the level of compliance with other criteria regarding the nature of the title held by the applicant over its registered office/secondary offices and its duration; the participation of applicant's directors/shareholders in liquidated companies, insolvent companies or temporarily dormant companies registered with the Trade Registry; the minor offences records of directors/shareholders; the ratio of EU/non-EU directors and the number of long-stay visas held by non-EU directors. All such information is to be provided by filling in Annex No. 1 to the Order No. 1984/2011.

Each answer given by the applicant shall be granted a number of points from 1 to 10, as further detailed in Annex 2 to the Order No. 1984/2011.

Whenever the number of points granted by AFP is **lower than forty-five (45)**, AFP shall reject the VAT registration pursuant to a decision providing the grounds for such a rejection, to be issued within a maximum of **fifteen (15) business days** as of the submission of all required documents.

Conversely, if the number of points granted by AFP is **equal to or higher than forty-five (45)**, AFP shall approve the VAT registration application by a decision to be issued within a maximum of **fifteen (15) business days** as of the submission of all required documents.



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