

Cover article: "Tax Claim Assignment – A Method to Unblock VAT Refund Application Dossiers"

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The Government's intention to hasten the VAT refund process revolves around the financial crisis which has widely affected the state budget, standing as one of the objectives set under ANAF Order 1308/2009, analyzed in the cover article of this month. This legal deed also contemplates the conditions underlying the implementation of a concept already regulated, though too seldom used in practice: tax claim assignment, which on the background of the lack of liquid assets represents an alternative whereby the value-added tax refund might be replaced by a mechanism consisting in the compensation of the claim by debts of the respective company's creditors held towards the state budget.

Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a selection of the most important legal amendments in the following fields:

- Banking
- Capital Market
- Corporate
- Dispute Resolution
- Employment
- Insurance
- IT&C
- Private Pensions
- Real Estate
- Tax

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- This year Romania marks 150 years since the establishment of the Law School, one of the first three founding Faculties of the University of Bucharest. As part of its giving back policy, Voicu & Filipescu became one of the main sponsors of the celebrating events to be organized on November 25-28, 2009.
- Already a long time partner of ELSA - The European Law Students' Association, this July Voicu & Filipescu supported the international summer law school Banking & Finance Litigation, with Partners Dumitru Rusu and Florin Dutu invited as speakers in this ten-day event open to students from around the world.

TAX CLAIM ASSIGNMENT – A METHOD TO UNBLOCK THE VAT REFUND APPLICATION DOSSIERS

The publication of ANAF Order 1308/2009 regarding certain measures for the settlement of negative VAT returns with reimbursement option, as well as for the offsetting or refund of the amounts representing the value-added tax approved under the refund decision seems to have brought some light in terms of VAT refund application dossiers. The idea is welcome, yet estimates on its practical efficiency can only be made after few months of application.

Such regulations are most likely the direct outcome of the financial crisis which, as it is widely-known, has largely affected the state budget, an impact which was and continues to be perceived also in terms of the capacity to refund the VAT amounts specified under the refund decisions.

This Order has two objectives, both valid from a tax standpoint: on the one hand, it seeks to hasten the process for the settlement of the claims concerning the negative VAT returns and, implicitly, the VAT refund process, and on the other hand it seeks to take advantage of the provisions under the Code of Tax Procedure Article 30 regarding the assignment of tax claims so as to replace the refund of the value-added tax, on the background of the lack of liquid assets, by a mechanism for the offset of claims by debts of the respective company's creditors held towards the state budget.

Please find below some of the most important details for each of the said two objectives.

HASTENING OF THE VAT REFUND PROCESS

The following measures were adopted for the hastening of the VAT refund process:

The setting out of a maximum term for the settlement of cross-check audits. The tax body may request that other tax bodies perform a cross-check audit, and the granted term of response is of 45 days, with the possibility to extend such term by a further 45-day period, under well-grounded circumstances, with the ANAF's approval. Settlement postponement will be made for the entire amount.

The expansion of the competence to perform cross-check audits. Under well-grounded circumstances, the cross-check audit may also be requested by the commissioners of the Anti-Fraud Squad, with the approval of the ANAF's president.

The introduction of a priority rank. The cross-check audits performed in the case of high tax risk refunds are to take precedence of other tax auditing-related activities. Upon the planning of the tax auditing-related activities, missions of such type are to have priority.

The introduction of the liability to swiftly update local databases. This Order lays down the liability incumbent upon the heads of tax units to appoint civil servants in charge with the real-time update of

the database concerning the settlement of negative VAT returns. The creation of local databases. This will be useful in monitoring the VAT refund processes.

IMPLEMENTATION OF THE ASSIGNMENT PROCEDURE OF PRINCIPAL AND ACCESSORY CLAIMS CONCERNING REPAYMENT OR REFUND RIGHTS

Despite the fact that the concept of tax claim assignment was regulated as of the very coming into force of the Code of Tax Procedure, the application of the same was limited or even absent. A pressure element needed to occur, namely the financial crisis, which at its turn resulted into the state budget's failure to refund the VAT amounts, so that this concept of tax claim assignment to be seriously accounted for.

