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ROMANIA

TRANSFER PRICING GUIDANCE

1. Reference to the Arm's Length Principle

The arm's length principle was introduced in the domestic tax law in 1994 and is applicable to all related party transactions, including those taking place between a non-resident legal entity and its Romanian permanent establishment. Starting with 2010, related party transactions carried out between two Romanian legal entities also fall within the scope of transfer pricing investigations, whereas previously only transactions with non-resident related parties were investigated by the tax authority.

Art. 19 of the Romanian Fiscal Code (Law no. 227/2015) as later amended and supplemented, establishes the general rule that transactions between related persons or entities must be valued at normal market value.

According to art. 7 point 33 of the Fiscal Code, as later amended and supplemented, the market value principle is defined as following: *"when the conditions established or imposed in the trading or commercial relations between two affiliated persons are different from those that would have existed between independent persons, any profits which in the absence of those conditions would have been realized by one of the persons, but have not been realized by this person due to those conditions, may be included in the profits of that person and taxed accordingly"*.

In order to determine the related parties' fiscal results, transfer pricing provisions in Fiscal Procedure Code (Law no. 207/2015) will apply. In case such differences are met, that cannot be properly explained or documented by the audited taxpayer, it may concluded that transfer prices are not set at arm's length and the tax authorities can adjust the taxpayers' revenues and expenses so as to reflect the market value. Currently, this approach applies both in domestic and in cross-border situations.

2. Reference to the OECD Transfer Pricing Guidelines

Although Romania is not a member of the Organisation for Economic Cooperation and Development (OECD), domestic legislation expressly stipulates that in the application of transfer pricing rules, the Romanian tax authorities will also consider the OECD Transfer Pricing Guidelines for multinational companies and tax administrations (OECD TPG).

Romania fully endorses the OECD TPG as the primary interpretative source for the application of the arm's length principle, as incorporated in Article 11 of the Fiscal Code and in the transfer pricing regulations issued by the Ministry of Finance.

In line with international practice, Romania applies the OECD TPG prospectively, as of the date they are adopted or reflected in domestic legislation or administrative guidance.

However, to the extent that later editions of the OECD TPG provide clarifications or elaborations of principles already embedded in previous versions, the Romanian tax authorities may take them into consideration for earlier periods, provided that such application does not conflict with domestic law or existing double tax treaties.

3. Definition of related parties

According to art. 7 point 26 of the Fiscal Code, as later amended and supplemented, a person is affiliated if the relation between such person and another person is defined by at least one of the following cases:

- a natural person is affiliated with another natural person if such persons are spouses or

relatives up to the 3rd degree inclusive;

- a person is affiliated with a legal person if the person owns, directly or indirectly, the holdings of the affiliated persons, representing minimum 25% of the value/number of the participation titles or of the voting rights held in the legal person, or if it actually controls the legal person;
- a legal person is affiliated with another legal person if at least the former holds, directly or indirectly, the holdings of the affiliated persons, representing minimum 25% of the value/number of the participation titles or of the voting rights held in the other legal person, or if it actually controls the legal person;
- a legal person is affiliated with another person if a person holds, directly or indirectly, the holdings of the affiliated persons inclusive, representing minimum 25% of the value/number of the participation titles or of the voting rights held in the other legal person or if it actually controls that person;

4. Transfer pricing methods

Domestic legislation provides that taxpayers may use all transfer pricing methods (comparable uncontrolled price method, cost plus method, transactional net margin method, resale price method, profit split method) as well as any other as recognized by the OECD TPG.

The standard used for selecting the most appropriate method is provided in a condensed version in the domestic legislation, as well as in Chapter II of the OECD Guidelines, Selection of the most appropriate transfer pricing method to the circumstances of the case, that should be used accordingly.

5. Transfer pricing documentation requirements

Romanian transfer pricing documentation requirements follow, in principle, the three-tiered standard established by OECD BEPS Action 13 and the EU Code of Conduct on Transfer Pricing Documentation for Associated Enterprises (EUTPD), group section (similar to the information and structure master file), local file and Country by Country Reporting.

