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Recent Developments in International Taxation

ROMANIA

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RECENT HIGHLIGHTS

During the past year, the most significant international-related tax developments in Romania involve:

- the continued implementation of certain information exchange programs and other measures related to the Organisation for Economic Co-operation and Development's ("OECD") recommendations on Base Erosion and Profit Shifting ("BEPS"). Romania is moving toward the ratification of the Multilateral Instrument (the "MLI").
- Amendments to the implementing provisions of the EU ATAD Directive.
- Amendments to the VAT split mechanism.
- New levies on businesses active in specific sectors (banking, energy, telecommunication, gambling)

A. Exchange of information



Exchange of information (Directive 2011/16) and mutual tax recovery assistance (Directive 2010/24) are implemented. In essence, the Romanian legislation is updated to reflect the recent amendments to the EU exchange of information and mutual tax recovery assistance directive.

B. BEPS Measures (2018)

In 2018-2019, Romania continues to move towards the application of certain BEPS recommendations and is on the way with the MLI ratification procedure. While the MLI ratification process is not finalised, the Romanian authorities sent a clear message that Romania is committed to address cross-border tax avoidance.

Multilateral Instrument

Hybrid mismatches	Art. 3 – Transparent entities	
	Art. 4 – Dual resident entities	
	Art. 5 – Methods for elimination of double taxation	Option C
Treaty abuse	Art. 6 – Purpose of a Tax Agreement	
	Art. 7 – Prevention of Treaty abuse	
	Art. 8 – Dividend transfer transactions	
	Art. 9 – Capital gains related to entities deriving value mainly from immovable assets	
	Art. 10 – Anti-abuse rule for PEs situated in third jurisdictions	
PEs	Art. 11 – Taxation by a country of its own residents	
	Art. 12 – Dependent agent	
	Art. 13 – Auxiliary/Preparatory activities	Option A
	Art. 14 – Splitting-up of contracts	
Dispute resolution	Art. 15 – Persons closely related to an enterprise	
	Art. 16 – Mutual Agreement Procedure	
	Art. 17 – Corresponding adjustments	
	Art. 18 – 26 – Arbitration option	

 - Fully adopted
 - Adopted with reservation

 - Not adopted

In the vein of fighting cross-border tax avoidance, the Romanian tax authority started Operation "Iceberg", which entails the intensification of tax audits performed on large taxpayers (mostly multinational companies), which carry out activities with significant impact from all economic areas.

The main scrutiny areas are:

- fighting the profit outsourcing phenomenon;
- verifying the manner in which large companies manage economic relationships between companies from their own group; and
- dissolution of trading chains organized with the view of avoidance of the compliance with tax obligations by identifying and investigating fiscal fraud phenomena having significant negative fiscal implications on the state budget.

C. Anti Tax Avoidance Directive (ATAD) - implemented in 2018

Before implementation of ATAD, financing costs were deductible up to a certain interest rate level (4% / NBR reference rate for loans in foreign currency / RON) and only if the debt-to-equity ratio was between 0 and 3.

Based on ATAD, in 2018 exceeding borrowing costs became deductible within an annual limit of EUR 200,000, while the costs above this threshold were deductible up to 10% of EBITDA.

Starting January 2019, these limits are of EUR 1,000,000 and, respectively, 30% of EBITDA.

Rules concerning CFC and exit taxation, in accordance with ATAD provisions were introduced.

In addition, the ATAD general anti-abuse rule was adopted, next to similar rules already existing in the domestic law. According to this rule, for the purpose of calculating the corporate tax liability, the tax authorities shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the tax law, are not genuine having regards to all relevant facts and circumstances. An arrangement may comprise more than one step or part, and an arrangement or series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

No rules concerning hybrid mismatches have been adopted yet.

D. Amendments to the VAT split implemented in 2018

The VAT split mechanism supposed the cashing of collected VAT and payment of deductible VAT in/from a Treasury account dedicated only for such operations.

Initially, the mechanism was meant as mandatory for all taxpayers. Further to infringement, upon its enforcement the mechanism remained compulsory only for taxpayers in insolvency and those incurring outstanding tax debts above certain thresholds. Other taxpayers may opt for such mechanism, thus benefiting of a 5% reduction of the corporate income tax.

E. New levies in 2019

In 2019, the following new levies were introduced:

- A tax for banking institutions, computed as percentage applied to financial assets. Initially, the quota varied between 0.1% and 0.5%, depending on the value by which the quarterly ROBOR average exceeded the reference value of 2%. In March, the method of determining the tax has been significantly changed.
- A monetary contribution due by the licenses holders in the field of electricity and heat in cogeneration for the electricity component and of natural gas - 2% of the turnover generated by the activities covered by the licenses.
- In the field of telecommunications, for granting the licenses for use of radio frequencies through competitive or comparative selection procedures - a minimum value of 2% / 4% of the turnover.
- For organizers of gambling activities, a tax of 2% applied on the total participation fees collected.