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Changes in Romanian tax legislation as of 1 February 2013

Highlights



Introduction



- **Significant changes in Romanian tax legislation have been introduced in July 2012, September 2012, and January 2013, aimed at raising tax revenue and boosting economic growth**
- **Below is an outline of some of these measures applicable starting 1 February 2013 with respect to:**
 - Corporate income tax
 - VAT
 - Withholding tax

Corporate income tax

Company reorganizations and tax losses

- **Cross border reorganizations, change of legal seat**
 - Former rules: tax losses of a Romanian company transferring the assets / branch of activity to a company in another EU member state in the context of a merger / spin-off would be “lost”
 - New rules: the losses may be recovered by the permanent establishment / branch in Romania of the foreign company
- **Tax losses carried forward of a Romanian company remain unaffected by a change in shareholding**
 - Assumption: the reorganization was not aimed at tax avoidance.

Taxation of company cars

Former rules:

- **50% of fuel costs = non deductible**
- **Exceptions: 100% deductibility for vehicles used exclusively for some specific activities:**
 - Transport of personnel to and from work place
 - Interventions and repairs
 - Courier activities
 - Vehicles used by sales agents
 - Vehicles used by recruitment agents
 - Vehicles used for taxi activities
 - Vehicles for renting, etc.

Taxation of company cars (*cont-d*)

Recent interpretations:

- **Ok to use the vehicle for a combination of the specific activities to claim 100% deductibility**
- **The use for the specific activities must be proved by facts and doc's**
 - Object of activity
 - Qualified personnel
 - Supporting documents (recommended: document called "*foi de parcours*")
- **The transport of personnel to and from the work place: need to prove that there are "obvious difficulties" in finding other means of transportation (e.g. public transportation) in order to be able to claim 100% deductibility**

Taxation of company cars (*cont-d*)

New rules:

- **Vehicles used exclusively for business purposes: all expenses 100% deductible**
 - Supporting documents
 - Transport of personnel to and from work place “for business purposes”: need to prove the “obvious” difficulties in finding other means of transportation (see above)
- **Vehicles not used exclusively for business purposes: all expenses 50% non deductible**
 - “Expenses”: not only fuel, but also rental, insurance, maintenance, repairs...
 - Depreciation: remains fully deductible
 - However, as of 1 February 2013, limited to RON 1,500 (approx EUR 340) per month
- **Same exceptions (100% deductibility) for the “specific” activities (with slightly extended range)**

Other tax measures introduced in 2012

- **Option to apply the advance CIT payment system starting 2013**
 - The general system: corporate income tax paid quarterly, in the month following the quarter, and based on the actual results of the relevant quarter
 - Starting 2013, companies can opt for the advance CIT payment system (which was and remains compulsory for a limited category of entities, e.g. banks)
 - Under the advance CIT payment system, tax is paid in advance, in quarterly pre-payments, based on the tax paid in the previous year, and taking into account the inflation index

Other tax measures introduced in 2012 (*cont-d*)

- **Option to apply the advance CIT payment system starting 2013 (*cont-d*)**
 - The option must be notified at the beginning of the year for which the request is filed
 - If exercised, the option is compulsory for two consecutive years
 - Not available for certain entities (e.g. former microenterprises, newly set-up co's, co's in a tax loss position in the previous year, companies which were in temporary inactivity, etc.)

- **Certification of CIT returns by a chartered tax advisor**
 - Postponed (again) until 2014

Recently introduced measures

As of 1 February 2013 (as per Government Ordinance 8 / 23 Jan 2013):

▪ **Additional deduction for eligible R&D expenses**

- Previously: companies involved in R&D activities could deduct an additional 20% of the amount of eligible R&D expenses
- Now: the percentage of 20% has been increased to 50% and the incentive will also be available for R&D activities carried out in other EU and EEA Member States

▪ **Rules regarding depreciation**

- Depreciation of company cars based on the number of kilometers or functioning hours is no longer allowed
- Intangibles with indefinite useful lives (as per applicable accounting regulations) are deemed non depreciable
- Expenses related to investments into fixed assets under joint venture agreements may now be depreciated

Recently introduced measures (*cont-d*)

- **The 3% tax on gross (adjusted) income becomes compulsory for micro-enterprises (previously, it was an optional regime) with a turnover of maximum 65,000 EUR (previously the threshold was EUR 100,000) and which also fulfill the other conditions to qualify as micro-enterprises, i.e.:**
 - Private ownership only qualifies
 - The revenue must be derived from activities other than consulting, management, banking, gambling, etc.
- **The requirement to also have maximum 9 employees in order to qualify as a micro-enterprise has been eliminated**
- **The system becomes compulsory for companies which meet the relevant conditions as at 31 December 2012 (with transitional measures)**
- **Companies with revenues of 65,001 to 100,000 EUR during 2012 which had opted for the system will continue to be subject to tax on micro-enterprises in 2013**

▪ Tax Treaties and artificial transactions

- The Romanian tax authorities may refuse the application of a double Tax Treaty between Romania and other states if the transaction does not have “economic substance” (i.e. artificial transactions)
- Artificial transactions: *“transactions which do not have an economic substance and which would not be performed in the context of regular business practices, carried out with the main purpose of avoiding taxation or of obtaining tax benefits which would otherwise not be available”.*

VAT

The VAT cash accounting system

How does it work?

