ROMANIA

1. INTRODUCTION

a. Forms of Legal Entity

Romanian Company law allows for the incorporation of five different types of companies as legal entities, namely: General Partnership, Limited Partnership, Joint Stock Company, Company Limited by Shares and Limited Liability Company. All of these are liable to tax themselves, they are not considered transparent for tax purposes.

The most common legal forms of incorporation used in Romania are the Limited Liability Company ("LLC", or the so called "SRL") and the Joint Stock Company ("SA"). Generally, a legal entity should have at least two participants. Nonetheless, LLCs are allowed to have a sole shareholder. The minimum share capital in the case of a joint stock company is of approximately EUR19,000, while no minimum share capital is regulated in the case of the LLCs (prior to 5 November 2020, the LLCs minimum share capital was of approximately EUR40).

From 5 July 2020, as a measure aimed at relaxing and encouraging the development of the business environment, Romanian Company Law was amended so as to eliminate the legal restriction according to which (i) a natural or legal person could be a sole shareholder in only one LLC and (ii) an LLC with a sole shareholder could not have another LLC made up of a single person as sole shareholder.

b. Taxes, Tax Rates

From a tax standpoint, taxpayers are subject to various tax regimes depending inter alia on their legal status (e.g. individual vs. legal entity), type and size of activity carried out or type of income obtained.

In general, Romanian legal entities are subject to a tax on their taxable income (the microenterprise tax) following their incorporation. It is a flat rate of 1% or 3% (depending on certain criteria) applied to the taxable income, (the deduction of expenses is not allowed as a principle), this regime would generally be maintained as long as the yearly taxable revenue does not exceed EUR1 million. The microenterprises may however opt for the corporate income tax ("CIT") system if they meet certain requirements. This microenterprise tax system will suffer significant changes which will come in force on 1 January 2023 (e.g. the system will become optional, the taxable turnover threshold will be reduced to EUR0.5 million, the company will have to have at least one full time employee to be able to apply for the system, there will be a single tax rate, namely 1%, the company should not undertake specific activities like banking, insurance, or derive 20% or more of its turnover from consultancy and management activities etc.).

Another specific tax regime is the one applicable to the so called HoReCa industry (hotels / accommodation facilities, restaurants / catering and bars) which varies depending on several factors (e.g. type of activity, the useful commercial surface, rank of the locality etc.). This system will be eliminated from 1 January 2023 and these companies will be able to opt for applying the microenterprise or the corporate income tax system.

On the other hand, some Romanian legal entities (e.g. not falling into the category of microenterprises) and foreign legal entities that either carry out an activity via a permanent establishment in Romania, have their place of effective management in Romania or derive capital gains from Romania (related to Romanian shares or real estate) are subject to CIT currently at a flat rate of 16% applied to the taxable result (which is the accounting profit to which certain tax adjustments are made).

Romanian resident individuals are generally taxed at a flat rate of 10% on different types of revenues including also capital gains or interest, except dividend income which is taxed at a 5% flat rate (dividend tax rate will increase to 8% from 1 January 2023). Individuals may owe social security contributions for certain types of income, including investment income. Non-resident individuals also become subject to tax in Romania for certain Romanian sourced income which includes the investment income obtained from residents.

Aside from taxation of income, local taxes apply for various types of property. For instance, building tax is levied at a standard rate ranging from 0.08% to 1.3% (mainly depending on whether the building has a residential / non-residential or mixed use); while land tax is levied at a fixed rate per square metre and the rate varies according to the local council's categorisation of the location of land, the type of land use, locality rank, etc. From 1 January 2023, the local tax rates will be changed.

c. Common divergences between income shown on tax returns and local financial statements

For CIT payers, the taxable result is computed based on the accounting profit / loss (reflected in the financial statements) to which certain tax adjustments are made. Examples are the add back of non-deductible expenses and items similar to expenses (though not recorded in the profits and loss account) and deduction of non-taxable income and items similar to income.

2. RECENT DEVELOPMENTS

a. EU Directives tackling tax avoidance practices

As of 1 January 2018, Romania transposed into its domestic legislation four rules of Council Directive (EU) 2016/1164 *laying down rules against tax avoidance practices that directly affect the functioning of the internal market* ("ATAD"), specifically: interest limitation rule, exit taxation, general anti-abuse rule and controlled foreign company rule. For the most part, ATAD was implemented without many variations from its original text.

Subsequently, from 1 January 2019 several much awaited amendments were enacted in the domestic interest limitation rules, such as:

- An increase of the fixed tax deductible threshold from EUR200,000 to EUR1 million;
- An increase of the variable deductible threshold from 10% to 30% of tax-EBIDTA;
- Clarification that in the case of taxpayers involved in merger / spin-off operations, the right to carry forward exceeding borrowing costs is transferred to the absorbing / receiving companies, in certain conditions.

The latest development in this area represents the transposition into domestic legislation of Council Directive (EU) 2017/952 *amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries* ("ATAD2"), in February 2020.

b. Tax discounts for the net equity increase

According to the Government Emergency Ordinance no. 153/2020 ("GEO 153"), during the period 2021 – 2025 the taxpayers subject to CIT, microenterprise tax or the specific tax regime applicable to HoReCa industry may benefit of yearly tax discounts should they achieve certain increases of their net equity, as follows:

- Tax discount of 2% for recording a certain level of the net equity;
- Tax discounts between 5% to 10% for recording an increase of the adjusted net equity compared to the previous year (first condition should also be met);
- Tax discount of 3% for recording between 2022 and 2025 an increase over a certain threshold of the adjusted net equity compared to the adjusted net equity of 2020 (first condition should also be met).

The discounts may be cumulative where taxpayers fulfil more than one of the aforementioned conditions. GEO 153 also provides specific rules applicable in case of e.g. reorganisations, taxpayers with modified tax year, etc.

c. Coronavirus Aid and Relief measures

In the context of the COVID-19 situation, a state of emergency was declared in Romania on 16 March 2020 which was, as of 18 May 2020, replaced by an alert state. From 9 March 2022, the alert state was terminated in Romania and most of the restrictions associated with the COVID-19 pandemic were repealed.

