

## **The Evolution of the Income Tax for Microenterprises in Romania**

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**Abstract:** *During the interwar period, especially after the great economic crisis of 1929-1933, the capitalist economic conception replaced the noninterventionist state with the interventionist one. This situation is similar with our present financial and economic conditions, when the financial crisis gradually transforms into an economic crisis.*

*In these conditions, the public finances become an intervention instrument the state can use for its social and economic agenda. According to the classical concept on public finances, the income of the state budget has to ensure both the financing of the state institutions, the stimulation of economic development and the adjustment of the social conditions. Using duties and taxes, some branches or trade companies can become more attractive or can be saved from bankruptcy either due to lower taxation bases or duties, or exempting certain income or profit from taxation.*

**Keywords:** *fiscal policy, energy taxation, energy prices, energy consumption, oil and natural gas price, energy tax harmonization*

### **1. Introduction**

The duties and taxes are the means used by the state in order to ensure a balanced financing of the economy. As a matter of fact, the duties and taxes are essential instruments of the economic and social policies of the state used to stimulate the economy at national level, instruments that emphasize the interventionist character of the state.

As specified in the preface of the European Chart for Small Enterprises<sup>1</sup>, the small companies are the foundation of the European economy. They represent an essential source of jobs and new business ideas. The efforts of the European Union to form a new economy will have success only if the small enterprises will be the priority of its work agenda.

These enterprises are the most sensitive companies to changes in the business environment. They are the first to be affected by the burden of bureaucratic excesses. Also, they are the first to flourish from the initiatives to eliminate bureaucracy and reward success.

The existing 23 million small and medium sized enterprises (SMEs) in the European Union ensure 75 million places of work and represent 99% of all the companies.

However, they often have to face the imperfections of the market. The SMEs have often difficulties when it comes to obtaining capital or credits, especially in the start-up phase. Their limited resources can also reduce the access to new technologies or innovation.

This is why supporting the SMEs is one of the priorities of the European Commission in order to achieve economic growth, to create new jobs and attain social and economic cohesion.

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<sup>1</sup> Adopted at the 13th of June 2000, the European Chart for Small enterprises was accepted by Government Ordinance no. 656/2002, published in the Official Gazette no. 496 on the July 10 2002.

The special attention of the Romanian Government for the development of the small and medium sized enterprises led to introducing the income tax for microenterprises as an alternative to the income tax.

## 2. Legal Regulations on Microenterprises

The income tax for microenterprises was introduced for the first time in Romania in 2001 once the Government adopted the Ordinance no. 24/2001<sup>2</sup>.

Presently the income tax of the microenterprises is stipulated in the Title IV (art. 102-112) from the Fiscal Code and Methodological Standards applying for title IV from the Fiscal Code<sup>3</sup> (Point 1-17).

**From an economic point of view, the microenterprise is defined** by the art. 4, paragraph (1), letter a) from Law no. 346/2004<sup>4</sup> as a small or medium sized enterprise with “no more than 9 employees and a net annual turnover or owning a total amount of assets of up to 2 million euro, or its equivalent in lei”.

**From a fiscal point of view, the microenterprise is defined** by art. 103 from the Fiscal Code as a Romanian legal entity that fulfills all of the following requirements at the 31<sup>st</sup> of December of the previous fiscal year:

- a) It has other source of income than the one obtained from consulting and management that constitutes more than 50% of the total income;
- b) It has 1 up to 9 employees;
- c) It achieved an income that did not exceed the equivalent in lei of 100.000 euro;
- d) The registered capital of the legal entity is owned by persons, others than the state, local authorities and public institutions.

It is important to point out that, from an economic point of view, the notion of “microenterprise” is much larger than from a fiscal point of view.

The judicial doctrine operates with the idea that there is a lack of legal correspondence concerning the definition of the notion “microenterprise”.

My opinion is that this problem is false because the fiscal legislator didn’t want this tax to apply to all the legal entities that fulfill the condition of being microenterprises, as per the general law.

### Applying legislation

- Government Ordinance no. 24 from 2001, on microenterprise taxation, published in the Official Gazette no. 427 from the 17<sup>th</sup> of August 2001, repealed by the law no. 571/2003;
- Law no. 111 from 2003, to approve the G.O. 24/2001 on microenterprise taxation, Official Gazette no. 243 from the 9<sup>th</sup> of April 2003;

<sup>2</sup> The Government Ordinance no. 24/2001 (O.G. no. 472 from the 17<sup>th</sup> of august 2001) on microenterprise taxation was repelled by the Law. No. 571/2003 on the Fiscal Code (O.G. no. 927 from the 23<sup>rd</sup> of December 2003).

<sup>3</sup> The applying methodological standards for the law no. 571/2003 on the Fiscal Code were approved by Government Decision no. 44/2004 (O.G. no. 112 from the 6<sup>th</sup> of February 2004).

<sup>4</sup> Law no. 346/2004 on stimulating the setting up and development of the small and medium sized enterprises (O.G. no. 681 from July 29 2004).

