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Recent Developments in International Taxation

Romania

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Highlights

Romania is actively involved in implementing anti-base erosion and profit shifting (BEPS) measures (ie, implementation of Anti-Tax Avoidance Directives (ATAD) 1 and 2; Directive 2018/822 amending Directive 2011/16 regarding the automatic mandatory exchange of information in the fiscal field regarding the cross-border modalities that are subject to reporting ('DAC 6'); and country-by-country (CbC) reporting) and the Organisation for Economic Co-operation and Development's (OECD's) BEPS minimum standards, especially as an associate member of the Inclusive Framework on BEPS.

Moreover, Romania has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('MLI').¹

The MLI has not yet been ratified by Romania.

DAC 6

DAC 6 has been transposed into Romanian legislation and was applicable as of July 2020.

As such, the obligation of intermediaries to report to the tax authorities information on certain cross-border arrangements that could be used to obtain tax advantages was established.

Intermediaries (any person who directly or through other persons, designs, markets, organises, makes available for implementation or manages the implementation of a cross-border arrangement that is the subject of reporting) or taxpayers, as the case may be, must declare to the tax authorities only those cross-border arrangements that have certain characteristics and elements (distinctive signs) that offer indications on avoiding tax obligations or obtaining a tax advantage, such as intra-group transfers of intangible assets that are difficult to value; the acquisition of companies that record losses and the use of losses to reduce tax obligations; and conversion of income into capital or categories of income that are tax exempt.

The sanctions for non-compliance with the reporting obligations are between RON 5,000 and RON 100,000.

The reporting deadlines have been moved to 31 January 2021 (for reports corresponding to the period 1 July 2020 – 31 December 2020) and 28 February 2021 (for reports corresponding to the period 25 June 2018 – 30 June 2020).

¹ See www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf accessed 25 October 2020.

ATAD 2

Directive (EU) 2016/1164 as amended by Directive (EU) 2017/952 regarding the non-uniform treatment of hybrid elements was transposed into Romanian legislation as of February 2020.

The purpose of the new regulation is to combat the uneven treatment of hybrid financial instruments or entities, which are elements that exploit the differences between tax systems to obtain tax advantages (double deductions that arise from different interpretations regarding the qualification of financial instruments, payments or entities, or from payment allocation).

The provisions of ATAD 2 have been transposed entirely into Romanian tax legislation, with virtually no modifications. The rules are essentially the following:

- When a hybrid mismatch results in a double deduction, the deduction should be granted only in the Member State from where the payment originates.
- When a hybrid mismatch results in a deduction without inclusion in the taxable base of another Member State, the Member State of the payer should deny the deduction of that payment.

Quick Fixes Directive

On 3 February 2020, the Quick Fixes Directive was transposed into national law.

The quick fixes package consist of four measures and aims at tackling VAT fraud in intra-European Union supplies of goods, as well as the harmonisation, even simplification, of call-off stock structures and chain transactions.

The four quick fixes are:

- QF 1: chain transactions;
- QF 2 and 3: VAT exemption on intra-EU supplies; and
- QF 4: call-off stock simplification measures.