

Transfer Pricing Country Summary Romania

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Legislation

Existence of Transfer Pricing Laws/Guidelines

Overview

General Transfer Pricing rules have been implemented in Romanian legislation in 2003 via the Tax Code, mentioning arm's length principle and the specific methods provided by OECD in order to determine the market value of transactions between related parties.

Romanian companies are obliged to keep Transfer Pricing documentation for both cross-border and domestic transactions. According to the Romanian tax legislation, all related parties are obliged to prove the method applied for setting the prices of controlled transactions (domestic or cross-border) between related parties and keep a relevant documentation justifying this method.

The Romanian transfer pricing legislation includes:

- Romanian Fiscal Code (Law 227 / 2015);
- Methodological Norms for the application of the Fiscal Code;
- Order 442/2016 regarding Transfer Pricing thresholds, deadline and content of the Transfer Pricing file and the adjustment procedure (for tax audit starting with January 1st, 2016);
- Order No. 3737/2015 regarding the approval and the content of the form "Decision of adjustment / estimation of an income or a cost obtained / incurred by an affiliated party";
- Emergency Government Ordinance no. 42/2017 regarding the approval of the template and content of the "Country-by-Country (CbC) Report" Form;
- Form 404 – CbC Report;
- Form 405 – Notification regarding the status of the constituent entity within the multinational group and the identity of the tax residence of the reporting entity of the multinational group;
- Double Tax Treaties;
- OECD Transfer Pricing Guidelines;
- Order 3735/2015 regarding the issuance and amendment of advance pricing agreements;
- Fiscal Procedure Code – Law 207/2015.

Definition of Related Party

According to the Romanian Fiscal Code, related parties are defined as follows:

1. An individual is affiliated with another individual if such person is spouse or relative up to the third degree, inclusive. Between affiliated persons, the price at which tangible or intangible goods are transferred or services are rendered is transfer price;
2. An individual is affiliated with a company if the individual owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% from the value/number of shares or from the voting rights in the company, or effectively controls the company;
3. A company is affiliated with another company if at least:

- a. The first company owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% of the value/number of shares or voting rights in the other company, or if it controls the company;
- b. The second company owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% from the value/number of shares or voting rights in the first company;
- c. A third company owns, directly or indirectly, including holdings of affiliated persons, a minimum of 25% by the value/number of shares or voting rights both in the first and in the second company.

In addition, according to the Romanian Fiscal Code, companies are considered related parties in cases of economic control, although no definition of such control is provided.

Transfer Pricing Scrutiny

There is a very high risk of transfer pricing audits in Romania at the moment as during the last years, transfer pricing audits have intensified and have become a sensitive topic among Romanian taxpayers.

Specifically, transfer pricing has been in the focus of the Tax Authority since 2008 although transfer pricing audits intensified from 2013 onwards.

Transfer pricing can be audited during a general examination or audits only with transfer pricing focus.

Generally, based on an internal Risk Assessment the tax authorities consider relevant:

- Sector wide thematic audits;
- During a VAT refund inspection;
- Following an unannounced tax audit;
- Continued Operating Losses;
- Fluctuating Operational Result;
- Delays in the payment of tax liabilities;
- Other criteria (not public information).

Large taxpayers are obliged to prepare the Transfer Pricing documentation if they carry out transactions with related parties exceeding the following thresholds:

EUR 200,000 – cashed in/paid interest for financial services

EUR 250,000 – services rendered/received towards/from related parties

EUR 350,000 – acquisitions/sales of tangible/intangible assets

Large taxpayers that do not meet the above thresholds or medium or small tax payers are obliged to prepare the Transfer Pricing documentation solely after the tax inspectors request if they carry out transactions with related parties exceeding the following thresholds:

- EUR 50,000 – cashed in/paid interest for financial services
- EUR 50,000 – services rendered/received towards/from related parties

- EUR 100,000 – acquisitions/sales of tangible/intangible assets

The other taxpayers who do not fall in any of the above mentioned categories are not obliged to prepare the Transfer Pricing documentation, however they should document that the arm's length principle is observed in the dealings with the related parties in line with financial and tax applicable principles. Nevertheless, a model of such documentation is not provided by any legislative provision.