In line with the Fiscal Procedure Code (Law no. 207/2015, as amended), taxpayers engaged in related party transactions are required to prepare a transfer pricing file. Large taxpayers are required to prepare annual transfer pricing file. Small and medium size taxpayers are required to prepare a transfer pricing file at the request of the tax authorities, in a tax audit context. The transactions for which the taxpayer is required to prepare a transfer pricing file, the deadlines, the content of the transfer pricing file, when this is requested are all published in Order of the President of the National Agency for Fiscal Administration no. 442/2016 on the amount of transactions, deadlines, content of the transfer pricing file, conditions for requesting, and the adjustment and estimation procedure (Order no. 442/2016).

The provisions of Order no. 442/2016 are in line with OECD Transfer Pricing Guidelines and Code of Conduct on Transfer Pricing Documentation Associated Enterprises in the European Union (EUTPD), published in the Official Journal of the European Union No. C176/1 of 28th of July 2006.

Generally, the transfer price file shall include information about the group (legal, operational and organizational structure, general description of group's activity, business strategies, transfer pricing methodology at group level, overview on the transactions between related parties, intangible assets' holders within the group, general description of functions and risks assumed by the related parties, etc.), information about the audited taxpayer (detailed presentation of controlled transactions, functional analysis, contractual terms, economic circumstances, specific business strategies, use of internal or external comparables, documented description of the transfer pricing method), description of other conditions deemed relevant for the taxpayer. Romania has implemented the OECD CbCR regime through

the Fiscal Code (Law 227/2015) and Order no. 3049/2017 (as amended).

6. Specific Transfer Pricing Topics

Romania closely follows the OECD developments and international best practices in the area of transfer pricing, particularly on specialised topics reflecting the evolving global standards under the OECD/G20 Inclusive Framework on BEPS.

In applying the arm's length principle, the Romanian tax administration refers to the most recent versions of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, including the updates incorporated in the 2022 edition and subsequent 2024 revisions.

Accordingly, Romania's transfer pricing practice and audit approach are aligned with OECD guidance on:

- the treatment and allocation of income related to intangible property, including the application of the DEMPE functions (Development, Enhancement, Maintenance, Protection, and Exploitation) and Hard-to-Value Intangibles (HTVI) principles;
- the analysis of intra-group services, distinguishing between value-adding and shareholder activities and applying the simplified approach for low-value-adding services;
- the delineation and pricing of intra-group financial transactions, consistent with Chapter X of the OECD Guidelines; and
- the recognition and evaluation of Cost Contribution Arrangements (CCAs) for shared development or service activities.

Romania's approach emphasizes substance over form, the accurate delineation of transactions, and the alignment of profits with value creation, in line with the OECD/G20 BEPS Actions 8–10.

The Romanian tax authority actively monitors these developments and updates its administrative guidance and audit methodologies accordingly, ensuring consistency with international standards while maintaining compliance with domestic law.

Intangible Property – DEMPE and HTVI considerations:

Romanian transfer pricing rules follow the OECD Transfer Pricing Guidelines (TPG) in delineating transactions involving intangible property ("intangibles") based on the DEMPE functions – development, enhancement, maintenance, protection and exploitation.

Ownership of intangibles for transfer pricing purposes is determined not solely by legal title but by the actual conduct of the parties and the functions performed, assets used, and risks assumed.

Taxpayers must identify the entities performing DEMPE functions and determine whether they are appropriately remunerated, taking into account the group's value chain and economic substance.

The allocation of returns must reflect where control over development and related risks resides and who bears the financial risks associated with the intangible.

Romanian tax authorities scrutinize transfers or licensing of hard-to-value intangibles (HTVI).

In the case of transfer of an intangible or rights in an intangible that qualifies as a hard-to-value intangible, the authorities may use ex-post outcomes as presumptive evidence to test the appropriateness of ex-ante pricing, in accordance with the guidance in Section D.4 of Chapter VI of the OECD TPG.