ANAF Order provides for new regulations on the actual implementation of such concept. Both the application rules and the necessary forms are described therein. The main rules governing the claim assignment system are hereinafter contemplated.

Scope. The procedure will be applied both to the negative returns with repayment option undergoing settlement upon the publication of the order, and to those which are to be filed after July 10, 2009.

Claims eligible for assignment. In accordance with the provisions of the Code of Fiscal Procedure Article 30 paragraph (1), in order for a tax claim to be assigned, such claim must be established pursuant to the law. It is possible that only the amounts which must be effectively refunded to the assignor taxpayer be assigned. Should the taxpayer have fiscal obligations, these fiscal obligations are offset before the assignment has been carried out.

Tax body notification procedure. The principal or accessory claims concerning the taxpayers' repayment or refund rights may be assigned only with the prior notification of the tax body holding jurisdiction over the administration of the assignor's property. The assignment will come into effect only as of the date on which the assignee transmitted a notification in this respect in compliance with the provisions under the Code of Fiscal Procedure Article 30 paragraph (2).

Working procedure with tax bodies. The taxpayer's tax claims may be assigned to third parties. In this respect, the assignment agreement will be filed by the assignee. Should it have outstanding fiscal obligations, the assignment agreement will be filed with the tax body holding jurisdiction over the administration of the assignor's property, together with an application for offset.

The date of the redemption of assignee's outstanding fiscal obligations is the date of the filing of the application for offset. In the event that, despite the existence of outstanding fiscal obligations, the assignee does not file any application for offset whatsoever, the redemption of the obligations will occur upon the registration of the offsetting operations by the treasury subordinated to the tax body holding jurisdiction over the administration of the assignor's property.

The tax body holding jurisdiction over the administration of the assignee's property draws up the

notice for the offset of fiscal obligations in standard form, in 4 copies, and it sends it to the treasury and public accounting unit subordinated to the tax body holding jurisdiction over the administration of the assignor's property.

Subsequently to the receipt back of 3 of the 4 copies of the notice for offset from the Treasury, such copies will be distributed as follows: one copy will be transmitted to the assignee, one copy will be archived to the assignor's tax record, whereas the third copy will be archived to the assignee's tax record.

Working procedure at the level of the Treasury. The offset notices are issued by the tax body holding jurisdiction over the administration of the assignor's property and are communicated to the treasuries in charge with the data entry and with the return of the offset notices to the tax body.

Should the assignor and the assignee fall into the jurisdiction of the same treasury and public accounting unit, the treasury unit:

- will draw up the accounting book entry concerning the redemption of the assignee's obligations
- will carry out by IT means the offset operation
- will return to the tax body the offset notice in 3 copies

Should the assignor and the assignee fall into the jurisdiction of the different treasury and public accounting units, the tax body holding jurisdiction over the administration of the assignor's property transmits the offset notice to treasury subordinated to tax body holding jurisdiction over the administration of the assignee's property, and the latter will draw up a payment order containing the herein below details:

- payer's tax code: the assignor's tax code
- beneficiary's tax code: the assignee's tax code
- specification of the corresponding budgetary accounts
- payment date: date on which the assignee's budgetary obligations are redeemed

After the offset has been carried out, the 3 copies of the offset notice will be communicated to the competent tax bodies, following that the documents be archived as mentioned under the previous section.

Use of the claim in case of non-assignment. In the event that taxpayers do not wish to assign the repayment right, a database at national level will be created regarding both the taxpayers that hold such claims and their creditors. The database will be used for the identification of the relationships between tax claim holders and their creditors for the establishment of attachments on income. Forms for such actions are described in the Order.

Banking - legislative restrospective

The National Bank of Romania (NBR) has lately been engaged in a rather intense activity with respect to the drawing up of legislative drafts. Therefore, the NBR published on its official website for public debate purposes drafts of:

- Norm **amending and supplementing NBR Norm no. 15/2006 on the transmission of primary indicators to the NBR through the electronic Reporting System**—the deadline for the posting of comments is August 12, 2009; and
- Regulation **amending NBR Regulation no. 3/2009 on the classification of loans and investments, as well as on the establishment, adjustment and use of specific credit risk provisions**, as subsequently amended – deadline August 14, 2009.