The Romanian Government adopted measures to support economic operations for businesses affected by the spread of COVID-19. Some of the key tax measures taken in this respect consisted of:

- Non-application of late payment charges (penalties and interest) in case of certain tax obligations (applicable during 2020);
- Forced executions by garnishment in the case of budgetary receivables were either suspended or were not started, as the case may be (applicable during 2020);
- Social protection measures, such as technical unemployment were partially borne by the state (applicable in different periods of 2020 to 2022);
- "Bonuses" for the payment, within the legal deadline, of certain taxes (applicable during 2020);
- Tax discounts applicable for the HoReCa industry (applicable during 2020 and 2021).

Starting in 2022, most of the COVID-19 key tax measures were no longer applicable, but may be relevant to tax due diligence processes going forward.

3. SHARE ACQUISITION

a. General Comments

Share deals consist of the acquisition of a company's shares and as a consequence, the buyer indirectly achieves the ownership over the targeted assets and liabilities, having in general a minimum impact on the operational activity of the acquired company.

b. Tax Attributes

Changes in the shareholding structure of the acquired company taking place under a share deal scenario do not affect its tax position. Hence, any tax attributes such as tax losses, sponsorship tax credits, non-deductible reportable expenses which may be carried forward in the future, available at the level of the acquired company prior to the share deal will continue to be available post-acquisition.

c. Tax Grouping

With effect from 1 January 2021, Romanian tax legislation provides a specific framework regarding the consolidation regime for corporate income tax ("CIT") purposes. CIT consolidation involves the setting up of a tax group in which the calculation, declaration and payment of CIT is performed by one of its members, called the responsible legal entity. Specifically, each of the members calculate their individual tax result (taxable profit or tax loss) and the responsible legal entity adds-up the results of all the members in order to determine the tax result at group level.

A CIT consolidation group may consist of:

- A Romanian legal entity/legal entity with a registered office in Romania established according to European law and one or more other such entities in which the first legal entity holds, directly or indirectly, at least 75% of the value/number of participation titles or their voting rights;
- At least two Romanian legal entities in which a Romanian individual holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights;
- At least two Romanian legal entities in which a legal entity/individual, resident in a state with which Romania has concluded a double taxation treaty or an information exchange agreement, holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights; or
- At least one Romanian legal entity in which a legal entity, resident in a state with which Romania has concluded a double taxation treaty or an information exchange agreement, holds, directly or indirectly, at least 75% of the value/number of participation titles or voting rights and the permanent establishment in Romania of such foreign legal entity.

The Romanian tax legislation provides certain conditions which qualifying entities should fulfil in order to be a part of a CIT consolidation group such as being registered as CIT payers and applying the same CIT payment system (not applying microenterprise tax or HoReCa tax systems), having the same tax year, not being part of a different CIT consolidation group, not performing certain types of activities, etc.

The legislative framework provides specific provisions with respect to setting up the CIT consolidation group, the minimum period for which the group should be maintained, joining or exiting a CIT consolidation group during its existence and tax consequences thereof, computing the taxable result and declaring the CIT due by the group. If a member exits a CIT consolidation group before the minimum period expires, the respective member and the group should recalculate the tax results of prior periods as if that member was not part of the group (this may lead to additional tax liabilities); there are certain exceptions to this rule.

The Romanian legislation also provides a specific framework regulating the implementation of tax grouping for VAT purposes.

d. Tax Free Reorganisations

Reorganisations may be implemented in a tax neutral manner by way of a merger, spin-off, transfer of assets (in exchange for shares) or exchange of shares. Such operations involving Romanian legal entities, as well as EU qualifying legal entities, may be generally tax neutral for the difference between the market value of the assets / liabilities transferred and their tax value (e.g. no CIT is due), provided certain criteria are cumulatively met (e.g. the receiving entity maintains the tax value, tax depreciation methods and useful lives of the assets transferred at the same level as they were prior to the reorganisation process). In case of partial spin-offs, the transfer should consist of one or more independent business lines towards one or more existing / new entities, while the company undergoing the spin-off operation should maintain at least one independent business line.

Reorganisation operations must have business substance to be considered tax neutral. Domestic and EU cross border reorganisation operations may not enjoy tax neutrality if they result in fraud and tax evasion detected according to the law. Share deals, as well as merger and spin-off operations are outside the VAT scope by default (i.e. the transfer does not represent a VATable operation), while asset deals may enjoy VAT neutrality only provided they qualify as a transfer of a going concern ("TOGC") per the domestic legislation.

e. Purchase Agreement

Usually, the acquisition of shares is made either by a holding company that owns and manages the investee(s), or by a special purpose vehicle set-up in light of a leveraged buyout structure.

It is recommended that specific buyer-protection clauses (e.g. representations and warranties, indemnity clauses) are inserted in the share purchase agreements ("SPAs") to provide the buyer with protection against risks which may crystalise in the future as a result of pre-closing events. The following tax areas are heavily scrutinised by the tax authorities at present, regardless of the industry of the taxpayer:

- Deductibility of service expenses: to claim CIT deductibility, the target should be able to demonstrate with written evidence that the services acquired have been actually rendered, that they were acquired and used for business purposes as well as the benefits derived by the taxpayer therefrom;
- Transfer pricing issues may arise for transactions carried out by the target with related parties: these should be carried out at fair market value (in line with the "arm's length principle"). Lack of a complete transfer pricing file may trigger fines and adjustment of taxable basis for CIT purposes and also for VAT in certain circumstances;
- Services acquired by the target from individuals organised as freelancers / limited liability companies etc. may be re-qualified in certain cases as dependent relationships from a tax point of view and hence trigger personal income tax and mandatory social security contributions, similarly to salaries. These, as well as late payment charges may be imposed on the target.

f. Transfer taxes on share transfers

There is no indirect transfer tax for the sale of shares (certain commissions / taxes may be due if the shares are traded on the regulated market, or certain fixed amounts may be due to the Trade Register). Sale of shares is an exempt without credit operation for VAT purposes, and therefore no Romanian VAT should be charged.

g. "Purchase accounting" applicable to share acquisitions

In the case of share acquisitions, the local accounting regulations (Order 1.802/2014) provide that the shares are recognised by the buyer at the level of their acquisition cost, regardless of any differences that may exist between the fair value and historical cost of the assets in the acquired company.

h. Share Purchase Advantages

One of the key advantages of a share deal is the possibility to take over a business together with any tax assets available (e.g. tax losses, tax credits). For instance, a Romanian company is entitled to carry forward and recover its fiscal losses in the next seven consecutive years based on FIFO method provided it is a CIT payer (this means that companies subject to microenterprise tax or HoReCa specific tax are not entitled to carry forward tax losses).

