



Tax&Legal Highlights

Romania

Romania becomes associate member of Plan BEPS – Base Erosion and Profit Shifting

Romania becomes associate member of Plan BEPS – Base Erosion and Profit Shifting on the 9th of June when Law no 124/2017 comes into force. The main objective of BEPS is to prevent the use by companies of legislative mismatches from national tax systems in order to transfer profits to lower tax jurisdictions.

Consequently Romania is expected to implement legislative changes on medium term, according to the recommendations of BEPS in the following areas: transfer pricing, double taxation conventions, exchange of information between fiscal authorities.

The new rules implemented according to BEPS might lead to the restructuring of the activities of multinational companies around the world, including Romania. The aim of BEPS measures is to ensure that MNEs report profits where economic activities are carried out and value is created.

Conventions for avoidance of double taxation concluded by Romania will be amended

Romania and other 67 countries signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) on the 7th of June. Romania has 91 conventions for avoidance of double taxation.

These states will swiftly implement a series of tax treaty measures to update the existing network of bilateral tax treaties and reduce opportunities for tax avoidance by multinational enterprises. The new convention will also strengthen provisions to resolve treaty disputes, thereby reducing double taxation and increasing tax certainty, according to OECD which initiated plan BEPS – Base Erosion and Profit Shifting.

MLI was developed through inclusive negotiations involving more than 100 countries and jurisdictions, under a mandate delivered by G20 Finance Ministers and Central Bank Governors. As a result of implementing MLI, 1,100 treaties around the world will be changed.

Romania has 91 conventions for avoidance of double taxation.

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Multinational enterprises have new reporting obligations regarding automatic exchange of information on fiscal area

Any parent company or any other reporting entity resident in Romania and part of a multinational group of companies with a consolidated income in amount of minimum EUR 750 million has the obligation to submit a country-by-country report for each reporting year that includes information on the amount of revenue, profit/losses, stated capital, accumulated earnings, number of employees and tangible assets. The provisions were introduced by a Government Emergency Ordinance amending the Fiscal Procedure Code.

On June 9, 2017, the Romanian Government approved an emergency ordinance amending the Fiscal Procedure Code, further published in the Official Monitor of Romania on June 13, 2017. The Normative Act shall enter into force on the date of its publication in the Official Monitor of Romania, Part I, except for the provisions of art. I point 9, which shall enter into force within 10 days of the date of publication.

The ordinance transposes the Council Directive (EU) 2016/881. The directive provides that each Member State of the European Union is required to take measures to impose on the parent company of a group of multinational companies resident in its territory the submission of a report for each country and fiscal year, within 12 months of the last day of the reporting fiscal year of the group.

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The main objectives of the Ordinance are:

- the assessment of the risks related to transfer prices and those related to the erosion of the taxable base and the transfer of profits at international level;
- use by tax authorities as a data source during a fiscal audit at national level.

The Ordinance is applicable to multinational groups with a consolidated income in amount of minimum EUR 750 million (hereinafter "MG").

General reporting obligations

Reporting obligations of the taxpayer

Any entity part of a MG as defined above has the obligation to notify the competent authority whether it is the ultimate parent or surrogate (assigned for reporting) until the last day of a MG's reporting fiscal year. The parent company or surrogate resident in Romania and part of a MG, has the obligation to submit a report for each country for each fiscal year starting January 1, 2017 or later.

The reporting process refers to the fiscal year as defined in art. 16 of the Fiscal Code.

The obligation to submit the report to the competent authorities in Romania shall take place within 12 months of the last day of the MG reporting fiscal year.

Entities that are not ultimate parent or surrogate parent companies are required to notify the competent authority in Romania of the identity and tax residence of the reporting entity until the last day of the reporting fiscal year.

If the reporting entities for each country do not comply with the obligation to submit the reports or provide incorrect or incomplete information, they are liable for a fine, as follows:

- for late submission of the report or the transmission of incorrect or incomplete information, the reporting entity is sanctioned with a fine from RON 30,000 to RON 50,000;
- for failure to submit the report, the reporting entity is sanctioned with a fine from RON 70,000 to RON 100,000.

Please read the entire article, by accessing the following [link](#).

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Posting of employees in the framework of transnational provision of services on the territory of Romania, clarifications

Some aspects regarding the posting of employees in the framework of transnational provision of services on the territory of Romania were clarified by methodological norms (Decision no 337/2017). For example, the norms present some factual elements to be taken into account by the Labor Inspection in order to identify the existence of actual transnational postings.