- Law no. 232 from 2003 approving the Government Ordinance no. 36 from 2003 on correlating stipulations from the financial and fiscal legislation published in the Official Gazette no. 373 from the 31<sup>st</sup> of May 2003;
- Ordinance no. 945 from 2003 on approving the Instructions concerning the methodology of calculating the income tax for the enterprises, published in Romania's Official Gazette of no. 548 from the 30<sup>th</sup> of July 2003;
- Law no. 571/2003 on the Fiscal Code;
- The G.O. no. 138 from the 29<sup>th</sup> of December 2004 on modifying and completing the Law no. 571/2003 on the Fiscal Code;
- Law no. 346/2004 on stimulating the setting up and development of the small and medium sized enterprises with subsequent modifications and completions;
- Law no. 343 from the 17<sup>th</sup> of July 2006 on modifying and completing the Law no. 571/2003 on the Fiscal Code;
- Emergency Government Ordinance 34/2009 on rectifying the budget for 2009 and controlling some financial and fiscal measures.

#### **The Legal framework on the income tax for microenterprises set up by Government Ordinance no. 24/2001**

The Romanian Government adopts the G.O. no. 24/2001 on microenterprise taxation according to the stipulations of the art. 107 from the Romanian Constitution and the stipulations of the art. 1 point II.1, Law no. 324/2001 on the capacity of the Government to issue ordinances.

According to G.O. no. 24/2001 the legal entities, called microenterprises, have to pay an income tax for any income, if they fulfill all the following conditions at the 31<sup>st</sup> of December of the previous year:

- a) If they produce goods, provide services and/or have trading activities;
- b) If they have up to 9 employees;
- c) If they achieved an income that did not exceed the equivalent in lei of 100.000 euro;
- d) If they have a privately owned capital;

The legal entities set up during the fiscal year benefit from the stipulations of the present ordinance if they comply with all of the above mentioned requirements.

The G.O. 24/2001 does not apply to the following institutions:

- banks,
- insurance and reinsurance companies,
- investment companies, investment management companies and deposit companies,
- securities mediating companies,
- companies with exclusively external trading activities;

The evidence of complying with the required number of employees is issued by the local and Bucharest departments of labor and social solidarity.

In order to comply with the requirement of the income level, the financial accounting data from the verification balance for the month of December of the previous year is taken into account or the financial data from the profit and loss account for microenterprises.

In case if, during the fiscal year, one of the requirements is no longer met by the enterprise, the taxpayer has the obligation to follow for that year the taxation regime established by the Government Ordinance no. 24/2001, without the possibility to return to this type of taxation in the following year, even if he subsequently complies with all the above mentioned conditions.

The legal entities subjected to this tax regime established by the G.O. no. 24/2001, no longer calculate and don't pay the income tax according to the stipulations of the G.O. no. 70/1999 tax on profit, republished with subsequent modifications and completions. The microenterprises will organize and conduct the financial bookkeeping according to the Methodology approved by the Order of the Ministry of the Public Finances.

The microenterprises that deliver goods or services directly to the population and don't provide invoices for them have to use fiscal electronic registers, according to the law.

The period of time subjected to taxation for all the microenterprises is the fiscal year that corresponds to the calendar year.

In the case when a taxpayer is set up or reorganized through separation or fusion during the fiscal year, the period subjected to taxation is the period of the fiscal year the company existed.

The tax is calculated by applying the 1.5 rate on the total income obtained from any source during that trimester, therefore on the income registered in the profit and loss account for the microenterprise.

When the microenterprise purchases cash registers, the tax rate is applied on the total income minus its value, according to the justifying act for the month the purchase was registered.

The microenterprises that carry out production activities resulting in material goods or provide services and invest their profit into tangible and intangible assets subjected to amortization, defined according to Law no. 15/1994 on the amortization of the fixed capital into tangible and intangible assets, republished with subsequent modifications, designed for the activities for which the taxpayer is authorized, the investments of these microenterprises are deducted from the tax to be paid. The discounted amount cannot exceed the tax that has to be paid for the whole fiscal year.

For the investments that are not finalized in the current fiscal year, the deduction is made in proportion with the value of the works that were accomplished, based on a partial work situation.

The payment of the tax is made in lei, each trimester until the 25<sup>th</sup>, including 25, of the first month from the following trimester.

If the tax is not paid in the due time according to the stipulations of the ordinance, delay penalties are applied according to the G.O. no. 11/1996 on levying budget outstanding debts, approved and modified by the Law no. 108/1996 with subsequent modifications and completions.

The process of finding, control, following and levying the taxes, as well as any corresponding delay penalties, stipulated in the above mentioned regulation are carried out by the fiscal institutions subordinated to the general county departments of public finances and the city of Bucharest.

The fiscal control is carried out according to the procedure stipulated by G.O. no. 70.1997 on the fiscal control, approved and modified by the Law no. 64/1994, with subsequent modifications and completions, not sooner than 2 years from the date of the previous fiscal control or from the date the ordinance came under effect, except the cases of fiscal evasion.

The tax obligations stipulated in the regulation are considered income of the state budget.