Additional benefits such as the possibility to deduct reportable expenses in future periods are also available in share deals.

Though the value of the tangible and intangible assets in a share deal cannot be stepped up at the date of the share deal, the value of the tangible non-current assets can be increased for both accounting and tax purposes further to a year-end revaluation which generates a surplus. Nevertheless, the CIT impact of increased tax depreciation corresponding to the revaluation surplus is netted-off by an equal taxable item. Such a revaluation may be performed provided that the target accounting policy is to revaluate its depreciable non-current assets. Recognition of a step-up in value of intangible assets for accounting and tax purposes is not allowed. Moreover, under a share deal, the target company is entitled to continue with the same tax depreciation plan applicable for its non-current assets as before the transaction.

Another advantage of a share deal is the possibility for the acquired company to request the issuance of tax clearance certificates from the Romanian tax authorities certifying that the company has no outstanding tax liabilities. However, such certificates confirm that the company settled the tax liabilities which were self-assessed. Hence, the certificate does not ensure that there are no undeclared tax liabilities for instance. Thus, for an increased level of comfort regarding past tax liabilities, the company should also undergo a tax audit carried out by the tax authorities.

Going forward, no real estate tax implications arise in the case of a share deal, as far as the immovable assets of the acquired company are concerned. However, potential notary fees may be due if the parties opt to have the share purchase agreement authenticated by a notary public. In this case, the notary fees are due by either the seller or by the buyer, as contractually agreed between the parties.

Also, from a VAT standpoint, the sale of shares is a VAT exempt without credit operation.

i. Share Purchase Disadvantages

The main drawback of a share deal is that the buyer takes over all liabilities, including tax liabilities, of the target. Therefore, buyers should perform in-depth due diligence to quantify the potential risks and seek protection through the sale and purchase agreement (by asking the seller for guarantees and indemnities in respect of pre-closing events).

4. ASSET ACQUISITION

a. General Comments

By comparison to a share deal, asset deals consist in the acquisition of a part or the totality of a company's assets, the ownership right being transferred as a whole.

b. Purchase Price Allocation

In case of a business transfer, the purchase price allocation should be made based on a valuation report.

c. Tax Attributes

Taking over a business by way of an asset deal does not involve taking over of the tax attributes available of the transferring company (e.g. tax losses, tax credits) prior to the transfer, as only the assets per se are transferred to the receiving company. Nevertheless, the history of the assets is relevant as the buyer should continue the tax depreciation over the remaining useful life (if this information is available) and if the sale qualifies as a transfer of the business as a going concern (outside the VAT scope), the buyer becomes the successor of the transferor in terms of VAT adjustment liability.

d. Tax Free Reorganisations

Reorganisations may be implemented by way of a merger, spin-off or transfer of assets (in exchange for shares) or exchange of shares. In order for the aforementioned operations to be tax free, certain criteria should be cumulatively met (e.g. the receiving entity maintains the tax value, tax depreciation methods and useful lives of the assets transferred at the same level as they were prior to the reorganisation process). In particular, asset deals per se may enjoy direct tax neutrality provided they are performed by way of consideration as an exchange of shares (i.e. like a transfer of assets in exchange for shares – e.g. a partial spin-off where the transferring entity receives shares in in the receiving entity in exchange for the assets transferred to the latter) and VAT neutrality provided they qualify as a 'transfer of a going concern' per the domestic legislation.

Further to performing an asset deal, the receiving company may later on perform a spin-off operation whereby the acquired line of business can be subsequently transferred to an existing or newly incorporated company. The spin-off enjoys VAT neutrality (as the operation is outside the scope of VAT) and subject to the fulfilment of certain conditions, may also enjoy direct tax neutrality.

e. Purchase Agreement

When discussing Business Transfer Agreements ("BTAs"), it is key that the parties (and especially the seller) ensure the BTA clauses accurately reflect the economic substance of the transaction. For instance, assuming the transaction qualifies as a TOGC for VAT purposes, the clauses of the BTA should be drafted to capture the essential features of the business line transferred, its key elements and the intention of the receiving company to continue that same business. Furthermore, buyers should ensure they are protected in case the tax neutrality of the asset deal is later challenged by the tax authorities.

f. Depreciation and Amortisation

For Romanian tax purposes, the useful life of depreciable non-current tangible assets is established within specific ranges, depending on the category of assets concerned. The taxpayer has the option to choose any period falling within the legal range. Under an asset deal, the buyer is entitled to recover the acquisition price of the depreciable non-current tangible assets during their remaining useful life via tax depreciation charges. Intangibles recognised for accounting purposes and which have a determined useful life are generally amortised for tax purposes on a straight line basis over their useful life or the contractual term. One of the exceptions to this rule is that no tax depreciation is allowed for any resulting goodwill item.

g. Transfer Taxes, VAT

No stamp duties, real estate tax or notary fees are due at the moment of the asset deal. Notary fees are due in case the parties opt to authenticate the contract for the transfer of ownership right. It is generally mandatory for the transfer of the ownership rights over land and buildings to be authenticated by a notary public. The notary fees are owed either by the seller or by the buyer, as mutually agreed.