According to the Draft Regulation, certified individuals, sole proprietorships, family businesses, as well as associations, foundations or any other non-lucrative entity fall within the ambit of NBR Regulation no. 3/2009, the financial performance of the same being determined in accordance with the provisions of the said Regulation, applicable to Debtors legal entities, beyond the sector of credit institutions; the stages underlying classification of loans/investments and the determination of the necessary specific credit risk provisions are amended, and the rating downgrade by contamination, namely the taking into account of the weakest of the individual classification categories, are repealed.

Capital market - legislative retrospective

In the past month, the National Securities Commission (CNVM) passed **Order no. 39/08.07.2009** for the approval of Instruction no. 4/2009 amending Instruction no. 5/2006 on **the half-year accounting reporting system of the entities authorized, regulated and supervised by CNVM**. This Instruction amends Appendix no. 2 – Informative Data and Appendix no. 4 of Instruction no. 5/2006.

In accordance with Measure Prescription no. 13 of July 8, 2009, the CNVM has initiated a pilot programme for the new computer-assisted reporting system (SIR@CNVM) for a 6-month period, as of July 22, 2009. The pilot programme is addressed to the following types of reporting entities:

- (a) financial investment companies;
- (b) investment management companies;
- (c) undertakings for collective investments, including financial investment companies established in accordance with the provisions of Law no.133/1996 for the conversion of Private Property Funds into financial investment companies;
- (d) issuers of securities which are admitted to trading on the regulated market administered by S.C. Bursa de Valori Bucuresti S.A.

Financial investment companies will report in their capacity of both undertakings for collective investments, and issuer traded on the Bucharest Stock Exchange.

On its official site, the CNVM also posted the **Draft Regulation regarding the exercise of some of the shareholders' rights within general meetings** implementing provisions of Directive no. 2007/36/EC under the same name.

The draft regulation sets out the conditions underlying the exercise of some of the shareholders' rights, attached to the voting shares, within the general meetings of the companies having their registered office located on the Romanian territory, the shares of which are admitted to trading on a regulated market, located or operating in a member state. The main provisions of the draft regulation regard the shareholders' right to information, concerning general meetings in particular, the right of the same to request for the introduction of new items on the agenda, the participation to the general meeting by electronic means, and, respectively, the vote by correspondence. Amendments and comments had been transmitted to the CNVM until August 5, 2009.

Corporate - legislative restrospective

Law no. 277/2009 for the approval of Government Emergency Ordinance no. 173/2008 **amending and supplementing Law no. 85/2006 on the insolvency procedure, and also amending letter c) of article 6 of Law no. 146/1997 on stamp duties.** Law no. 277/2009 was published in the Official Gazette, Part I, no. 486 of July 14. The main amendments brought by Law 277/2009 concern the jurisdiction of Courts to settle insolvency applications, as well as:

(a) The definition of the insolvency state

According to these new provisions, insolvency refers to that state of the debtor's assets characterized by shortage of the liquid assets available for the payment of certain, liquid and payable claims. Insolvency is deemed as manifest whenever the debtor fails to pay its debts held towards one or more of its creditors after 30 days have passed as of the due date. Furthermore, insolvency is imminent when proof is made that the debtor will find itself in the incapacity to pay by the due date the payable debts it had contracted from the money available on the due date.

(b) The threshold value of the claim

A prominent amendment of the Insolvency Law is represented by the increase of the threshold value of the claim from Lei 10,000 to 30,000. According to Law 277/2009, in order for the creditor's application to be filed, the minimum amount of the claim must equal Lei 30,000. The threshold value of the claim for employees has not been subject to any changes, as it remained at the same amount, namely 6 national average wages.

(c) Promissory sale and purchase agreements

According to the newly stipulated article 93¹, the obligations arising out from a promissory sale and purchase agreement of a certified date, which is prior to the opening of the procedure, whereby the promissory seller gets involved in the procedure, will be performed by the official receiver/liquidator upon the request of the promissory buyer:

- (i) the contract price has been fully paid or it may be paid on the date of the request and the assets are under the promissory buyer's possession;
- (ii) the price is not lower than the asset's market value;
- (iii) the asset bears no substantial part in the success of a reorganization plan.