Transfer Pricing Penalties

Lack of documentation

If a taxpayer fails to comply with the transfer pricing documentation requirements it would be subject to a default penalty per qualifying agreements. This fine can be comprised between 12,000 RON and 14,000 RON (approximate EUR 2,600 – EUR 3,000) for large and medium-sized taxpayers, while for individuals and legal person the fine ranges between 2,000 RON and 3,500 RON (approximate EUR 430 – EUR 760). In case of lack of documentation, tax authorities resort to transfer pricing adjustments based on a simplified procedure.

Estimation of the transfer prices

In addition to the penalties mentioned above, an essential aspect is the fact that in the case of an incomplete or a non-submission of the transfer price file, the fiscal authorities have the right to resort to the procedure for estimating the amount of the transfer price of the intra-group transactions considered incomplete or lacking, in order to adjust the revenues and expenses registered by the taxpayer, based on the market price ("central market level").

Adjustments in respect to transfer prices

In situations where the fiscal authorities consider that the transfer prices used in an intra-group transactions fail to meet the market price, the tax audit team will adjust the amount of the transfer prices used.

Advance Pricing Agreement (APA)

APA is available from 2007. Applications can be made for future transactions on unilateral, bilateral or multilateral basis for a period of 5 years, with the possibility of extension.

The application fee for issuing an APA is 20,000 EUR for large taxpayers and 10,000 EUR for other categories of taxpayers. In case amendments are brought to an existing APA, a fee of 15,000 EUR is applicable for large taxpayers and respectively 6,000 EUR for other categories of taxpayers.

Documentation And Disclosure Requirements

Tax Return Disclosures

Transfer pricing requirements in Romania do not state the obligation of tax return disclosures.

Level of Documentation

The content of the transfer pricing documentation is provided in Order 442/2016 which acquires most of the information and documentation requirements from BEPS Action 13.

Content of local transfer pricing file

Group information

1. The organizational, operational and legal structures at the level of the group for the period analyzed, including the geographic localization and the identification details of the related parties and Permanent Establishments within the group
2. A short presentation of the group's activities and business strategies for the period analyzed, including any changes in respect to group's strategy within the analyzed period;
3. A description of the transfer pricing policy applicable at group level, if the case;
4. A general description of the inter-company transactions performed between affiliated companies within the group;
5. Description of the main functions performed, risks incurred and assets used in the transactions performed within affiliated entities from the group, including any changes that occurred during the analyzed period. For example, if during the period analyzed changes with regards to functions, risks and assets used within the Group occurred, please provide us with a description of these changes;
6. Description of the main functions performed, risks assumed, assets used that significantly generate added value at the level of each related party within the group;
7. A short description of the intellectual property rights (trademark, know-how, license, etc.) owned by the Group, if applicable;
8. Description of the transfer pricing policy in respect to financial arrangements (intra-group financing) carried out between the group companies, if applicable;
9. Description of potential business restructurings carried out at the level group, within the analyzed period;
10. A general description of the group's research and development activity, if applicable;
11. Description of the Advance Pricing Agreements (APAs) concluded at the group level, if applicable;

Company information

1. The legal, operational and organizational structure of the Romanian entity;
2. Brief presentation of the products manufactured/services rendered by Romanian entity;
3. A short description of each inter-company transaction performed by the Company;
4. Description of the pricing policy for the transaction carried out with the related parties;
5. Description of the transfer pricing methodology applied, if any;
6. Description of the research and development activities carried out by Romanian entity;
7. Description of the transfer pricing policy in respect to intra-group financing activities and presentation of the financial agreements concluded with both related and independent parties;

8. Presentation of potential agreements concluded by the Romanian entity with related parties in respect to cost contribution arrangements (CCAs);
9. Presentation of the main outlets (markets) for the deliveries of products/rendering of services by the Romanian entity to its related parties;
10. Presentation of the functional and comparability analysis for each transaction carried out with related parties;
11. Description of the Advance Pricing Agreements (APAs) concluded by the Romanian entity, if applicable;
12. Financial statements of the Romanian company, including form 101 for the analyzed period.

Additional information may be requested by the Romanian tax authorities in case of a tax audit.

The Romanian transfer pricing legislation does not lay out any provisions regarding safe-harbour rules concerning low-value adding intra-group services.

Record Keeping

Contemporaneous documentation is required.