As previously mentioned, in case the asset deal does not qualify as a TOGC for VAT purposes and hence, the transaction is VATable, the applicable VAT rate depends on the nature of assets transferred. The standard VAT rate applicable in Romania is 19%.

h. Asset Purchase Advantages

The main advantage of an asset deal is that the buyer should not take over the seller's pre-closing financial and tax liabilities, as would be the case under a share deal.

i. Asset Purchase Disadvantages

Generally, in cases where the asset deal does not enjoy VAT neutrality, the buyer may request reimbursement of the input VAT incurred upon the acquisition of assets. However, such a procedure may prove to be administratively burdensome and lengthy (as it generally entails a tax audit for instance if it is the first reimbursement request). In the case of specific operations, VAT simplification measures apply if the seller and buyer are both registered for VAT purposes in Romania. Examples of operations are sales of constructions and land. The simplification measures provide that the buyer accounts for VAT via reverse charge mechanism without any VAT cashflow effect to the extent it has the right to fully deduct VAT. If the asset deal qualifies as a TOGC, it falls outside of the Romanian VAT scope and no VAT should apply.

Another drawback is that in an asset deal any historical tax losses recorded by the transferring company cannot be used by the buyer, but may be offset by the transferring company against potential gains arising at the date of the asset deal (if it does not qualify for direct tax neutrality).

Moreover, if buildings are transferred, the related real estate tax (building tax) which will be owed by the buyer (as new owner) is likely to differ from the real estate tax that was owed by the seller prior to disposal. The buildings are chargeable to different local tax rates depending on their purpose (residential vs. non-residential).

If the buyer is a legal entity, the taxable base for the first 5 years will be represented by the acquisition cost. Building's value should be updated based on a valuation report prepared by an authorised valuator at least once in every 5 years, as otherwise the building tax rate will increase (this valuation is different from the one made for accounting purposes). The seller of a building pays the building tax for the remaining period of the calendar year in which the asset is sold. The buyer pays the building tax starting the following year.

5. ACQUISITION VEHICLES

a. General Comments

There are various reasons for deciding to set up a special purpose vehicle ("SPV") in a specific jurisdiction (e.g. ease of doing business, stability of the tax framework, availability of tax incentives, overall economic context, banking system, set up and maintenance costs etc.), be it in Romania or in a different jurisdiction.

Nonetheless, it is worth mentioning that given the concerns raised by the wide-spread BEPS (base erosion and profit shifting) phenomenon, actions have been taken in order to effectively tackle aggressive tax planning practices such as treaty shopping (i.e. arrangements through which a person who is not a resident of a State attempts to obtain benefits that a tax treaty concluded by that State grants to residents of that State, for example by establishing a company in that State). It is viewed that such strategies could be established also to avoid, for example, capital gains tax with respect to the sale of shares in (real estate) companies located in jurisdictions whose (capital gains) taxing rights are not granted to them under the applicable Double Taxation Treaty ("DTT").

In this respect, Romania has announced that the OECD's BEPS Action 6 (aimed at targeting and preventing treaty abuse) is a priority and its recommendations will be implemented in Romania's DTTs through a multilateral instrument in the upcoming years. Additionally, on 10 January 2022 the law for the ratification of the Multilateral Convention was published for the implementation in the DTTs the measures related to the prevention of the erosion of the tax base and the transfer of profits, opened for signing and signed by Romania in Paris, in 2017. This will enter into force on 1 June 2022.

Thus, the provisions of the current DTTs concluded by Romania would need to be read in conjunction with Romania's list of reservations on the Multilateral Convention insofar as they address forms of treaty abuse by denying the benefits provided by the DTTs. Nevertheless, the Romanian tax legislation already contains a general anti-abuse rule under which artificial cross border transactions deemed as such by the Romanian tax authorities would be denied the benefits provided by the DTT.

Also, a Draft EU Directive laying down rules to prevent the misuse of shell entities for tax purposes (so called "ATAD 3") was released in December 2021.

b. Domestic Acquisition Vehicle

Setting up a domestic SPV may involve certain advantages with respect to the taxation of income flows derived from its local subsidiaries. For instance, the dividends the SPV receives from a Romanian subsidiary (legal entity) are not taxable for corporate income tax ("CIT") and microenterprise tax purposes. Moreover, the gross dividends may also be exempt from the 5% dividend tax applied by the subsidiary (this rate will be increased to 8% from 1 January 2023) provided the SPV holds at least 10% of the subsidiary's share capital for an uninterrupted period of minimum one year at dividend payment date.

Also, capital gains obtained (from the sale of shares and / or of assets) by Romanian resident companies registered as CIT payers are included in their ordinary profit and taxed at the CIT rate of 16%. If the seller owns at least 10% of the share capital of the subsidiary for an uninterrupted period of minimum one year, the capital gains from the sale of the shares are not taxable for CIT. Capital losses related to a sale of shares are in general tax deductible, except for the cases where the participation meets the above holding conditions (10%, for one year).

Lastly, liquidation proceeds derived by a Romanian CIT payer following the liquidation of a Romanian subsidiary or foreign subsidiaries resident in treaty countries are subject to the same participation exemption, (i.e. such income is non-taxable provided the holding requirements are met, 10%, for one year, when the liquidation procedure is initiated).

c. Foreign Acquisition Vehicle

As Romania has a large network of DTTs with more than 85 other countries, the incorporation of a foreign SPV is at times also contemplated by investors. If a non-resident company acquires the shares of a Romanian target company, the Romanian standard tax rules applicable to dividends and capital gains are in principle similar to those applicable to acquisitions made by Romanian companies.

Capital gains obtained by non-residents from the sale of shares held in Romanian companies are taxable in Romania at the 16% CIT rate. Sellers resident in treaty countries are exempt from CIT if at the date of disposal the participation exemption conditions are met (holding 10%, for one year). If the holding conditions are not met, the capital gain may still be CIT exempt in Romania if the DTT concluded between Romania and the country where the seller is tax resident awards the right to tax such gains only to the other state (investor's country). However, certain DTTs award taxation rights to Romania in case the shares sold by the non-resident derive their value (in)directly mainly from real estate located in Romania, this should therefore be analysed on a case by case basis.