Government Decision no. 834/2009 amending and supplementing Government Decision no. 925/2006 for the approval of the norms for the implementation of the provisions regarding the award of public procurement agreements under

Government Emergency Ordinance no. 34/2006 on **the award of public procurement agreements, of public works concession agreements and of services concession agreements.** Government Decision 834/2009 was published in the Romanian Official Gazette, Part I, no. 515 of July 27, and it

Corporate - legislative restrospective

regulated provisions such as:

- (i) the initiation of the award procedure;
- (ii) the disproportionate minimum eligibility criteria;
- (iii) the support offered by a third party.

Dispute resolution- legislative retrospective

Law no. 277/2009 for the approval of Government Emergency Ordinance no. 173/2008 **amending and supplementing Law no. 85/2006 on the insolvency procedure**, published in the Official Gazette, Part I, no. 486 of July 14, 2009. The major amendments include the minimum amount of the claim, which will be increased to Lei 30,000 in order for an application to be filed by a creditor, whereas for employees such amount will remain equal to 6 national average wages. Law no. 277/2009 also amends Law no. 146/1997 on stamp duties, setting out that the actions, applications and protests lodged in accordance with Law no. 85/2006 on the insolvency procedure and with Government Ordinance no. 10/2004 regarding the procedure of the judicial reorganization and bankruptcy of credit institutions will be charged Lei 120.

Law 276/2009 for the approval of Government Emergency Ordinance no. 212/2008 **amending and supplementing Law no. 146/1997 on stamp duties**, published in the Official Gazette, Part I, no. 482, of July 13, 2009. The law approving Government Emergency Ordinance no. 212/2008 provides for new tax thresholds for the actions and applications which can be assessed in money, filed with the law courts, amending in this respect article 2 paragraph (1) of law no. 146/1997.

Constitutional Court Judgment no. 1037 of July 9, 2009, published in the Romanian Official Gazette no. 501 of July 21, 2009, whereby it has been set out that the **provisions under article 28 paragraph (2) of Competition Law no. 21/1996** which lay down a term for bringing actions against administrative deeds having legislative function before administrative courts are unconstitutional. By this Judgment, the Constitutional Court concludes that the setting out of a term for challenging the lawfulness of the legal deed having legislative function issued by such authority infringes the provisions under article (6) of the Constitution, which guarantees the judicial review of public authorities' administrative deeds by way of action brought before the administrative court, as well as the provisions under article 21 paragraph (1), which established free access to justice.

Government Decision no. 834/2009 published in the Romanian Official Gazette, Part I, no. 515 of July 27, 2009, **amending and supplementing Government Decision no. 925/2006 for the approval of the norms for the implementation of the provisions regarding the award of public procurement agreements under Government Emergency Ordinance no. 34/2006** on the award of public procurement agreements, of public works concession agreements and of services concession agreements. According to Government Decision no. 834/2009, the contracting authority is held liable for the manner in which the public procurement agreement/framework-agreement is awarded, so that any and all applicable legal provisions be observed. Moreover, the contracting authority is entitled to initiate the implementation of the award procedure only after the award documentation or, as the case might be, the competition documentation has been prepared.

Employment - legislative retrospective

Clarifications on the legal provisions regulating the temporary lay-off in 2009. Law no. 268/2009 for the approval of Emergency Ordinance no. 28/2009 on the regulation of certain social security measures, published in the Official Gazette, Part I no. 482 of July 13, 2009, **brings forth a range of amendments on the provisions which had been formerly given different interpretations.**

- The modification of the maximum period within which the employer must not pay social security contributions, from 3 months to 90 (calendar) days. Whereas the former provisions laid down that throughout the period of temporary work stoppage employers and employees were to be exempt from paying the social security contributions provided for by law for a period which would not exceed 3 months, the new law sets out that the maximum length of the period within which social security contributions are not due will not go beyond 90 days.
- The modification of the maximum period within which the employees' pay packages are not deemed as salary income and are not subject to taxation from 3 months to 90 (calendar) days. Pursuant to Law 268/2009, the pay packages granted to employees, of not less than 75% of their basic wage corresponding to their specific position, paid from the wage fund, throughout the period of the employer's temporary work stoppage, are not deemed as salary income and are not subject to taxation, for a period of 90 days at the utmost.
- Other Clarifications. Law 268/2009 expressly provides for that the period of temporary work stoppage, with regard to the employees whose individual employment agreements are suspended, represents contribution-free vesting period. Moreover, the new regulation clearly stipulates that the temporary work stoppage may be total or partial (affecting only a department or a segment of an employer's business activity), including temporary reduction, and it may be grounded on economic, technological, structural or similar reasons.