Taxpayers engaging in HTVI transactions should maintain detailed documentation, including projections, assumptions, and valuation methodologies used to determine arm's length pricing.

Intra-Group Services considerations:

In line with Chapter VII of the OECD TPG, the Romanian tax administration distinguishes

between services that provide a clear benefit to the recipient and those that do not (so-called "shareholder activities" or duplicative services).

Taxpayers should demonstrate that:

- the service was actually rendered;
- it provided or was expected to provide an economic or commercial benefit; and
- the charge reflects the arm's length value.

Appropriate allocation keys (e.g., turnover, headcount, usage metrics) should be used when costs are pooled.

Financial Transactions considerations:

The Romanian tax authority applies the principles set out in Chapter X of the OECD TPG when reviewing intra-group financial transactions, including intercompany loans, cash-pooling, guarantees and hedging.

Key considerations include:

- accurate delineation of the financial relationship, including commercial rationale, loan terms, and options realistically available;
- assessment of the borrower's creditworthiness and capacity to service the debt;
- functional analysis of who exercises control over financial risk; and
- alignment between contractual terms and conduct.

Interest rates should be benchmarked using comparables from independent market transactions, and documentation should include evidence of interest-rate setting (e.g., credit rating analysis, yield curves, market spreads).

Thin capitalization and anti-abuse provisions under domestic law remain applicable in parallel with transfer pricing analysis.

Cost Contribution Arrangements (CCAs) considerations:

Romania recognizes cost contribution arrangements (CCAs) as defined in Chapter VIII of the OECD TPG. Under a CCA, participants share in the costs and risks of developing, producing, or obtaining assets, services, or rights, in proportion to the expected benefits derived. Contributions may be in cash or in kind (e.g., services, intangibles). Each participant's contribution must be consistent with the expected benefits and measured at arm's length value.

Where a participant's contribution is not commensurate with expected benefits, an arm's length adjustment must be made. CCAs should be supported by a written agreement specifying participants, scope, valuation method, and benefit allocation mechanism.

Taxpayers involved in CCAs, particularly those relating to research and development or shared service centers, should maintain robust documentation covering:

- the nature of activities and assets contributed;
- the expected benefits to each participant;
- the rationale for the allocation keys; and
- periodic review mechanisms to ensure alignment over time.

Compliance expectations:

Romanian tax authorities place increased focus on transactions involving intangibles, financial arrangements and intra-group services, particularly where profit margins deviate from industry norms. Taxpayers are encouraged to document DEMPE analyses, value creation within the group, and all assumptions underlying intangible valuations.

During audits, the tax administration may request detailed cost-allocation models, R&D project descriptions, intra-group agreements, and comparable benchmarking studies.

7. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

Burden of proof

The primary burden of proof is on the taxpayer, by way of the transfer pricing documentation that needs to be prepared according to national legislation requirements. On the other hand, where a transfer pricing file is not presented, upon request, or is incomplete (a failure to provide the information required by tax inspector in order to determine whether or not relevant transfer prices as charged in inter-company transactions are of an arm's length nature), the tax authority may proceed to its own assessment and impose adequate corrections to the taxable income, if considered appropriate. Also, in the event the prices applied in a transaction with a related party are challenged, the tax administration should determine the market value based on public available information on similar transactions.

Statute of limitation

Profit adjustments on transactions between related parties can be performed within the domestic statute of limitation period of 5 years. By means of exception, the right to assess tax obligations shall be limited to 10 years, provided that such obligations are likely to result from fiscal fraud, falling under the provisions of criminal law.

Desk and field audits

Generally, the procedural rules for transfer pricing audits are the same as those applicable to ordinary examinations. The audits are initiated by a notification sent to the taxpayer, which will detail the nature and scope of the audit. The audit is closed by issuing a draft report that the taxpayers may oppose. After preliminary hearings granted to the taxpayer, the tax auditors may issue the final report, which can include adjustments.

Similar to ordinary tax audits, the transfer pricing audit might be initiated by selecting taxpayers as audit targets, based on various data, such as:

- significant related parties transactions;
- consistent losses;
- payment of minimal taxes;
- taxpayers' past behavior: compliant or non-compliant etc.