In addition, the corporate non-resident seller is required to register for Romanian CIT purposes either directly (in case of EU / EEA tax residents) or by appointing a Romanian tax agent. The tax registration is used for declaring and paying any Romanian capital gains tax owed. Obtaining a tax number and filing nil tax returns is required even if no tax is due in Romania (e.g. by virtue of the applicable DTT).

The non-resident should make available a tax residence certificate issued by competent authorities in its residence jurisdiction in order to be able to invoke treaty benefits and the non-resident should have appropriate economic substance.

Other types of income flows towards the non-resident SPV (e.g. dividends, interest, royalties, etc.) are subject to Romanian withholding tax ("WHT"), currently at a 5% rate in the case of dividends (to be increased to 8% from 1 January 2023) and 16% for all other payments (save for individuals who are tax resident of an EU state or a DTT state who are subject to a 10% standard WHT rate in Romania). Nonetheless, qualifying EU tax resident investors may benefit from a WHT exemption for dividends, interest and royalty income received from the Romanian subsidiary (under the specific conditions of the transposed EU Parent Subsidiary Directive and EU Interest and Royalties Directive). Substance as well as other formal requirements should be met for to benefit from such exemptions.

It is also worth mentioning that:

- Lack of substance of the foreign investor may lead to non-application of the above mentioned exemptions or reduced rates under DTTs, EU legislation, etc.;
- If a non-resident company acquires the assets of a Romanian company and continues to operate the business, it will likely give rise to a permanent establishment in Romania, in which case 16% CIT would be due on the allocable taxable profits;
- If the foreign investor has the actual place of effective management in Romania, it becomes a Romanian tax resident and is liable to 16% Romanian CIT on its worldwide income, from 2021 a procedure is available in order to establish if a foreign investor may be considered as having the effective place of management in Romania, as well as the obligations arising in this situation. Additionally the Romanian law contains general anti-abuse rules (covering also artificial cross border transactions) which may be used to requalify a transaction as to reflect its underlying economic substance.

d. Partnerships and joint ventures

Based on our experience, it is not common practice that shares are acquired by an unincorporated entity such as a partnership or a joint venture.

e. Strategic vs Private Equity Buyers

There are no particular distinctions or differentiators to highlight in terms of tax considerations between strategic or private equity buyers investing in Romania. The M&A market in Romania has significantly evolved and growth in investment is anticipated to continue.

6. ACQUISITION FINANCING

a. General Comments

At a first glance, purely from a Romanian tax perspective, equity financing may be preferred in certain cases to debt funding as there are no tax deductibility limitations for corporate income taxpayers. However, it leads to a less flexible structure in terms of funds repatriation as compared to debt financing.

b. Equity

Cash injections leading to an increase in the share capital of a company are made either by (a) the issuance of new shares or (b) the increase of the nominal value of existing shares. From a tax standpoint, if performed according to the law, such operations are excluded from the definition of dividends and should not trigger taxable events. Separately, Romanian Company Law requires that the level of net assets is at least equal to 50% of the subscribed share capital, so this aspect should be monitored as well.

Nonetheless, lack of substance of the foreign investor may lead to non-application of the exemptions provided by the domestic legislation or the reduced rates under DTTs for capital gains, dividend and other income flows such as interest or royalties. If the foreign investor has the actual place of effective management in Romania, it becomes a Romanian tax resident and is liable to 16% Romanian CIT on its worldwide income. From 2021 a procedure is available in order to establish if a foreign investor may be considered as having the effective place of management in Romania, as well as the obligations arising in this situation. Additionally, the Romanian law contains general anti-abuse rules (covering also artificial cross-border transactions) which may be used to requalify a transaction as to reflect its underlying economic substance. Regarding the vehicle used for holding this equity in a Romanian target, please refer to Section 5. above.

c. Debt

i Limitation on interest deductions

Purely from a tax perspective, expenses (including interest expenses) are deductible if they are incurred for business purposes. Moreover, from a legal standpoint, the debt should be used exclusively for the benefit of the company and not for personal use.

With effect from 1 January 2019, the domestic interest tax deductibility rules (which implemented *Council Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market* starting 1 January 2018) were further amended. Thus, excess borrowing costs (generally defined as financing expenses less financing income) are deductible for CIT purposes up to a EUR1 million threshold per year (vs. the previous EUR200,000 threshold). Excess borrowing cost in excess of this amount is further deductible up to an increased quota of 30% (vs. a 10% quota applicable in 2018) of adjusted (positive) EBITDA (computed as the accounting result of which non-taxable income are excluded and to which CIT expenses, excess borrowing costs and tax deductible depreciation are added back). Excess borrowing costs which are non-deductible in the reporting period may be carried forward for an unlimited period of time under the same conditions for deductibility purposes.

Interest limitation does not apply to independent companies (i.e. entities which are not part of a consolidated group for financial accounting purposes, having no associated enterprise and no permanent establishment) nor in respect of loans used to finance long term public infrastructure projects. If the taxpayer applies the tax on microenterprises income (instead of CIT), the above rule is not relevant as deductions are not generally allowed under this regime.