The Methodological Norms govern mainly the following aspects:

- Illustrating, by way of example, the factual elements to be taken into account by the Labor Inspection in order to prevent abuses resulting from the establishment of "letterbox" companies and to identify the existence of actual transnational postings.

The factual elements in question shall take into account:

- a) The activities carried out by undertakings established in other EU Member States which, in the framework of transnational provision of services, post employees in Romania. In this respect, exempli gratia, the following aspects shall be analyzed: the place where the undertaking has its registered office and carries out its main activity, respectively the place where it pays its taxes and fees, the basic activity for which the undertaking is authorized, the subject matter of the service agreement concluded with the beneficiary of the services, the number of contracts executed and/or the size of the turnover achieved in the Member State of establishment;
 - b) The work and situation of employees posted on the territory of Romania (e.g.: the date on which the posting begins and ends, the correspondence between the nature of the activity performed by the posted employee and the scope of the service agreement).
- Procedural rules on administrative cooperation between national competent authorities in the field of transnational posting.

In the field of administrative cooperation, among others, the Labor Inspection:

- Provides information and / or documents relating to (i) employees posted on Romanian territory, (ii) any legal person registered in Romania, (iii) temporary employment agencies authorized in Romania, (iv) the payroll of salary rights of the posted workers and related proof of payment, (v) collective attendance sheets and (vi) individual employment agreements;
 - a) Receives, via the Internal Market Information System ("IMI"), the decision whereby an administrative financial sanction was imposed on an undertaking established in Romania.
- Annual risk assessment procedure caused by the violation of legal provisions on the posting of employees in the framework of transnational provision of services.
 - Obligation of undertakings posting employees in Romania, to submit to the competent territorial labor inspectorate a declaration on the transnational posting of employees;
 - Contraventions and sanctions imposed by the labor inspectors in case of non-observance of the rules on transnational posting, respectively fine ranging between 5,000 and 9,000 RON.

Entry into force

The Government Decision no. 337/2017 on the approval of the Methodological Norms regarding the posting of employees in the framework of transnational provision of services on the territory of Romania, is applicable starting with the date of its publication in the Official Gazette, respectively 31.05.2017.

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A new Regulation regarding the reception of construction works and corresponding installations shall enter into force on 29 July 2017

The Regulation dated 18 May 2017 regarding the reception of construction works fully replaces the Regulation for reception of construction works and installations dated 14 June 1994. The Regulation brings some welcome changes related to constructions, as well as some clarifications regarding aspects previously regulated.

The Regulation regarding the reception of construction works dated 18 May 2017 was published in the first part of the Official Gazette no. 406 dated 30 May 2017 and shall enter into force on 29 November 2017 (the "**Regulation**"). This new legislation shall not be applicable to the constructions for which the reception at the completion of works, respectively the final reception, is ongoing as of the date of entering into force of the Regulation.

The reception at the completion of the works.

Deadlines

A first clarification brought by the Regulation is that the contractor of the construction works has to communicate to and request from the investor the performance of the reception at the completion of the works **during the validity period of the permit** based on which it had executed the works.

After receiving such communication, the investor has 5 days (*as opposed to 3 days, stipulated in the previous regulation*) to request the appointment of the representatives which shall be part of the reception committee at the completion of works, to establish the details for the commencement of the committee's activity and to hand-over to the State Inspectorate for Constructions ("**SIC**") the communication received from the contractor, together with the reports drafted by the planner and the site supervisor, about the execution and value of the works.

The names of the representatives who shall be part of the reception committee at the completion of works have to be sent by the relevant

institutions within **10 days** after receiving such request from the investor. The investor has **maximum 3 days** from the date when it receives the names of the representatives (*as opposed to the previous regulation, which provided for a 15 days term since the contractor notifies the completion of works*) to notify the members of the commission, the contractors and the designer related to the date, hours and place for the assembly of the commission.

The composition of the reception committee at the completion of works

The reception committee at the completion of works shall be comprised of **minimum 3-5 members** and, if the case, of a SIC representative, a representative from the Inspectorate for Emergency Situations ("**IES**"), a representative from the Direction for Culture and/or a representative from the main credit-release authority. The Regulation expressly provides the situations when the representatives of the above-mentioned institutions shall be part of the reception committee, conditioning their participation on the category of construction of the immovable asset and on the special laws applicable in each situation.

Please read the entire article, by accessing the following [link](#).

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