Language for Documentation

The Transfer Pricing Report to be submitted to the Tax Authorities must be in Romanian. If the Transfer Pricing Report contains information in a foreign language, there is a need to attach a translation into Romanian by a national public translator, which signature must be certified by the institution of Romania in which the translator is enrolled.

Small and Medium Sized Enterprises (SMEs)

There are no specific provisions with regard to the documentation requirements for small and medium sized enterprises. However, taxpayers that carry out intra-group transactions below the significance thresholds provided by Order 442/2016 are not required to prepare a transfer pricing file.

For example, a taxpayer carrying out intra-group transactions with a cumulated annual value below:

- o EUR 50,000 for interest paid/received;
- o EUR 50,000 for services rendered/received and;
- o EUR 100,000 for acquisition/sale of goods.

is not required to prepare a transfer pricing file.

Deadline to Prepare Documentation

Refer to deadlines for submission of documentation below.

Deadline to Submit Documentation

Large taxpayers above significance thresholds as per Order 442/2016

The documentation should be prepared by the date of filing the annual corporate income tax return (the deadline of which is 25 of March following the business year if the business year is the calendar year). The documentation does not need to be submitted to the tax authorities.

The deadline for presenting the transfer pricing file is maximum 10 calendar days upon the request of the tax authorities, but no sooner than 10 calendar days from the submission date of the annual corporate income tax return.

Other categories of taxpayers

For other categories of taxpayers (i.e. large taxpayers below significance thresholds, small and medium taxpayers) the transfer pricing file must be submitted upon the request of the Romanian tax authorities in 30 or 60 calendar days, with the possibility of a 30-day extension of the deadline.

Statute Of Limitations

The general statute of limitations for federal tax matters is 5 years, which consequently applies for transfer pricing. However, based on the calculation method it can practically be also 6 years. It can be extended to 10 years in case of criminal investigation.

Transfer Pricing Methods

In general, the transfer pricing methods specified in the Romanian transfer pricing regulations are the same as in the OECD Guidelines: CUP, Resale Price, Cost Plus, Profit Split, and TNMM. It should be noted that, when applying the selected method, the use of inter-quartile range is mandatory.

If none of them is applicable, the taxpayer has the opportunity to define and use other approaches.

Comparables

According to transfer pricing Romanian legislation, the comparability analysis will take into account the following territorial criteria in terms of order: national, European Union, Pan-European, internationally.

In terms of the selection of the tested party, in practice the Romanian tax authorities prefer Romanian entities.

Country-by-Country Reporting

Romanian taxpayers, part of groups with consolidated revenue over EUR 750 million per year, have at least one of the obligations below:

1. To submit a CbC Report with the Romanian tax authorities;
2. To submit a notification to Romanian tax authorities regarding its status within the multinational (i.e. constituent entity, reporting entity) group and the identity and the tax residence of the reporting entity of the multinational group.

A Romanian company part of a multinational group with consolidated revenue over EUR 750 million per year, should submit a CbC Report if is the ultimate parent of the group or if one of the following condition applies:

- the ultimate parent entity of the multinational enterprise group is not obligated to file a CbC Report in its jurisdiction of tax residence;
- the jurisdiction where the ultimate parent entity is resident for tax purposes has a current international agreement to which Romania is a party, but does not have a Qualifying Competent Authority Agreement in effect to which Romania is a party, by the time specified in the Directive on mandatory automatic exchange of information in the field of taxation , for filing the CbC Report for the reporting fiscal year;
- there has been a systemic failure in the jurisdiction of tax residence of the ultimate parent entity that has been notified by the competent authority from Romania to the constituent entity resident for tax purposes in Romania.

Deadline to submit the notification

The deadline to submit this notification is no later than the last day of the reporting fiscal year of the respective group, but no later than the deadline for the submission of Form 101.

The failure to submit the notification may be subject of fines ranging between RON 500 and RON 1,000 (approximate EUR 110 – EUR 220) for small taxpayers and between RON 1,000 and RON 5,000 (approximate EUR 220 – EUR 1,100).

Deadline to submit the CbC Report

The deadline for submission of the CbC Report form is 12 months from the last day of the reporting fiscal year of the multinational enterprise group.

The late submission or the failure to submit the CbC Report may be subject to fines ranging between RON 30,000 and RON 100,000 (approximate EUR 6,500 – EUR 21,800).