- VAT becomes chargeable when payment is received by the supplier
 - If payment not received within 90 days from the date of issue of the invoice, the VAT still needs to be paid
- VAT deduction is postponed until the VAT is paid to the supplier
 - Exception: for intra-Community supplies, imports and acquisitions subject to the reverse charge mechanism

Who needs to apply it?

- Taxable persons which have established their place of business in Romania, with a turnover < RON 2,250,000 (approx. EUR 500,000) in the previous year
- If turnover < RON 2,250,000 between the period 1 October 2011 - 30 September 2012 => requirement to apply it starting 1 January 2013
- Excluded: taxable persons in a VAT group

The VAT cash accounting system (*cont-d*)

Compliance

- Notification required by the 25th of January of the following year that the company's annual turnover was less than RON 2,250,000
- If not, the tax authorities will register the taxpayer by default in the “Registry for taxable persons applying the VAT cash accounting system”
- Norms for the application of the relevant provisions have been adopted

Invoicing

- Simplified invoices for values < EUR 100 (with certain requirements)
- Electronic invoice: any invoice which includes the minimum information under Art. 155 of the Fiscal Code, issued and received electronically
- Transitional provisions for invoices issued by taxpayers before they started to apply the VAT cash accounting system and prior to switching to the normal VAT regime

Other tax measures introduced in 2012 (*cont-d*)

VAT deduction for company cars

- The 50% limitation of the right to deduct VAT on the purchase of motor vehicles not used exclusively for business purposes: extended to cover other services and expenditure as well, e.g.:
 - Leasing
 - Maintenance
 - Repairs, etc.

Exemption threshold amended

- Turnover threshold for applying the VAT exemption regime available for small enterprises: raised from EUR 35,000 to EUR 65,000.

Intrastat thresholds

- The Intrastat reporting threshold for intra-Community arrivals of goods has been increased from RON 300,000 (approximately EUR 68,000) to RON 500,000.
- The threshold for intra-Community dispatches of goods remains the same (i.e. RON 900,000).

Recently introduced measures

As of 1 February 2013 (as per Government Ordinance 8 / 23 Jan 2013):

- **New VAT exempt operations**
 - Transactions involving granting rights over immovable goods, such as usufruct and right of superficies, against payment, are now included in the category of VAT exempt operations, with the possibility to opt for taxation
- **Taxable base for supplies of goods / services between related parties**
 - New rules implementing the relevant provisions of the VAT Directive (anti-fraud measures). The VAT taxable base for supplies of goods / services between related parties becomes the “market value” of such operations (under specific conditions)
- **Adjustment of input VAT on missing goods**
 - VAT taxable persons are now required to adjust the VAT initially deducted for missing goods (including capital goods), including stolen goods, at the moment when it is discovered that such goods are missing
 - In the case of stolen goods, the VAT adjustment can be reversed at the moment when the theft is proved by a court decision

Recently introduced measures (*cont-d*)

- **Formalities related to the Registry of Intra-Community Operators (“ROI”)**
 - If there is a change in the list of administrators or of associates holding at least 5% of the share capital of a VAT taxable person registered in the ROI, the VAT taxable person is required to submit a criminal record check for the new administrators / associates within 30 days of the date of the change
 - If this requirement is not met, the tax authorities have the right to remove the VAT taxable person from the Registry
- **Re-registration**
 - Companies with their place of business outside of Romania which had their VAT registration number cancelled are now allowed to submit VAT re-registration requests, also after 180 days from the cancellation date

Withholding tax



As of 1 February 2013 (as per Government Ordinance 8 / 23 Jan 2013):

- **Additional withholding tax if no exchange of information**
 - 50% withholding tax will apply on dividends, interest, royalties, commissions, income from rendering services in or outside Romania if the income is paid to a non-resident from a state with which Romanian does not have a legal instrument in place (e.g. Tax Treaty) providing for the exchange of information

- **Declaration and payment of tax for foreign companies deriving capital gains from Romania**
 - Foreign companies deriving capital gains from Romania (from real estate, or from the sale of shares in a Romanian company) can now declare and pay the tax annually, this reducing the administrative burden for the taxpayer (previously it was quarterly)

What next?



What next?

▪ Local taxes

- Expected: a change in the general taxation principle applicable to real estate: in function of the utilization of the real estate (e.g. housing / business), instead of in function of the owner (e.g. individual / legal person)
- Also expected: increase in the level of local taxes (to cover inflation)
- Local tax authorities with arrears as at 31 December 2012 are required to increase the level of local taxes for 2013 (as per Government Decision no. 1309/2012)

▪ Increased focus on transfer pricing

- Note: European or worldwide benchmarking studies not accepted unless search for Romanian benchmarks has been undertaken

▪ CIT rate likely to remain unchanged (i.e. 16%) in 2013

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