To sum up, these limitations apply for both intragroup financing and third party (e.g. bank) financing and also for the interest capitalised into the asset value per the accounting rules (e.g. constructions), if the case. In this respect, the relationship with an associated entity is generally characterised by a direct or indirect participation of 25% or more of the share capital / vote rights or the right to receive 25% or more of the entity's profits. Moreover, if the financing is intragroup, the cost should be set at fair market value and documented for transfer pricing purposes, otherwise the tax authority is entitled to make adjustments for tax purposes.

ii Debt Pushdown

One way to achieve debt pushdown related to the acquisition of a Romanian target company is to use a leveraged buyout structure. Under a leveraged buyout a Romanian special purpose vehicle ("SPV") is used to buy the target's shares on the basis it obtains financing in this regard. Subsequently the SPV and the target are merged and hence the debt obtained to acquire the target's shares is presented in the resulting entity's balance sheet. However mergers implemented under a leveraged buyout must have business substance in order to be tax neutral. To our knowledge, so far in practice, the Romanian tax authorities have not challenged leveraged buyouts. Pre-merger interest accrued may be entirely non-deductible if at least 10% of the shares are acquired and held for at least one year. Moreover, there are arguments to benefit from tax deduction of interest accrued post-merger within the limits of the ATAD interest limitation rules as long as the company carries out economic activity.

d. Hybrid Instruments

From 3 February 2020, the rules regarding hybrid mismatches, reverse hybrid mismatches and tax residency mismatches provided by Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("ATAD2") were implemented in the Romanian tax law.

The rules address mismatch situations which result from double deductions, from conflict in the characterisation of financial instruments, payments and entities, or from the allocation of payments. Where the mismatch leads to a double deduction or to a deduction without inclusion, Romania will either deny the deduction of a payment, expenses or losses, or require the taxpayer to include the payment in its taxable income, as the case may be. To this end, it is expressly mentioned that the norms/concepts/definitions/examples provided in the OECD BEPS report on Action 2 should be observed.

e. Earn-outs

Earn-out clauses may be included in share purchase agreements, as at times they may prove an appropriate instrument for structuring the price of a transaction. The tax implications should be assessed on a case by case basis depending on specific circumstances.

7. DIVESTITURES

a. Tax Free

Tax free divestitures are generally achievable provided the participation exemption conditions are met.

In this regard, capital gains arising from the sale of shares by Romanian resident companies registered as CIT payers are CIT exempt if the seller owns for an uninterrupted period of minimum one year at least 10% of the share capital of the subsidiary.

Capital gains obtained by non-residents from the sale of shares held in Romanian companies are taxable in Romania at the 16% CIT rate. Sellers resident in treaty countries are exempt from CIT if at the date of disposal the participation exemption conditions are met (holding 10%, for one year). If the holding conditions are not met, the capital gain may still be CIT exempt in Romania if the DTT concluded between Romania and the country where the seller is tax resident awards the right to tax such gains only to the other state (investor's country). However, certain DTTs award taxation rights to Romania in case the shares sold by the non-resident derive their value (in)directly mainly from real estate located in Romania, this should therefore be analysed on a case by case basis.

Lastly, liquidation proceeds derived by a Romanian CIT payer following the liquidation of a Romanian subsidiary or foreign subsidiaries resident in treaty countries are subject to the same participation exemption (i.e. such income is non-taxable provided the holding requirements are met, holding 10%, for one year, when the liquidation procedure is initiated).

b. Taxable

An exit may generate taxation in Romania in certain situations (e.g. the seller is a Romanian tax resident individual, if the participation exemption conditions are not met by the corporate seller, if the seller is a resident of a state with which Romania did not enter a DTT, or if the DTT grants Romania taxing rights on capital gains (and local participation exemption rules are not met).

c. Cross Border

From 1 January 2018, following the partial implementation by Romania in its domestic tax law of the ATAD provisions, a taxpayer is subject to exit tax, where transferring, for example, (i) assets from its Romanian permanent establishment to its head office, or (ii) another permanent establishment in another EU member state or in a third country, in so far as Romania no longer has the right to tax the transferred assets due to the transfer. According to the tax law, the exit tax is currently assessed at 16% tax rate, applicable on the difference determined between the market value of the transferred assets, at the time of exit of the assets and their value for tax purposes. Nonetheless, in certain conditions, a deferral in the payment of the exit tax is given, allowing the taxpayer to pay the exit tax in instalments over a 5 year period.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Romanian residents are subject to tax on their worldwide taxable income. Per the domestic tax legislation, a resident is any Romanian legal entity, any foreign legal entity having its place of effective management in Romania, any legal entity having its seat (registered office) in Romania and which is incorporated according to the European legislation and any resident individual.

b. CFC Regime

From 1 January 2018, CFC rules were implemented in the Romanian legislation and the provisions do not stray significantly from the ATAD's provisions. Specifically, a Romanian taxpayer deemed to have a CFC in another jurisdiction includes in its corporate income tax ("CIT") tax base undistributed revenues such as interest, royalties, dividends, capital gains, revenues from certain financial activities (e.g. financial leasing, insurance, banking etc.) and revenues indirectly derived from transactions with associated companies in certain conditions. The CFC regulations do not apply to CEE companies which have a significant economic activity, supported by personnel, equipment, assets and facilities or if the relevant revenues derived by the CFC (mentioned above) are equal or less than one third of the total revenues booked in the respective tax period. The avoidance of double taxation is ensured via the credit mechanism.

c. Foreign branches and partnerships

Domestic companies undertaking activities via a permanent establishment situated in another country may apply one of the methods for the avoidance of double taxation depending on the provisions of the relevant double tax treaty, namely:

- The credit method : the domestic target can benefit from a tax credit for the tax paid abroad but the tax credit so granted cannot exceed the corporate income tax which would have been due if the Romanian corporate income tax provisions would have been applied; or
- The exemption method : the profits derived from the foreign permanent establishment are exempt from corporate income tax purposes in Romania.

Where partnerships are concerned, assuming they are seen as tax transparent entities, the income so derived is taxable at the level of each Romanian partner, based on the relevant rules.

d. Cash Repatriation

According to the domestic legislation, cash repatriation from a branch or permanent establishment to its head office is not deemed to be a distribution of dividends.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Attention should be paid to the DTT concluded between Romania and the country of tax residence of the buyer of the Romanian target whose assets are mainly represented by Romanian real estate.