The measures, as clarified by Law 268/2009, will apply in 2009 (more precisely, subsequently to the coming into force of Emergency Ordinance no. 28/2009). With regard to the commission payable to the Territorial Labour Inspectorate, such commission will apply under the same terms and conditions as up to the present, namely to the overall salary fund achieved on a monthly basis by the company's employees, irrespective of the situation undergone by the same.

Insurance - legislative retrospective

In the past period, the Insurance Supervisory Commission (CSA) passed **Order no. 9/2009** amending the Norms on **the compulsory civil liability insurance for the damages caused by car accidents**, implemented by CSA Order no. 20/2008, **Order no. 10/2009** for the implementation of the Norms on the **Guarantee Fund**, and **Order no. 11/2009** for the implementation of the Norms on **the amount and payment term of the licence fee payable by insurers and insurance brokers**.

Orders no. 9/2009 and no. 11/2009 were adopted by the Insurance Supervisory Commission in the current context of the economic crisis in order to lend support to the insurance participants and to appropriately protect the insured people's interests by means of:

- the reduction by 0.1 percentage points of the rate of the gross insurance premium amount which is charged on a monthly basis for the civil liability car insurance, reaching thus 1.00%, starting with the month of July, and respectively
- the cutdown down to 0.3% of the licence fee amount of the gross premiums charged by insurers, respectively of the gains resulting from the brokerage activities carried out by insurance brokers, ancillary to the period for which such gains are due.

With respect to Order no. 10/2009, this Order was published in the Official Gazette no 512/27.07.2009, and it regulates the procedures for the creation of the Guarantee Fund provided for by Law no. 136/1995 on insurance and reinsurance in Romania, as subsequently amended and supplemented, the management and the structure of the Fund's income and expense budget, the procedure and the terms regarding the performance of payments out of the Fund's available funds, the methods applied for the recovery of the amounts paid from the Fund. The implementation norms also contain special provisions concerning the use of the Fund's available funds within the bankruptcy procedures initiated in prior to the coming into force of Law no. 503/2004 on the economic recovery and bankruptcy of insurance companies.

Three **legislative drafts** are posted on the official site of the Insurance Supervisory Commission:

- Draft Order for the implementation of the Norms on the Insurance Pool against Natural Disasters;
- Draft Order amending the Norms on the licensing of insurers;
- Draft norms on the principles for the organization of an internal control and management risk system, as well as on the organization and performance of internal auditing activities for insurers/reinsurers.

Any potential proposals for the supplementation or amendment of the draft can be submitted by August 12, 2009.

IT&C - legislative retrospective

New clarifications on electronic invoices. The issuer of the electronic invoice is held liable to use a computer-assisted system homologated by the Ministry of Communications and Information Society (MCSI), in accordance with the MCSI Order no. 488/2009 regarding the procedure of checkout and homologation of the computer-assisted systems designed for the operations of electronic invoice issuing, as well as the norms of security and performance in connection with the computer systems used by the persons who issue, transmit or record fiscal invoices, receipts and slips in electronic forms, published in Part I of the Official Gazette of Romania no. 487 of July 14, 2009. In this respect, the issuer will submit to MCSI a written application whereby it requests the commencement of the procedure for the homologation of the computer system.