The litigations formulated for the control or the tax papers of the fiscal bodies will be solved according to the regulations of the E.G.O. no. 13/2001.

The Romanian Parliament adopted the Law no. 111/02.04.2003 that approved the Government Ordinance no. 24/2001 on microenterprise taxation published in the Official Gazette of Romania, Part I, no. 243/09.04/2003, adopted based on the art. 1, point II.1 from the Law no. 324/2001 on the ability of the Government to issue ordinances, published in the in the Official Gazette of Romania, Part I, no. 472/17.08.2001, with subsequent modifications and completions:

- ❖ The legal entities, called microenterprises in that which follows, can choose to pay a tax on the obtained income if on the 31<sup>st</sup> of December of the previous year they meet all of the following conditions:
  - If they produce goods, provide services and/or have trading activities;
  - If they have between 1 and 9 employees;
  - If they achieved an income that did not exceed the equivalent in lei of 100.000 euro;
  - If they have a privately owned capital;
- ❖ The legal entities set up during the fiscal year can benefit from these advantages if they fulfill the requirements mentioned above;
- ❖ The stipulations of the government ordinance does not apply to the legal entities that carry out banking activities, insurance and reinsurance activities, those that trade on the capital market and have external trading activities;
- ❖ In order to meet the requirements on the income level, the financial accounting data from the verification balance for the month of December of the previous year is taken into account or the financial data from the profit and loss account for microenterprises;
- ❖ In case if, during the fiscal year, one of the requirements is no longer met by the enterprise, the taxpayer has the obligation to follow for that year the taxation regime established by the Government Ordinance no. 24/2001, without the possibility to return to this type of taxation in the following year, even if he subsequently complies with all the above mentioned conditions.
- ❖ When the microenterprise purchases cash registers, the tax quote is applied on the total income minus its value, according to the justifying act for the month the purchase was registered;
- ❖ If the tax is not paid in the due time according to the stipulations of the ordinance, delay rates and penalties are applied according to legislation under effect on levying budget outstanding debts;
- ❖ The process of finding, control, following and levying the taxes, as well as any corresponding delay increases, stipulated in the above mentioned regulation are carried out by the fiscal institutions subordinated to the general country departments of public finances and the city of Bucharest
- ❖ The fiscal control is carried out according to the procedure stipulated by G.O. no. 70.1997 on the fiscal control, approved and modified by the Law no. 64/1994, with subsequent modifications and completions, not sooner than 2 years from the date of the previous fiscal control or from the date the ordinance came under effect, except the cases of fiscal evasion.

**Law no. 571/2003 on the Fiscal Code published in the O.G. no. 927 on the 23<sup>rd</sup> of December 2003**

As per Law no. 571/2003, a microenterprise is a Romanian legal entity that meets all of the following conditions on the 31<sup>st</sup> of December of the previous fiscal year:

- a) If the registered object of activity of the entity is to produce material goods, provide services and/or carry out trading activities;
- b) If the legal entity has between 1 and 9 employees;
- c) If the company achieved an income that did not exceed the equivalent in lei of 100.000 euro;
- d) The registered capital of the legal entity is owned by persons, others than the state, local authorities and public institutions.

The income tax rate for microenterprises is 1.5%.

The tax calculation and payment for microenterprises is made on a trimester basis, until the 25<sup>th</sup>, including 25, of the following month for that particular trimester. The microenterprises must submit their income tax declaration before the payment date.

**✚ The G.O. no. 138 from December 29<sup>th</sup> 2004 modifying and completing the Law no. 571/2003 on the Fiscal Code**

The Government Ordinance no. 138/2004 stipulates the following:

- The microenterprises that pay the income tax can choose to pay the tax on profit starting with the following fiscal year. The option has to be expressed before January 31 of the following fiscal year to the one the company has to pay the income tax for.
- The income tax rate for the microenterprises is 3%.

The stipulations of the emergency ordinance come under effect on the 1<sup>st</sup> of January 2005.

**✚ Law no. 343 from July 17 2006 modifying and completing the Law no. 571/2003 on the Fiscal Code, published in the Official Gazette of Romania, no. 662 from the 1<sup>st</sup> of August 2006**

Originally, the letter a), art. 103 from the Law no. 571/2003 had the following content:

The microenterprise is a Romanian legal entity that meets all of the following conditions at the 31<sup>st</sup> of December of the previous fiscal year:

- a) Its registered object of activity is to produce material goods, provide services and/or carry out trading activities;

According to Law no. 343 from the 17<sup>th</sup> of July 2006, article 103, the letter a) will have the following content:

- a) It has other income than the one obtained from consulting and management that constitutes more than 50% of the total income;

The purpose of modifying this condition is due to a registered tendency in practice for the legal entities that obtain income from consulting and/or management to opt for the enterprise income tax, thus maximizing their net profit and avoiding paying any other types of taxes.<sup>5</sup>

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<sup>5</sup> "Curierul fiscal" no. 5/2009, pg. 11

The condition stipulated at letter a) of the article 103 from the Law 571/2003 of the Fiscal Code coming under effect on the 1<sup>st</sup> of January 2007 has to be verified for the fiscal year 2008 based on the income accomplished by the taxpayers in the fiscal year 2007, except the situation specified in art. no. 1071 of the Fiscal Code. The condition for the following years will be verified based on the accomplished income in the previous fiscal year. Classifying the income obtained from consultancy and management is done after analyzing the contracts that were concluded.

