

# **GUIDE on the avoidance/ elimination of double taxation**

*Note: The information included in this document is provided only as a guide and is not an indicative guidance/assistance or legal advice.*

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## **TO WHOM THIS GUIDE IS ADDRESSED?**

**This GUIDE is addressed to the taxpayer who considers that taxation imposed by two or more states on specific taxes, which are governed by double taxation avoidance agreements or arrangements, for the same taxable income or capital is contrary to the legal provisions.**

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### The main legal basis:

- Law no. 227/2015 on the Fiscal Code, with the subsequent amendments and completions;
- Law no. 207/2015 regarding the Fiscal Procedure Code, with the subsequent amendments and completions;
- Conventions to avoid double taxation - the list can be consulted at the following address:  
[https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili\\_r/Conventii/Conventii.htm](https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm)
- Order of the Minister of Public Finance no. 583/2016 for the approval of the form provided by art. 230 and 232 of Law no. 227/2015 regarding the Fiscal Code, with the subsequent amendments and completions

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## **To establish the tax residence:**

Order of the Minister of Public Finance no. 1099/2016 for the regulation of some aspects regarding the residence in Romania of individuals;

Guide on the tax residence of individuals available on the NAFA website.

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### STEPS IN THE CONDUCT OF AVOIDANCE THE DOUBLE TAXATION PROCEDURE:

(1) Initiating the mutual agreement procedure is performed by making an application to the territorial fiscal body within N.A.F.A. in whose jurisdiction is the tax fiscal residence of the taxpayer/payer, department taxpayers assistance in order to avoid double taxation;

(2) The application will be accompanied by the **related documentation** showing the double taxation situation (for example Certificate of fiscal residence, Certificate of attestation of tax payment etc.)

(3) In order to avoid double taxation, the tax credit is granted if the provisions of the double taxation avoidance Agreement concluded between Romania and another state are applied and if the payment of the tax abroad is proved by a supporting document, issued by the competent authority of the foreign state.

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### DEVELOPMENT OF THE MUTUAL AGREEMENT PROCEDURE:

- ❑ In the situation that the double taxation cannot be solved at the level of the competent territorial tax authority, the taxpayer can address the National Agency for Fiscal Administration, by submitting a request to the general registry for initiating the mutual agreement procedure.
- ❑ The request will be examined by the competent structure and, if a double taxation situation is identified, the mutual agreement procedure will be initiated.

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**Example:** tax treatment applicable to income from salaries obtained by individuals resident in Romania if they operate on the basis of individual employment contracts concluded with employers resident in countries with which Romania has not concluded double taxation agreements.

- According to Law no. 227/2015 on the Fiscal Code, with the subsequent amendments and completions, art. 76, para. (4), lit. o), does not represent taxable income within the meaning of income tax, *“the amounts or benefits received by individuals from dependent activities carried out in a foreign state, regardless of the tax treatment in that state, including activities carried out on ships board and flights operated in international traffic. The exceptions shall be the wage incomes paid by, or on behalf of an employer, who is resident in Romania or has permanent establishment in Romania, which shall be taxable in Romania only in case Romania has the right of taxation”*.

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- According to GD no. 1/2016 for the approval of the Methodological Norms for the application of the Fiscal Code, with the subsequent amendments and completions, Title IV, Chapter III, Section I, point 12, para. (19), in order to apply the provisions of art. 76, para. (4), lit. o) of the Fiscal Code, the incomes from dependent activities carried out abroad and paid by a non-resident employer, are not taxable and are not declared in Romania according to the provisions of the Fiscal Code.
- Also, in the situation where the activity of individuals resident in Romania takes place in Romania, based on art. 82 para. (1) and (2) of the same normative act, taxpayers who carry out their activity in Romania and who obtain incomes as wages and assimilated to wages from abroad have the obligation to declare and pay monthly tax to the state budget, until the date of 25 inclusive of the month following the month when the income was obtained, in this case being applicable the provisions of art. 82 of the Fiscal Code, with the subsequent amendments and completions.



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### ATTENTION:

- !! A.N.A.F. may reject the request for an mutual agreement proceeding.
  
- !! Application of an agreement on avoidance of double taxation on income and capital taxes does not imply the imposition of income in the country of residence of the recipient of such income, but it implies the attribution of the main right of taxation to the source country of the incomes, the country of residence of the beneficiary following to ensure the avoidance of double taxation, according to art. "Avoidance of double taxation" from a convention for the avoidance of double taxation.

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### ATTENTION:

- !! If the applicant does not present the tax residence certificate issued by the competent authorities and / or Romania has not concluded an agreement to avoid double taxation with the countries in which he is resident, will applicable the provisions of Law no. 207/2015 on the Fiscal Code, with subsequent amendments and completions, Title VI, art. 223 and 224, as appropriate.
- !! If the residence certificate is presented, the provisions of the respective double taxation avoidance agreement (if any) will apply, depending on the nature of the income, established according to the contractual provisions.