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Recent Developments in International Taxation

Romania

Lucian Barbu

Nestor Nestor Diculescu Kingston Petersen, Bucharest

lucian.barbu@nndkp.ro

Highlights

Romania is actively involved in implementing anti-base erosion and profit shifting (BEPS) measures (ie, implementation of European Union Anti-Tax Avoidance Directives ('ATAD') I, ATAD II, 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.¹ In 2022, Romania started formal negotiations to become an OECD member and is engaged in taking the necessary steps towards accession.

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

The MLI was ratified by Romania in February 2022 and entered into force on 1 June 2022.

Electronic standard audit file

Romania has implemented the electronic standard audit file ('SAF-T'), which started in 2022, through which taxpayers electronically report to the tax authority accounting and tax data. The requirement to submit Informative Statement D406 has been set for each category of taxpayer:

- for large taxpayers: starting from 1 January 2022;
- for taxpayers classified as large taxpayers starting from 1 January 2022, which were not classified as large taxpayers in 2021: starting from 1 July 2022;
- for medium taxpayers: starting from 1 January 2023;
- for small taxpayers: starting from 1 January 2025; and
- for new registered taxpayers: from the effective registration date, the first submission should take place on the last day of the month following the reporting period, and after the reference date, for the category in which they were registered.

Taxpayers must file the report on a monthly or quarterly basis, in accordance with their fiscal period from a VAT perspective. Taxpayers that are not registered for VAT purposes should submit the SAF-T file on a quarterly basis.

DAC 6

DAC 6 was transposed into Romanian legislation, applicable as of July 2020, and 2022 is the second year of reporting.

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

established and is fully applicable, although, so far, not many operations seem to have been reported.

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, 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.

ATAD II

Directive (EU) 2016/1164 as amended by the Directive (EU) 2017/952 regarding the non-uniform treatment of hybrid elements is transposed into the Romanian legislation and is fully applicable.

The purpose of the new regulation is to combat the uneven treatment of hybrid financial instruments or entities, that is, 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 the ATAD II Directive 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; and
- 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.

Double tax treaties

In 2022, a new double tax treaty concluded between Romania and Spain entered into force (the old treaty was concluded in 1979). The new treaty was updated based on the OECD Model Convention and was applicable starting 1 January 2022.

Transfer pricing files for large taxpayers

Starting in 2022, the deadline for preparing transfer pricing files for large taxpayers is 25 June, as opposed to 25 March. During future tax audits, it is expected that the tax authorities will focus more on transfer pricing aspects.

¹ See www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf accessed 13 September 2022.