The article 107 on the tax rate was modified as presented below:

- ✓ The income tax rate for enterprises is: 2% in 2007; 2.5% in 2008; 3% in 2009.

A new article 1071 was introduced after article 107 with the following content:

- ✓ Art. 1071: Taxing the enterprises with higher income than 100.000 euro

The new approved modifications stipulate that, if during a fiscal year a microenterprise reaches an income bigger than 100.000 euro, this microenterprise will pay a tax on profit based on the income and the expenses accomplished from the beginning of the fiscal year. The profit tax is calculated and the paid for starting with the trimester when the limit stipulated in this article was exceeded, without any delay rates. When calculating the due profit taxes, the payments that represent the income tax for microenterprises for that fiscal year are deducted.

**According to the Methodological Standards required for applying the Law no. 571/2003 approved by the Government Ordinance no. 44/2004 with subsequent modifications and completions, the following are stipulated:**

- ❖ The taxpayer will inform the fiscal body about the modification of the type of tax by submitting a stating declaration, as per the Government Ordinance no. 92/2003 on the Fiscal Code procedure, republished with subsequent modifications and completions.
- ❖ In order to meet the conditions concerning the income level attained during the fiscal year, and to establish the weight of the income achieved from consulting and management from the total income, the same income will be taken into account that forms the tax base stipulated in art. 108 from the Law no. 571/2003 on the Fiscal Code, with subsequent modifications and completions.
- ❖ The LEU/EUR rate exchange used in order to determine the equivalent in euro of the income attained by the microenterprise is the one communicated by the National Bank of Romania for the last day of each month of the period related to that particular income.
- ❖ The profit tax the taxpayer has to pay starting with the trimester when the value stipulated in art. 1071 was overreached, according to Law no. 571/2003 on the Fiscal Code with subsequent modifications and completions, represents the difference between the profit tax calculated from the beginning of the fiscal year until the end of the reporting period and the enterprise income tax due for that year.

### **3. The Procedure of Calculating the Tax Base and the Income Tax**

The instructions on calculating the enterprise income tax was issued on 25.07.2003, the persons who meet the criteria stipulated by the Government Ordinance no. 24/2001 on microenterprise taxation, approved and modified by the Law no. 111/2003, modified and completed by the Law no. 232/2003 issued in order to approve the Government ordinance no. 26/2003 on correlating some stipulations

from the financial and fiscal legislation, called in that which follows microenterprises, contains the following instructions:

### **3.1 The Organization of Bookkeeping and the Calculation of the Tax Base**

The microenterprises that pay the income tax organize and manage their bookkeeping according to Simplified accounting regulations, synchronized with the European directives, approved through Order no. 306/2002 issued by the Ministry of Public Finances.

The tax base subjected to the 1.5% rate is the total income of the trimesters that is registered in the credit of the 7<sup>th</sup> class "Income accounts", except the ones registered in:

- ❖ Account 711 "Stock variation";
- ❖ Account 721 „Income from the production of intangible assets”
- ❖ Account 722 „ Income from the production of tangible assets”
- ❖ Account 758 „ Other exploitation income” representing analytically the income share of government subventions and other similar resources used to finance investments;
- ❖ Account 781 "Income from commissions from the exploiting activity" and 786 "Income from commissions"
- ❖ The income resulted after settling the debts and the penalties to be paid at the state budget that weren't deductible expenses when calculating the profit subjected to taxation, according to the legal regulations.

The positive differences of the exchange rates resulted after evaluating the outstanding debts and the debts into foreign currency existing at the 31<sup>st</sup> of December, registered by the bookkeeping into account 117 "Reported result" after applying the regulations stipulated in the Order issued by the Minister of Public Finances no. 306/2002 on approving the Simplified accounting regulations synchronized with the European directives, is considered to be an income subjected to taxation as these outstanding debts are settled and the debts are paid.

The number of workers represents the number of persons employed with an Individual Labor Contract, as per the stipulations of the Labor Code, no matter the duration of work registered in the monthly payrolls or in the employment register.

When analyzing the conditions of compliance with the number of employees, the following cases are not taken into account: cases of canceling the labor rappsports as a consequence of retiring or suspending the individual labor contract, after performing any actions that can also be sanctioned in this manner.

The legal entities with one employee that suspend the individual labor contract unilaterally during a month are considered to comply with the condition stipulated in art. 1, paragraph (1) letter b, from the G.O. no. 24/2001, modified by Law no. 111/2003 and Law 232/2003, if during the following month another worker is hired.

In order to meet the conditions on the level of income accomplished in the previous year, the same income that constitutes the tax base will be taken into account, while the exchange rate used to calculate its equivalent in euro is the one registered when the financial exercise was concluded.

