

Tax & Legal Weekly Alert

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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.

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.

Upcoming Deloitte events

Redefining your NPL strategy, from underwriting to NPL transactions – Deloitte seminar, 21 June 2017

Deloitte Tax & Legal in mass media

Fiscal Inactivity: What authorities intended and what they achieved. The legal actions in EU could have a significant impact on companies, an analysis by Vlad Boeriu, Partner of Deloitte Romania

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

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.

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.

Reporting obligations of the fiscal competent authorities in Romania

Following the fulfilment of the obligations by the taxpayers, the competent authority in Romania shall transmit the report to any other Member State in which one or more MG entities have their tax residence or are taxed through a permanent establishment within 15 months of the last day of the fiscal year (**i.e. starting January 1, 2017 or later**) of the MG. By way of exception from the above-mentioned deadline **for a fiscal year starting January 1, 2016 or**

after this date, the report shall be submitted in 18 months from the last day of the respective fiscal year.

The automatic exchange of information is carried out by means of a standard form, using electronic means of the CCN network.

Moreover, the competent fiscal authority in Romania shall submit to the European Commission an annual assessment of the effectiveness of the automatic exchange of information process, as well as the practical results obtained.

Information required

The report for each country must include the following details:

- information regarding the amount of revenue, profit / loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents for each jurisdiction in which the group operates;
- identification of each constituent entity in the MG of companies, specifying the jurisdiction in which the constituent entity has its tax residence.

For further questions, please contact us.



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

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:

- a) 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;
 - b) 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.

[For further questions, please contact us.](#)



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Upcoming Deloitte events

Redefining your NPL strategy, from underwriting to NPL transactions – Deloitte seminar

The event, which will be held in English, will take place on 21 June, at Deloitte's premises.

Deloitte Tax & Legal in mass-media

Fiscal Inactivity: What authorities intended and what they achieved. The legal actions in EU could have a significant impact on companies, an analysis by **Vlad Boeriu, Partner of Deloitte Romania**:

http://www.hotnews.ro/stiri-specialisti_deloitte-21815390-inactivitatea-fiscala-intentionat-autoritatile-rezultate-ajuns-demersurile-justitie-din-putea-avea-impact-semnificativ-pentru-companii.htm



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