

## Payment transactions – a few particularities

*by Adina Zdru, Tax consultant*

The foreign exchange law is relatively unknown although the daily processes imply payment transactions on a regular basis. In practice, this occurs by means and under the supervisions of banks. Some principles and particularities will be discussed below.

### Basic concepts

The rules of procedure of the Romanian National bank (BNR) Nr. 4/2005 defines, from the perspective of the foreign exchange law the following persons as **residents**:

- natural persons domiciled or residing in Romania who are authorized to carry out independent activities,
- Legal persons or other entities headquartered in Romania,
- Branches, agencies, representations, offices of foreign persons/structures registered/authorized in Romania,

among the **non-residents**, however, the following are included:

- natural persons domiciled or residing abroad and that are authorized there to carry out independent activities,
- Legal persons or other entities headquartered abroad,
- Branches, agencies, representations, offices of foreign persons/structures registered/authorized abroad,

### Payment transactions between residents and non-residents

Payment transactions between residents and non-residents may occur freely, in RON or a foreign currency. Based on this regulation, residents may organize their payments flows containing foreign elements with no restrictions.

This applies, for instance, to payment flows between a Romanian and a foreign person, between a parent company and its Romanian branch or other similar cases.

### Payment flows between residents

As an exception to the above, payment transactions between residents must be organized, in principle, in RON, if they are based on commercial transactions. Certain exceptions to it are listed in Annex 2 to the rules of procedure.

According to the most recent changes, also payments between residents based on loans /credits, deposits, value papers, distribution of dividends may occur freely, in RON or a foreign currency.

For invoicing in a foreign currency, a consent statement from the parties will be required.

The payment of the remuneration owed by a Romanian employer to a Romanian employee may be made, however, only in RON, regardless of the legal form in which the work relationship was agreed.

Note: The abovementioned restrictions refer only to the payment flows, respectively the encashments and payments made in a foreign currency. This may not be seen as an obstacle stopping two residents from agreeing upon commercial transactions in a foreign currency (for

instance RON). In case none of the abovementioned exceptional elements are fulfilled, the payment will have to be made in RON. In such cases, it is useful to harmonize the exchange rate applied upon invoicing with the exchange rate for accounting and/or fiscal purposes.

### **Reporting obligations**

According to the rules of procedure Nr. 4/2014 of BNR, bond loans obtained by residents from non-residents for longer than one year must be reported to BNR within 3 days following the contract conclusion. The forms can be accessed on the internet page of the BNR. Subsequent changes of such contracts must also be reported.

Reporting obligations exist also in relation to the direct investments of residents abroad. As a direct investment one may define long lasting assets in foreign entities, for instance contribution shares in the share capital of a foreign company of at least 10% or the establishment of a foreign branch, real estate purchasing abroad, as well as certain transactions based on such.

### **Other effects**

Moreover, banks have a reporting obligation towards the fiscal administration. Based on bank reporting, it must organize a centralized electronic register of the IBAN – accounts. Thus, the information regarding the bank account of a person will be accessible to the authorities. The fiscal administration can, for instance, block the accounts of a person if they have not paid their taxes or check the transactions carried out in the account of a person in order to dispose the verification of such, as the case may be.

Should a foreign person open an account in Romania, they would be subject to a registration obligation for fiscal purposes. In case such person is not yet registered for fiscal purposes, the bank will have to cause such registration to be made.

### **Conclusion**

Generally, when carrying out payment transactions, one must pay attention to transparency and good faith. Persons active also on an international level or persons having foreign shareholders and business partners, must keep an eye on certain relevant aspects in order to avoid possible payment difficulties and/or not to fail to observe certain obligations.

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