According to art. no. 1 paragraph (5) from the G.O. no. 24/2001 modified by the Law no. 111/2003 and the Law no. 232/2003 if one of the conditions is no longer met during the fiscal year, the taxpayer



must no longer apply the income tax, even if he subsequently meets all the criteria stipulated at letter b and c of the article 1, paragraph (1) from that regulation.

In the case if the microenterprise purchases cash registers, the tax rate is applied on the total income minus its value, according to the justifying act for the month the registers started to be operated. This process of setting up to work is done according to the legal stipulations.

### **3.2 Regulations on Opting and Registering as a Microenterprise**

Art. 1 paragraph (1) from the G.O. no. 24/2001, modified by Law no. 111/2003 and Law 232/2003 stipulates that the option is stated when paying the tax for the income obtained from any source, exiting this taxation system is done starting with the year following the one when the company no longer meets the conditions stipulated in this article.

The following legal entities can opt to pay an income tax on the income obtained from any source:

a) The companies founded after the 31<sup>st</sup> of May, including 31, if they meet all the conditions specified at let. a) and d) art. 1, paragraph (1) from the G.O. no.24/2001 modified by Law no. 111/2003 and Law 232/2003 the day it was registered at the Trade Register; the condition stipulated at let. b) art. 1 paragraph (1) is met if the hiring is done no later than 60 days from the date the registration certificate was issued, even if this date is in the next fiscal year.

The option is recorded in the registry request of the Trade Register and applies for that fiscal year and the following years, as long as the enterprise meets the conditions stated in art. 1 paragraph (1) from the G.O. no. 24/2001, modified by Law no. 111/2003 and law no. 232/2003.

b) The legal entities paying the profit tax can opt for the income tax only at the beginning of the fiscal year if at the end of the previous year they meet the stipulations of the art. 1 paragraph (1) from the G.O. no. 24/2001, modified by Law no. 111/2003 and law no. 232/2003 and if they never paid the income tax before.

This decision is communicated to the local fiscal organs at the beginning of the fiscal year by submitting the Stating Declaration in the case of legal entities, family associations without legal personality, until the 31<sup>st</sup> of January, including 31.

The legal entities founded before May 31 2003 that pay an income tax and don't have any employee can apply the same tax regime the following fiscal years if they hire between 1 and 9 employees, including 9, before the 31<sup>st</sup> of December, including 31, and comply with all the stipulations of art. 1 paragraph (1) from the G.O. no. 24/2001, modified by Law no. 111/2003 and law no. 232/2003.

#### **The legal entities that cannot select this tax regime are the following:**

✚ The legal entities that are organized and function according to special working and organization laws from the banking area (banks, mortgage companies and building societies etc.)

✚ The legal entities that are organized and function according to special working and organization laws from the insurance area (insurance and reinsurance companies), the capital market (the stock market and the commodity exchange, investment companies, registry companies, deposit companies) except the legal entities that carry out mediating activities in these areas (brokers and insurance agents).

✚ The legal entities carrying out their activity in the area of gambling, sport betting and casinos.

The legal entities that are non-profit and non-political organizations don't follow the stipulations of the Government Ordinance no. 24/2001, modified by Law no. 111/2003 and law no. 232/2003.

#### **4. Stimulating Measures for Microenterprise Set Up and Special Financial Conditions**

**The Law no. 346/2004 on stimulating the setting up and development of the small and medium sized enterprises** with subsequent modifications and completions includes the following papers: the rectification published in the O.G no. 791 on 27/08/2004; the G.O. no. 94/2004; the G.O. no. 27/2006; the Law no. 175/2006; the E.G.O. no. 139/2007 published in the O.G. no. 844 on 10/12/2007 and **stipulates the regulations that create a positive framework for the setting up and development of the small and medium sized enterprises.**

According to the 2<sup>nd</sup> art., a enterprise is any organization form of an economic activity that is authorized as per the laws under effect to conclude acts and carry out a trade activity, in order to obtain a profit in a competing environment: trade companies, cooperative societies, physical persons carrying out independent economic activities and family associations authorized according to the legislation under effect.<sup>6</sup>

The small and medium sized enterprises can be classified in the following categories according to the average number of employees and the net annual turnover or the total owned assets:

- a) **Microenterprises** – have up to 9 employees and a net annual turnover or own assets with a value of no more than 2 million euro, or its equivalent in lei;
- b) **Small companies** – have between 10 and 49 employees and achieve a net annual turnover or own assets with a total value of up to 10 million euro, or its equivalent in lei;
- c) **Medium sized enterprises** – have between 50 and 249 employees and reach a net annual turnover of up 50 million euro, or its equivalent in lei, or own assets whose total value does not exceed the equivalent in lei of 43 million euro;

In order to certify that it belongs to the group of small and medium sized enterprises a company has to present the following documents:

- a) A certificate on the average annual number of registered employees issued according to the law by the local Labor Department based on the average number recorded for the previous year;
- b) A certificate on the annual turnover issued by the Financial Administration of the area where the company carries out its activity, based on the balance sheet of the last completed fiscal year.

In the case of small and medium sized enterprises set up during the fiscal year in progress, the period taken into account will be the one between the date the company was set up and the issue date of the certificate, based on a statutory declaration made by company's legal representative.