Specifically, it should be checked whether, according to the above mentioned DTT, Romania has the right to tax the capital gains derived by a non-resident investor from the sale of the shares in an entity whose major assets are Romanian real estate. If this is the case, any capital gains received upon a future exit are subject to 16% Romanian corporate income tax, save for the case where the seller is tax resident in a treaty country and has maintained a participation of minimum 10% in the target`s capital for at least one year prior the sale.

b. CbC and Other Reporting Regimes

Country by Country (CbC) reporting obligations were introduced locally in 2017. An ultimate parent entity of a MNE Group (i.e. a multinational group having total consolidated group revenue of more than EUR750 million or an amount in RON equivalent to EUR750 million during the fiscal year preceding the reporting fiscal year) tax resident in Romania or another reporting entity (namely, a surrogate parent entity or other constituent entity under certain conditions, both resident in Romania), shall submit a CbC report for each fiscal reporting year (beginning on or after 1 January 2016; in case of constituent entities, the first reporting year was 2017). The filing term of the CbC report is of 12 months since the last day of the reporting fiscal year of the MNE Group (for instance, 31 December 2020 for FY 2019 calendar year).

The Romanian resident entity that does not fulfil the criteria mentioned above (i.e. not being the final parent entity or the surrogate parent entity or the designated constituent entity), but is part of a MNE Group (which has the consolidated group revenue over EUR750 million during the fiscal year preceding the reporting fiscal year), has the obligation to notify the relevant Romanian authorities with regard to the identity and residence of the reporting entity until the last day of the reporting fiscal year of the MNE Group at the latest, but not later than the submission deadline of the tax statement of the respective constituent entity for the previous year.

10. TRANSFER PRICING

The Romanian transfer pricing rules apply to intragroup transactions performed either between domestic entities or between a Romanian and a foreign entity. The national transfer pricing legislation follows the OECD Guidelines and requires that all transactions between related parties be carried out at market value (i.e. at arm's length value).

In cases where transfer prices are not set according to the arm's length principle, the Romanian tax authorities have the right, upon a tax audit, to adjust the taxpayer's expenses or revenues to reflect the market value of transactions. Hence, for instance where taxable mergers and spin-offs performed between related parties are concerned, business valuations should be performed in order to document that the taxation was applied with reference to the fair market value.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

With the implementation of the ATAD2 rules regarding hybrid mismatches starting 2020, the arrangements that involve the use of hybrid entities should be carefully analysed in order to determine whether they result in mismatches that lead to either double deduction or a deduction without inclusion, case in which specific tax rules should be observed in Romania.

Moreover, it is specifically provided that where one or more non-resident related companies hold a total (in)direct participation of at least 50% in a Romanian established / registered hybrid entity and these non-resident companies are located in jurisdictions that treat the respective hybrid entity as a taxpayer, the hybrid entity is considered tax resident in Romania and subject to CIT as long as the income it derives is not taxed in another way in any of the other jurisdictions involved.

b. Use of Hybrid Instruments

From 3 February 2020, the rules regarding hybrid mismatches, reverse hybrid mismatches and tax residency mismatches provided by Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries ("ATAD2") were implemented in the Romanian tax law.

The rules address mismatch situations which result from double deductions, from conflict in the characterisation of financial instruments, payments and entities, or from the allocation of payments. Where the mismatch leads to a double deduction or to a deduction without inclusion, Romania will either deny the deduction of a payment, expenses or losses, or require the taxpayer to include the payment in its taxable income, as the case may be. To this end, it is expressly mentioned that the norms/concepts/definitions/examples provided in the OECD BEPS report on Action 2 should be observed.

c. Principal/Limited Risk Distribution or Similar Structures

Such structures can be implemented in the post-acquisition integration phase. However, in accordance with the general anti-abuse rule, attention should be given to the practical aspects of such arrangements, not to the formal ones. Consequently, the relevant tax provisions regarding, inter alia, transfer pricing (e.g. appropriate pricing method, comprehensive functional and risk analysis, etc.) and the creation of permanent establishments (e.g. where the activity performed in practice exceeds the auxiliary / preparatory threshold, usage of commissionaire arrangements, etc.) should be observed.

d. Intellectual property

Transactions involving intellectual property (IP) are rather sensitive and should be carefully analysed on a case by case basis in order to correctly identify the related tax implications. Going forward, where such transactions are performed between related parties transfer pricing rules should be observed. Also, the recently implemented exit taxation rules could be relevant where the transfer of such assets leads to Romania losing the taxation right over such assets while they remain in the legal / economic ownership of the same taxpayer (e.g. transfers from a Romanian PE to the head office).

e. Special tax regimes

Though no IP related preferential tax regimes are currently available, the domestic legislation contains a specific tax framework for research and development ("R&D") companies and activities. Specifically, companies performing R&D activities are granted tax deductions for corporate income tax purposes, as follows:

- An additional tax deduction of 50% of eligible expenses for R&D activities;
- The possibility of applying the accelerated tax depreciation method regarding devices and equipment used in R&D activity; and
- An exemption is also available on reinvested profit in new technological equipment, computers and related peripherals, computer programs, etc. (list of qualifying assets will be extended from 2023).

A similar incentive is available for individuals carrying out R&D activities in that related as salary income is exempt from personal income tax purposes.

Moreover, taxpayers engaged exclusively in innovation, research, development, and related activities, are exempt from corporate income tax during the first 10 years of activity. This tax relief is applied in compliance with state aid regulations. State aid schemes (in the form of non-refundable grants) aimed at supporting R&D activities and investments in the R&D sector are also available.

Other special tax regimes include:

- The special regime for activities relating to bars, nightclubs, clubs and casinos. If the corporate income tax due for such activities is lower than 5% of the related revenues, the CIT is determined as 5% applied on revenues;
- The special regime applicable for the IT sector : individuals deriving salaries from activities carried out in the IT programming field are exempt from personal income tax under certain conditions;
- The special regime for the constructions sector : from 1 January 2019 until 31 December 2028, individuals deriving salaries from activities carried out in the constructions field will benefit from personal income tax exemptions and decrease of social security contributions (for salary related income) under certain conditions which refer to the employer's type of activity, the turnover derived by the employer, the monthly gross income from salaries derived by the employees benefiting from the personal income tax exemption.