The herein below documents must be submitted to MCSI by the issuer of electronic invoices applying for the homologation of the computer system:

- (a) homologation application;
- (b) audit report – the audit will be carried out by an auditor that is independent from the issuer of the electronic invoice and from the designer of the computer system the homologation of which is applied for; the audit report may be carried out by either a natural or legal person, certified as computer system auditor.
- (c) operational description of the computer system;
- (d) security plan of the computer system;
- (e) certifications regarding the security of the computer system, if any;
- (f) auditor's statement, whereby it confirms its independence from the issuer of the electronic invoice and from the designer of the audited computer system;
- (g) if the case might be, the description of the equipment necessary for the conversion process to be carried out, in the event that the issuer as of right of the electronic invoice has a valid agreement based upon which it benefits from services consisting in the conversion of invoices issued as hardcopy into electronic invoices;
- (h) the supporting document proving that the homologation fee has been paid – Lei 9,000.

Further to the checkout on the compliance of the computer system with the requirements set out by order 488/2009, the homologation order will be issued within 30 days as of the date of the submission of the documentation. The homologation order is valid for one year, and the renewal procedure is similar to the issuance procedure; throughout the entire period of its validity, the MCSI holds the right to perform checkouts of the homologated computer system.

Alterations of the homologated computer system. It is important to note that the issuer of the electronic invoice is held liable to inform the MCSI on any alteration of the computer system modifying the submitted documentation. Should the MCSI deem that the alterations made to the computer system affect the performance rates of the same, it will ask the issuer of the electronic invoice

IT&C - legislative retrospective

to initiate the procedure for the renewal of the homologation.

Outsourcing of the services of issuance, transmission or recording of electronic invoices. The aforementioned services could be outsourced based upon any agreement validly concluded with a supplier of electronic invoicing services, with the observance of any and all terms and conditions stipulated by Law no. 260/2007 on the registration through electronic means of commercial operations.

Private pensions - legislative retrospective

The **Private Pension Supervisory Commission** (CSSPP) posted on its official site **three new draft norms**, consistent with the principle of transparency of the decision-making process in public administration, and namely:

- Norms regarding the operations of receipts and payments effected through the accounts of the privately administered fund, respectively the operations of receipts and payments effected through the accounts of the optional pension fund, the deadline for the transmission of comments being the date of August 19, 2009;
- Norm regarding the use of the personal assets of the participant to a facultative pension fund having as deadline – August 2, 2009.

The first two drafts comprise the methodology of the receipt and payment operations effected through the bank accounts of the private and optional pension funds bringing further clarifications on the registration of the same, in the context of the transparency of the Romanian private pension system, by regulating:

- (a) the flow of operations concerning the transfer of the individual contributions of the participants to the private pension funds;
- (b) the flow of operations concerning the settlement of financial instrument transactions;
- (c) the flow of operations concerning the transfer of the participants' assets between the pension funds;
- (d) the flows of operations concerning the payment of the counter value of the personal net assets of the participant to a pension fund in case of invalidity, demise, as well as in case of its acquisition of the right to pension;
- (e) flows of operations concerning the redemption of the obligations held by the private pension fund.

The provisions of these draft norms will be applicable to the private pension funds, as well as to private pension fund administrators and depositaries. Should such drafts come into force, Norm no. 17/2008 on the use of the personal assets of the participant to an optional pension fund in case of invalidity and demise, published in the Official Gazette of Romania no. 515 of July 9, 2008, as well as some of the provisions under Norm 19/2008 on the use of the personal net assets of the participant to a privately administered pension fund will be repealed.

With regard to **the third draft norm**, it **will regulate the manner in which the participant's personal assets are used** in the event that the said participant:

- (a) reached the age of 60 years and did not pay the minimum of 90 monthly contributions or its personal assets are not at least equal to the amount necessary to obtain the minimum optional pension;
- (b) benefits from an invalidity pension in accordance with Law no. 19/2000 on the public pension

Private pensions - legislative retrospective

system and other social security rights, as subsequently amended and supplemented;

(c) dies before the filing of the application to obtain an optional pension.

Until the enactment of the special law regarding the organization and operation of the payment system of the pensions regulated and supervised by CSSPP, the participant or the beneficiary, as to the case, will receive the amount existing in its account, as sole payment.

Real estate- legislative retrospective

The Government amends and supplements the legislation regarding regional and town planning. Law 242/23.06.2009 for the approval of Government Ordinance no. 27/2008 amending and supplementing Law no. 350/2001 on regional and town planning was published in the Official Gazette, Part I, no. 460/03.07.2009.