The currency exchange rate used to calculate the annual turnover is the euro exchange rate registered on the 31<sup>st</sup> of December of the previous year, as communicated by the National Bank of Romania.

The legislation mentioned above lays a special emphasis on supporting the **small and medium sized enterprises** by **creating special conditions** for them as mentioned below:

##### **A. Access to public services and to assets owned by trade companies, national companies whose majority share package is owned by the state and the assets of autonomous administration**

The government, the specialized bodies of the central public administration, the national local legislative authorities are obliged to pass concrete measures in order to facilitate the access of the

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<sup>6</sup> This article was published in art I, point 1 from the G.O. 27/2006 and completed by the approving Law no. 175/2006.

small and medium sized enterprises to public networks and utility services required in order to carry out their activity without affecting the competition on the free market.

This special condition created for the small and medium sized enterprises by the government, the central and local authorities is carried out through:

- ❖ Measures that simplify the procedure of access to public networks and utility services:
  - The unification of the stages of issuing notices or the preliminary agreements required for the small and medium sized enterprises to have access to public networks and utilities;
  - The simplification and unification of the documents requested to the small and medium sized enterprises in order to obtain the notice or the final approval in order to connect and access the public utility networks;
  - The settlement of the maximum tax level entailed by the process of approval and connection, and the fees imposed to small and medium sized enterprises in order to elaborate the documents and execute the works of plugging and connecting to the public utility networks
- ❖ Access to the available assets of the trade and national companies whose majority share package is owned by the state and those of autonomous administration

## **B. Priority access to public acquisitions of material goods, works and services**

The government, the ministries and all the other specialized bodies of central public administration, as well as the local authorities have to stimulate the growth of weight of the small and medium sized enterprises in the value of the public acquisitions of material goods, works and services, so that this weight reaches a level that can be compared to the contributions of these companies in achieving the gross domestic product.

Therefore, the SMEs can benefit from:

- 50% tax relief for criteria related to turnover, participation and performance bonds required for public acquisitions of products, works and services;
- Technical assistance that facilitates the access to specialized formation services in the field of public acquisitions;
- Electronic services of information related to the offer requests presented electronically by the bidders.

## **C. Supporting the activity of research and technological innovation of the small and medium sized enterprises**

The activity of research and technological innovation carried out by the small and medium sized enterprises is supported by the Government that:

- Adopts measures in order to create conditions favorable to organizing and carrying out activities of research, development and innovation;
- Elaborates policies and issues regulations in order to create a positive environment for the distributing, transferring, absorbing and valuating the result of the activity of research, development and innovation carried out by the small and medium sized enterprises;

- Improves the access of the small and medium sized enterprises to scientific information and specialized technologies, according to the legislation, and promotes the setting up of business centers, scientific and technological parks and other similar structures;
- Ensures the technological transfer at no charge towards the small and medium sized enterprises, according to the laws under effect and after the proposal of the National Agency for the Small and Medium Sized Enterprises.

#### **D. Information, assistance, consulting, research and technological innovation services provided for the small and medium sized enterprises**

In order to carry out and develop their activity, the small and medium sized enterprises benefit from information, assistance, consulting, research and technological innovation services in the financial-banking, management and marketing areas.

The government, the authorities of local public administration, the chambers of commerce and industry, the employers' organizations of the small and medium sized enterprises, support the creation and development of centers and organizations that offer information, consulting, assistance and training for the small and medium sized enterprises, by:

- a) Supporting the activities of information, consulting, assistance and training provided to the small and medium sized enterprises;
- b) Identifying the financing sources for some programs and actions whose purpose is to facilitate the access of the small and medium sized enterprises to information, consulting, assistance and training services provided by these centers and organizations, and to extend the area of services offered to the small and medium sized enterprises by these organizations.

#### **E. Professional formation**

Through the funds allotted by the state or local budget, through programs supported by national and international institutions or other resources, the government and the local public authorities ensure complete or partial financing of some professional formation programs for the small and medium sized enterprises.

The programs of professional formation will be carried out through the following organizations:

- ✓ The National Unemployment Agency
- ✓ State and private educational establishments, accredited according to the law
- ✓ The suppliers of professional formation authorized according to the legislation to organize professional formation courses.

### **5. Legal Modifications of the Profit Tax and Income Tax for Microenterprises starting with 2009**

#### **5.1 New Fiscal Measures Introduced by the Emergency Government Ordinance no. 34/2009**

Taking into account the present international context, the main characteristics of the budget policy in the next period that are subordinated to sustaining economic growth, reducing the inflation and

achieving the level of budget deficit correlated with the macro-economical objectives, taking into account the recommendations made by the European Commission and other international financial institutions to reduce budget expenses, that is to diminish current administration expenses and allot resources to projects with multiplying economic effects that represents the main method of limiting the rhythm of economic decline and partially compensating the decrease of activity in the private sector, several measures have to be applied in order to maintain budget balance and reduce the volume of budget expenses at a level that allows the Romanian Government to respect its internal and international commitments, including the budget deficit.