The formal request for transfer pricing file is generally preceded by preliminary inquiries into related parties' transactions, such as requests for inter-company agreements or explanations of related parties' transactions as disclosed in the financial statements or accounting documents.

Penalties

Failure to present the transfer pricing file may result in fines ranging from LEI 12,000 up to LEI 14.000 (i.e. approx. EUR 2.700 to EUR 3.000 at the current foreign exchange rate) for medium and large taxpayers, or from LEI 2.000 up to LEI 3.500 (i.e. approx.. EUR 430 to EUR 750 at the foreign exchange rate) for the other categories of taxpayers; followed by an estimation of transfer prices by the tax authorities based on generally available information on similar transactions, as the arithmetic mean of prices on three similar transactions. The additional taxable profits resulting from this estimation or any transfer pricing adjustments are subject to the general 16% profit tax rate and corresponding late payment interest and penalties. Under Romanian legislation, interest and penalties in case of late payment are non-deductible.

8. Information for Small and Medium Enterprises on TP

Currently, there are specific transfer pricing rules and regulations or procedures for small and medium size taxpayers, compared to large taxpayers. Thus, according to the provisions of Order no. 442/2016, in case of small and medium-sized taxpayers, the applicable values of a

materiality threshold are, as follows:

- EUR 50.000 in case of interest costs incurred for financial services, to be determined based on the exchange rate announced by the National Bank of Romania prevailing at the last date of the relevant fiscal year;
- EUR 50.000 in case of provisions of services, to be determined based on the exchange rate announced by the National Bank of Romania prevailing at the last date of the relevant fiscal year;
- EUR 100.000 in case of transaction involving purchases/sales of tangible or intangible assets, to be determined based on the exchange rate announced by the National Bank of Romania prevailing at the last date of the relevant fiscal year.

Thus, according to the provisions of Order no. 442/2016, large taxpayers (as established by Order of the President of the Agency National Tax Administration), which carries out transactions with affiliated persons with a total annual value, calculated by summing the value of transactions performed with all affiliated persons, excluding VAT, greater than or equal to any of the following thresholds, have the obligation to prepare the transfer pricing file annually:

- EUR 200.000 in case of interest costs incurred for financial services, to be determined based on the exchange rate announced by the National Bank of Romania prevailing at the last date of the relevant fiscal year;
- EUR 250.000 in case of provisions of services, to be determined based on the exchange rate announced by the National Bank of Romania prevailing at the last date of the relevant fiscal year;
- EUR 350.000 in case of transaction involving purchases/sales of tangible or intangible assets, to be determined based on the exchange rate announced by the National Bank of Romania prevailing at the last date of the relevant fiscal year.

Taxpayers/payers qualifying for the above mentioned provisions that conduct inter-company transactions of an aggregate annual value reached by adding up the values of transactions with all their related parties, exclusive of VAT, which is lower than the materiality thresholds mentioned above, must prepare documents that attest to the compliance with the arm's length principle, in case of a tax inspection, according to the effective provisions of the general tax regulations.

The transfer pricing documentation file can also be requested by the tax authority outside of a fiscal inspection, based on art. 58 and 64 of Law no. 207/2015 on the Fiscal Procedure Code, as subsequently amended and supplemented.

Large taxpayers/payers who do not meet the above criteria have the obligation to prepare and present the transfer pricing file only at the request of the tax authority in the framework of a tax inspection.

9. Information on dispute resolution

Currently, the legislation foresees the following forms of Mutual Agreement Procedures (MAPs):

- MAPs, as provided by bilateral tax treaties concluded by Romania with other countries;
- MAPs under the EU Arbitration Convention for EU Member States;
- MAPs the EU Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union.

A taxpayer may request the initiation of a MAP where it considers that taxation is not in accordance with the relevant treaty.

The request must be submitted within three years from the first notification of the action

resulting in such taxation.

MAP requests can be made independently of domestic administrative or judicial remedies.