A new element is represented by the fact that the land fitted into the built-up area according to the General Town Planning Scheme does no longer has to be set aside upon the issuance of the building permit. Furthermore, the law prohibiting the promotion of the regional town planning schemes the declared purpose of which was the promotion of a certain investment project was repealed.

What is also new is the fact that should a regional town planning scheme be drawn up for a pre-set area upon the public local administration's initiative, the new town planning documentation may be financed **either from public funds or by interested private and legal persons**, though the competent public local authority will be fully held liable for the coordination of the preparation of the town planning documentations and their contents.

By no later than September 30, 2009, the town planning documentations which have been drawn up as against a town planning certificate issued in prior to August 29, 2008 or which are accompanied by an approval application of the technical town planning commission under the competent public local authority will be authorized and approved in accordance with the applicable laws before the coming into force of Government Ordinance 27/2008.

New amendments on Law no. 50/1991 on the authorization of construction works were adopted by the Government through Law no. 261/2009 for the approval of Government Emergency Ordinance no. 214/04.12.2008 amending and supplementing Law no. 50/1991 on the authorization of construction works, published in the Official Gazette, Part I, no. 493/16.07.2009.

What this law brings new is the introduction within the authorization procedure of construction works of a stage consisting in the issuance **of the competent environmental authority's opinion** with respect to the investments which are not subject to the environmental impact assessment procedures. The opinion issued by the competent environmental authority or, as the case might be, the administrative deed of the same, together with the approvals and agreements set out in the town planning certificate are to be attached and become an integrant part of the building permit.

Pursuant to Law no. 261/2009, the opinion of the competent environmental authority is the written document issued by the same subsequently to the initial assessment stage, respectively to the stage of submitting the investment to the environmental impact assessment procedure, whereas the administrative deed of the competent environmental authority is, as the case might be, the environmental agreement or the Natura 2000 approval. For the issuance of **a demolition permit**, neither the opinion of the competent environmental authority nor its administrative deed is necessary

Real estate- legislative retrospective

any longer.

This new legal deed offers to the public administration authority with territorial jurisdiction over the area where the building is located the possibility to demolish through administrative proceedings, without a demolition permit, without court referral and at the offender's expense, **the buildings constructed without a building permit, as well as any and all temporary buildings, works and improvements** performed on lands under the publicly or privately state-owned property or owned by other territorial administrative units.

Important amendments brought to the Civil Code. Law no. 287/2009 on the Civil Code was published in the Official Gazette, Part I, no.511/24.07.2009.

A substantial amendment brought to the Civil Code in force consists in the express regulation of the need for publicity, in the cases expressly provided for by law, of the rights, legal acts and actions regarding the status and capacity of persons, the assets owned by the same, any other legal relationships, by means of the Land Book, the Electronic Archive of Movable Securities, the Trade Registry, as well as any other forms of publicity stipulated by law.

What is also new is that any person, including the person deprived of legal competence, may carry out the publicity proceedings.

Publicity does not validate the right, the act or action subject to publicity, but it may though give rise to a presumption of existence to the extent to which it is neither deregistered nor modified. Moreover, publicity ensures the opposability of the right, act or action subject to publicity, it ensures the rank of the same, and, in cases expressly provided for by law, it conditions their creation or their legal effects.

Another amendment consists in the regulation of the pre-marital agreement and in the need of the registration thereof with the National Registry of Matrimonial Property, also stipulating that each of the spouses have the possibility to register a joint estate with the land book or with any other publicity registers.

The new Civil Code will come into force on the date set out in the law for the implementation hereof, following that the draft law be subject to the Parliament's approval by no later than July 24, 2010.

Notaries public cut down on their fees by 30 % for the "First Home" programme.

Order no. 1982/2009 supplementing the Norms regarding the fees of notaries public, approved by Ministry of Justice Order no. 943/C/2005, was published in the Official Gazette, Part I, no. 517/28.07.2009, whereby the notaries public cut down by 30 % on their fees charged for the authentication of the sale and purchase agreements and of the mortgage agreements the parties of which are individuals purchasing a dwelling through the government programme approved by Government Emergency Ordinance no. 60/2009 on some measures for the implementation of the "First Home" programme.