Taking into account that these elements entail general public interest and represent emergency and extraordinary circumstances whose resolution cannot be postponed according to art. 115 paragraph (4) from the Romanian Constitution, republished, the Romanian Government adopts the Emergency Ordinance no. 34/2009 on budget rectification for the year 2009 and the introduction of some fiscal and financial measures that brings in chapter V important modifications concerning the profit tax, the income tax and the enterprise income tax, the value added tax and the Fiscal Procedure Code. The “flat tax” is introduced that is calculated based on **table no. 1**<sup>7</sup>:

**Table no. 1. The minimum tax to be paid divided on income tranches**

<b>Turnover (CA)</b>	<b>Annual minimum tax</b>
0 - 52.000 lei	2.200 lei
52.001 - 215.000 lei	4.300 lei
215.001 - 430.000 lei	6.500 lei
430.001 – 4.3 million lei	8.600 lei
4.3 million lei - 21.5 million lei	11.000 lei
21.5 million lei - 129 million lei	22.000 lei
> 129 million lei	43.000 lei

## **5.2 The Minimum Profit Tax to be Paid**

**Starting with the 2<sup>nd</sup> trimester of 2009 all trading companies that pay the profit tax** (except non-profit organizations, owner associations, educational establishments, and religious institutions) **must pay a minimum tax** calculated based on the total income obtained in the previous year (that is in 2008).

The amount of this minimum tax is calculated as following: the profit tax to be paid at the end of the 2<sup>nd</sup> semester is compared with the annual minimum tax for the trimester, the higher value is paid. The annual minimum tax for the trimester is determined by dividing the minimum tax to 12 months and multiplying the result with the number of months for the corresponding period of time.

The same rule applies for the 3<sup>rd</sup> and 4<sup>th</sup> trimesters as well.

<sup>7</sup> The Emergency Ordinance no. 34/2009 published in the O.G. no. 249 on 14.04.2009.

**Case Study:**

One may assume that a trading company had a registered income of 400.000 lei in 2008. According to the Emergency Ordinance no. 34/2009, the minimum tax to be paid for this income is 6.500 lei per year.

- During the 1<sup>st</sup> trimester of 2009 the company had losses and did not owe a profit tax.
- The profit tax for the 2<sup>nd</sup> trimester of 2009 is 500 lei.

**The minimum tax for the same period is:**

$6.500 \text{ lei} / 12 \text{ months} \times 2 \text{ months (period May the 1}^{\text{st}} - \text{June the 30}^{\text{th}}) = 1.083 \text{ lei.}$

**In this case, the tax to be paid is 1.083 lei.**

- During the 3<sup>rd</sup> trimester, the same company has a resulting profit tax of 2.500 lei.

**The minimum tax for the same period of time is:**

$6.500 \text{ lei} / 12 \text{ months} \times 3 \text{ months (period July the 1}^{\text{st}} - \text{September the 30}^{\text{th}}) = 1.625 \text{ lei.}$

**Because this amount is smaller than the calculated tax, the company has to pay for the 3<sup>rd</sup> trimester a profit tax of 2.500 lei. It is important to mention that the same calculation principle will be applied for the 4<sup>th</sup> trimester.**

According to this new variant, no legal entity can make an exception when it comes to paying a tax, regardless of its economic status – whether it registers losses, obtains a minimum profit or doesn't have any income at all.

Regardless of its area or object of activity, no matter if the company provides services, carries out works, executes constructions, provides consulting services or sells goods – all the companies are included in the new tax system!

**5.2.1 The Profit Tax to be paid by new Companies founded during the Year**

**The newly founded taxpayers** will pay a tax equal to the minimum tax corresponding to the first tranche of total income (0-52.000 lei), that is 2.200 lei per year, calculated in proportion with the period remaining till the end of the year.

**Case Study:**

One may assume that a trading company is set up in the month of May 2009. It registered losses for the second trimester and, normally, it shouldn't pay a profit tax.

- Still, the minimum tax imposed for this period is:  
 $2.200 \text{ lei} / 12 \text{ months} * 2 \text{ months (period May the 1}^{\text{st}} - \text{June the 30}^{\text{th}}) = 366 \text{ lei.}$

**In this case, the tax to be paid will be 366 lei.**

**5.2.2 Limiting and Eliminating the Deductibility of some Expenses**

Starting with the 1<sup>st</sup> of May 2009, the category of **limited deductible expenses** includes the **functioning, maintenance and repair** expenses, excluding the ones for fuel (please see below), the expenses related to **cars** used by persons occupying leading and management positions of the legal entity, are limited to deducting no more than one car for each such person.

Starting with the same date, the **nondeductible expenses** when calculating the profit tax include any **fuel expenses** for road motor vehicles that are destined exclusively for person transportation with a

maximum weight of no more than 3.500 kilograms and that don't have more than 9 passenger seats, including the seat of the driver, owned or used by the taxpayer.