If both authorities fail to reach an agreement within the applicable timeframe (generally two years under the EU Arbitration Convention), the taxpayer may request arbitration where eligible.

Romania implements all agreements reached under MAP even if domestic limitation periods have expired.

For disputes involving EU Member States, taxpayers may also seek relief under Directive (EU) 2017/1852, transposed into Romanian law by Government Ordinance no. 6/2020 (as amended).

The Directive establishes a mandatory and binding arbitration mechanism for resolving double-taxation disputes between EU jurisdictions.

Key features include:

The taxpayer must first submit a complaint simultaneously to both competent authorities within three years of receiving the first tax assessment or measure leading to double taxation.

Each Member State must decide on the admissibility of the complaint within six months.

If no agreement is reached within two years, the taxpayer may request the establishment of an Advisory Commission (or Alternative Dispute Resolution Commission), which issues an opinion within six months.

The competent authority in Romania for both MAP and EU Directive (EU) 2017/1852 procedures is the National Agency for Fiscal Administration – Directorate for Transfer Pricing, and Advance Pricing Agreement.

Implementation and transparency:

Any agreement reached by the competent authorities under the Mutual Agreement Procedure shall be implemented by Romania regardless of domestic statute of limitation provisions or previous tax assessments made by the tax authorities that gave rise to the dispute.

Romania publishes annual statistics on MAP and EU Directive cases under the OECD MAP Statistics Reporting Framework and the EU Platform for Tax Good Governance.

Taxpayers are encouraged to consult the OECD's Manual on Effective Mutual Agreement Procedures (MEMAP) and the EU Code of Conduct on the Effective Implementation of the Arbitration Convention.

10. Relevant regulations on Advance Pricing Arrangements

Taxpayers engaged in related party transactions have the option to apply for advance pricing agreements (APAs). Information on the application procedure and the supporting documentation by a taxpayer intending to request the issuance of a APA are contained in Order of the N.A.F.A. President no. 3735/2015 on the approval of the procedure of issuing and modifying an advance pricing agreement, as well as the contents of the application for issuing and modifying an advance pricing agreement.

The APA is defined as an administrative act issued by the tax authority in the view of addressing a taxpayers' formal request in the scope of establishing the conditions and methodology to set up transfer prices in related party transactions for a determined period of time.

The procedure is initiated by the taxpayer through the submission of a formal request for an APA that can be preceded, if requested by the taxpayer, by a pre-filing meeting with the tax authority representatives. The content of documentation that needs to be provided for issuing an APA is similar to the content of the transfer pricing file, only it refers to future controlled transactions.

APAs can be unilateral, bilateral or multilateral and may be issued for a period of up to 5 years. By means of exception, its validity may be longer in case of long-term agreements. The APA is opposable and binding on the tax authorities as long as its terms and conditions are fully observed by the taxpayer. Also, it is mandatory for the taxpayer to submit an annual report detailing on the fulfillment of the terms and conditions of the agreement, by the deadline for submitting the statutory financial statements.

Ordinance 11/2025 implemented also roll-back APA, for a period up to 5 years, applicable for unilateral, bilateral as well as multilateral.

If a taxpayer does not agree with the APA, a notification may be sent to the issuing tax authority, within 30 days from the communication date and the APA will no longer produces legal effects. The deadline for issuing APAs is 12 months in case of unilateral APAs and 18 months in case of bilateral or multilateral APAs. In case of large taxpayers and for transactions included in the agreement with an annual consolidated value exceeding EUR 4 million, a fee of EUR 20.000 is to be paid, whereas for amending it the fee amounts to EUR 15.000. For the rest of the taxpayers (small and medium size enterprises), the fee for issuing an APA is EUR 10.000, and the fee for amending it is EUR 6.000.

11. Links to relevant government websites/European Union/OECD

Romanian Government: www.gov.ro

Ministry of Public Finance:

www.mfinante.gov.ro

Romanian National Agency for Fiscal Administration: www.anaf.ro

European Commission: www.ec.europa.eu

Organization for Economic Co-operation and Development (OECD) – www.oecd.org