Real estate- legislative retrospective

The Ministry of Public Finance and the Ministry of Small and Medium Sized Enterprises, Commerce and Business Environment adopt new measures in order to facilitate access to the "First Home" programme.

In Monitorul Oficial, Partea I, nr. 526/30.07.2009 s-a publicat Order no. 2390 of July 28, 2009 passed by the Ministry of Public Finance and the Ministry of Small and Medium Sized Enterprises, Commerce and Business Environment, amending and supplementing Order of the ministry of public finance and of the ministry of small and medium sized enterprises, commerce and business environment no. 2.225/994/2009 for the approval of the Convention on the implementation of the "First Home" programme and of the Guarantee Convention, as well as for the regulation of some necessary measures for the application of the provisions under Article 10 of appendix no. 1 to Government Decision no. 717/2009 regarding the approval of the norms for the implementation of the "First Home" programme.

It is the Guarantee Convention for the "First Home" programme that it is subject to the most prominent amendment, which consists in imposing on the programme's beneficiaries **the obligation to create, in accordance with Government Emergency Ordinance no. 60/2009, a statutory mortgage on the dwelling purchased from the guaranteed funds, in favour of the Romanian state represented by the Ministry of Public Finance.** Along with the statutory mortgage created on the dwelling, the 5-year period restraint on the alienation of the same, as well as the restraint on its burdening by other charges throughout the entire period of the credit financing are to be registered with the land book of the dwelling. The registration of both the statutory mortgage and of the restraints is to be effected in accordance with the guarantee agreement.

The aforementioned deed grants to the financing parties, in capacity of agents of the Ministry of Public Finance, the right and the obligation to register the mortgage over the dwelling purchased from the guaranteed funding, and concurrently to carry out any and all necessary proceedings for the registration of the said restraints in the land book and for the submission of the application regarding the deregistration of the mortgage and of the restraints, under the terms of the guarantee convention.

Tax- legislative retrospective

Circular no. 21/2009 of July 1, 2009 on the National Bank's reference interest rate level valid in the month of July 2009 – sets out the reference interest rate level for the month of July to 9.50% per year. The circular was published in the Official Gazette no. 452/01.07.2009.

Law no. 268/2009 of July 7, 2009 for the approval of Government Emergency Ordinance no. 28/2009 on the regulation of certain social security measures – Government Emergency Ordinance no. 28/2009 on the regulation of certain social security measures is approved, as subsequently amended and supplemented in connection with: the extension of the grant period and the method of calculation of the unemployment benefit, the exemption both of employer and employees from the payment of their social security contributions throughout the period in which the individual employment agreement is suspended at the former's initiative. The Law was published in the Official Gazette no. 482/13.07.2009.

Law no. 237/2009 of July 7, 2009 amending Law no. 19/2000 on the public pension system and other social security rights – the amendments brought to Law 19/2009 bear reference to the retirement age and the method of calculation of the pension. The Law was published in the Official Gazette no. 482/07.07.2009.

Order no. 1432/2009 of July 15, 2009 on the setting out of the value of the monthly indexed amount granted as nursery tickets for the 2nd semester of 2009 – starting with the month of August this year, for the 2nd semester of 2009, the value of the indexed amount granted as nursery tickets is of Lei 360. The Order was published in the Official Gazette no. 03/21.07.2009.

Order no. 1340/2009 of July 16, 2009 on the approval of the layout and contents of form 710 "Rectifying statement", code 14.13.01.00/r – approves the new layout and contents of form 710 "Rectifying statement". The Order was published in the Official Gazette no. 508/23.07.2009.

Order no. 2321/2009 of July 16, 2009, published in the Official Gazette no. 508/23.07.2009 for the approval of the Methodological Norms on the procedure for the grant of payment deferrals of the outstanding fiscal obligations, administered by the National Agency of Fiscal Administration – approves the Methodological Norms on the procedure for the grant of payment deferrals of the outstanding fiscal obligations, administered by the National Agency of Fiscal Administration. The legislative amendments brought by this Order are presented in detail in the cover article of this issue of News in Laws.

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