**The fuel expenses can be deducted** only for the following:

1. Vehicles used exclusively for: intervention, repairs, security and protection, courier, worker transportation to and from the place of activity, vehicles specially adapted to be used as broadcast vans, vehicles used by the sales agents and the agents of human resources;
2. The vehicles that are used for paid person transportation, including taxis;
3. Vehicles used for renting by other persons, including training activities in driving schools.

### **5.3 The Income Tax for Enterprises**

**The tax rate of 3%** applied on the income is preserved for 2009. In case if the tax to be paid by the enterprises is lower than the minimum annual tax calculated based on the total income that was obtained in the previous year (that is in 2008), the **minimum annual tax** will be paid according to the **TABLE** above.

The method that is applied in order to calculate the due tax is the following: for the 2<sup>nd</sup> trimester of 2009, the tax to be paid at the end of the trimester is compared with the annual minimum tax per trimester; the one with the highest value is paid. The same rule applies for the 3<sup>rd</sup> and the 4<sup>th</sup> trimesters.

#### **Case Study:**

*A trading company registered an income of 100.000 lei in 2008. According to the Emergency Ordinance no. 34/2009, the minimum tax to be paid for this income is 4.300 lei per year.*

- *During the 1<sup>st</sup> trimester, the company registered an income of 30.000 lei for which it paid an enterprise income tax of 3%, the amount of 900 lei.*
- *During the 2<sup>nd</sup> trimester of 2009, the income subjected to taxation is 20.000 lei, the enterprise income tax to be paid being 600 lei (20.000 lei\* 3%).*

**The minimum tax for the same period of time is:**

$$4.300 \text{ lei} / 12 \text{ months} \times 2 \text{ months (period May the 1<sup>st</sup> – June the 30<sup>th</sup>)} = 717 \text{ lei.}$$

**The tax to be declared and paid till 25.07.2009 in this case will be 717 lei.**

- *The same company registers in the 3<sup>rd</sup> trimester an income subjected to taxation of 15.000 lei, the enterprise income tax to be paid being 450 lei (15.000 x 3%).*

**The minimum tax for the same period of time is:**

$$4.300 \text{ lei} / 12 \text{ months} \times 3 \text{ months (period July the 1<sup>st</sup> – September the 30<sup>th</sup>)} = 1.075 \text{ lei.}$$

**Given the fact that this amount is higher than the calculated tax, the amount 1.075 lei will be paid.**

*It is important to specify that the same rule applies for the 4<sup>th</sup> trimester.*

## 6. Conclusions

In order to examine the effects of applying the flat tax on the economic operators, it is useful to continue the analysis and present the **tax rate**, the **profit subjected to taxation** and the **profitability rate** corresponding to the maximum income presented in the table, using as a starting point the flat tax determined for income tranches according to **table no. 2**:

**Table no. 2. The status of tax rate, the profit subjected to taxation and the profitability rate according to the minimum tax to be paid divided on income tranches**

Total annual income (lei)	Annual minimum tax (lei)	Tax rate	Profit subjected to taxation	Profitability rate
1	2	3 = 2/ maximum income in the table	4 = 2/16%	5 = 4/ maximum income in the table
0 - 52.000	2.200	4.23%	13.750	26.4%
52.000-215.000	4.300	2%	26.875	12.5%
215.001-430.000	6.500	1.5%	40.625	9.4%
430.001-4.300.000	8.600	0.2%	53.750	1.25%
4.300.001-21.500.000	11.000	0.05%	68.750	0.32%
21.500.001-129.000.000	22.000	0.017%	137.500	0.11%
Over 129.000.001	43.000	0.033%	268.750	

By analyzing the minimum tax established and calculated for the maximum turnover, according to the tax bands, one may notice huge discrepancies for this tax that cannot be backed up by sustainable arguments from an economic or financial point of view. One may easily note that the microenterprises, as they are defined in the fiscal legislation<sup>8</sup>, were classified into three tax bands. By comparing the present percentage 3% applied to the maximum turnover of the microenterprise (100.000 euro = 430.000 lei x 3% = 12.900), in the case of the flat tax – this percentage is 50% of the microenterprise income tax rate (6.500 lei) and this can be a fiscal relief available only for microenterprises.

If in the case of the first three tax bands the degree of decrease of the tax is acceptable, starting with the fourth tranche of calculating the flat tax the discrepancies between the accomplished income and minimum due tax have no explanation from an economic and financial point of view. By analyzing the table presented above, one may conclude easily that the companies that achieved an income of over 100.000 euro are favored by the flat tax as compared to the microenterprises; therefore the fiscal relief is much more consistent.

By analyzing the companies with an income of over 260 million lei whose income profitability rate is lower than 0.10% one may notice that the fiscal relief is in direct proportion with the attained income.

After analyzing the data presented in the table, one may conclude that there is no correlation between the income tranches on tax bands and the income tax. Therefore, the maximum income from the 4<sup>th</sup> tranche is 10 times bigger than the one from the 3<sup>rd</sup> tranche, while the annual minimum tax is only 1.28 times bigger; the income from the 6 share is 6 times bigger than the one from the 5<sup>th</sup>, the minimum tax being twice as big.

<sup>8</sup> Art. 103 from the Fiscal Code



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