

Income of non-resident companies/persons in Romania - obligations *by Georgiana Mierloiu, Tax & Accounting Services*

Companies or individuals operating in Romania, but who are non-residents, are confronted with a complex legal and tax framework that entails a number of obligations and responsibilities.

Legal provisions

In order to determine the tax liability on income earned in Romania by non-resident legal or natural persons, it is necessary to carefully check whether this income is included in the taxable income referred to in the Tax Code.

This includes, among other things, income from

- passive sources, e.g. dividends, interest, license fees;
- provisions;
- management and consulting services;
- services provided in Romania.

Management and consultancy services provided to Romanian companies are taxable in Romania under domestic tax law, regardless of whether they are provided on Romanian territory or not. Income from services provided in Romania is also taxable here.

Classification in the category of revenue from management and consulting services is based on an analysis of the underlying contracts and documents (cost estimates, activity reports, etc.).

The tax on income earned by non-residents in/ from Romania is generally calculated, withheld, declared and paid as withholding tax by the payer of this income in accordance with the Tax Code.

Double taxation treaty / EU regulations

If the company/person concerned is resident in a country with which Romania has concluded an agreement to avoid double taxation (“**DTT**”), this DTT may apply.

In this case, management and consultancy services are not taxed in Romania, as these are not taxed as business profits in the source state (in accordance with Art. 7 of the DTTs).

However, if Romania has a right of taxation, the tax rate applicable in Romania may not exceed the rate provided for in the DTT applicable to this income.

In the event of different tax rates in national legislation or double taxation agreements, the more favorable tax rates also apply.

Furthermore, certain EU directives stipulate that tax exemptions apply to certain situations (e.g. the Parent-Subsidiary Directive).

Formalities for tax relief

For the application of the relevant DTT and the above-mentioned EU regulations, the non-resident is obliged to provide the payer of the income with a certificate of tax residency and, if applicable, to declare on oath that the requirements of the EU regulations have been met.

Certificates of residence formally confirm the tax residence of a person in a particular country. They are issued by the competent authorities of that state.

Such a certificate is generally valid for the year of issue and a further 60 days.

It must generally be submitted before the income is paid. However, if it is only issued after the tax has been calculated, withheld, declared and paid, the amount paid can be reclaimed within the usual 5-year limitation period, regardless of whether or not the company has been subject to a tax audit.

Registration and other obligations

In the above-mentioned cases, it is often also necessary to determine whether/to what extent non-resident companies that generate income in Romania are also subject to an obligation to register in Romania or to obtain a tax number. Under certain circumstances, a presence in Romania can lead to the constitution of a permanent establishment for corporate income tax or VAT purposes and thus to additional obligations with regard to corporate income tax and/or VAT in Romania.

It should also be noted that the payer of the income is obliged to inform the tax authorities within 30 days of the conclusion of contracts with non-residents for services to be provided in Romania, as well as to submit certain information declarations. This ensures that the tax authorities have an insight into the activities and presence of non-residents or their employees in Romania.

Conclusion

In summary, non-resident companies/individuals generating income in or from Romania are subject to a number of tax obligations related to tax payment, tax registration, reporting and other administrative tasks. Understanding and complying with these is essential to avoid legal and financial problems and to comply with Romanian tax legislation.

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