12. OECD BEPS CONSIDERATIONS

Romania is a member of the Inclusive Framework on BEPS and is reviewing and monitoring implementation of the OECD/G20 BEPS Action Plan.

Romania has announced that the OECD's BEPS Action 6 (preventing misuse of treaties) is a priority for Romania. Thus, BEPS measures on avoidance of double taxation agreements will be implemented through a multilateral instrument that was negotiated within the ad hoc group established in 2015 for this purpose. In this respect, on 10 January 2022 the law was published for the ratification of the Multilateral Convention for the implementation in the DTTs of the measures related to the prevention of the erosion of the tax base and the transfer of profits; this was previously opened for signing and signed by Romania in Paris, in 2017.

Moreover, the domestic framework setting the procedures for preparing the local file and master file transfer pricing documents are already in line with the OECD BEPS project, Action 13. Large taxpayers must prepare transfer pricing documentation by the deadline of the annual CIT return submission (i.e. June 25 of the year following the tax year for the tax years 2021 – 2025 and 25 March of the year following the tax year starting 2026) and have it available upon request, when the annual value of a related-party transaction exceeds certain thresholds.

Also, Romania has enacted legislation to implement the provisions of Directive 2016/881/EU (DAC4) on Country-by-Country reporting ("CbCr") and exchange of CbC reports within the EU (the Directive is based on the Final Report on Action 13 of the OECD/G20 BEPS Project), as well as those of Directive 2018/822/EU ("DAC6") effective from 1 July 2020 (it should be noted though that Romania opted for a 6 month deferral of the initial reporting deadlines in the context of the COVID-19 pandemic).

13. ACCOUNTING CONSIDERATIONS

a. Combinations

The key accounting aspects that should be considered in combinations scenarios are related, amongst others, to:

- The booking of goodwill (either positive or negative, depending on the difference between the acquisition cost and the fair market value of the net assets acquired at transaction date);
- The accurate recognition of client contracts / lists depending on whether such elements qualify as intangible assets per the statutory accounting rules;
- The recapture of equity, asset and liability elements at the level of the absorbing / acquiring company; and
- The correct computation of the merger / spin-off premium (if the case).

The Romanian legislation contains specific provisions and guidelines in respect of the accounting treatment applicable in case of mergers and spin-offs.

b. Divestitures

Divestitures may be implemented in several ways, such as liquidating the target, sale of shares or withdrawal of the shareholder from the target. Among the main aspects that should be observed from an accounting standpoint we note:

- The inventory and valuation of assets, liabilities and equity;
- Valorisation of the target's assets (The term "valorisation" refers to one of the steps that should be followed in e.g. a liquidation procedure – the "valorisation" may be achieved by way of selling the assets, cashing-in the receivables, etc.); and
- Valuation of remuneration due to shareholders which withdraw from the target.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Distributable reserves refer in general to reserves whose booking is facultative according to the Romanian legal provisions. Generally, the distribution of such reserves to shareholders gives rise to a taxable event for CIT purposes as long as the reserves were previously deducted. Such distributions are deemed dividends for tax purposes.

b. Substance Requirements for Recipients

Under the general anti-abuse rule provided by the domestic legislation, arrangements which are not genuine and lack valid commercial reasons which reflect economic reality, but have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage, shall be disregarded by the Romanian tax authorities. In such events, the tax liabilities are established based on the domestic provisions (in other words, the international legislative instruments such as DTTs or EU Directives are inapplicable).

c. Application of Regional Rules

As a member of the European Union since 1 January 2007, Romania implemented / is obliged to implement all EU Directives. In the field of taxation, after transposing directives like Council Directive 2011/96/EU of 30 November 2011 *on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States*, Council Directive 2003/49/EC of 3 June 2003 *on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States* or Council Directive 2009/133/EC of 19 October 2009 *on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States*, Council Directive (EU) 2016/1164 *laying down rules against tax avoidance practices that directly affect the functioning of the internal market* ("ATAD"), the latest EU Directive to be implemented in the domestic legislation is Council Directive (EU) 2017/952 *amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries* ("ATAD2").

d. Tax Rulings and Clearances

Companies may request the issuance of an Advance Pricing Agreement ("APA"), subject to a fee ranging between the RON equivalent of EUR10,000 – EUR 20,000 or Advance Individual Tax Rulings ("AITR"), subject to a fee ranging between the RON equivalent of EUR3,000 – EUR 5,000, depending on the taxpayer's size (i.e. whether r small and middle-sized or large taxpayer). The terms for issuing APAs are 12 months for unilateral APAs and 18 months for bilateral and multilateral APAs. The term for issuing AITRs is 6 months.

AITRs and APAs can be requested only for future tax situation / transactions and are applicable solely at the level of the applicant taxpayer. Where new business models or arrangements are contemplated to be implemented post acquisition, the issuance of an AITR or APA can clarify and / or secure the tax treatment from the earliest possible stages. Bilateral / multilateral APAs may only be issued for transactions carried out in connection with taxpayers located in countries with which Romania has concluded double taxation agreements.

In practice, the taxpayers may also ask for non-binding rulings from the Ministry of Finance or the Tax Administration.

15. MAJOR NON-TAX CONSIDERATIONS

Due regard should be given to the legal aspects that arise in the context of an M&A deal. Where mergers are concerned, it is recommended that a legal due diligence is performed in order to identify any potential risks that may materialise at the level of the target company (e.g. where the target has significant real estate property or operates in a highly-regulated sector). In the context of reorganisations, the legal aspects related to the transfer of employees should be carefully analysed and observed. General Data Protection Regulation ("GDPR") obligations may also arise.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Albania	10 / 15	10	15	[3]
Algeria	15	0 / 15	15	
Armenia	5 / 10	10	10	[3]
Australia	5 / 15	10	10	[1] [3]
Austria	0 / 5	0 / 3	3	[3]
Azerbaijan	5 / 10	8	10	[3]
Bangladesh	10 / 15	10	10	[1]
Belarus	10	10	15	
Belgium	5 / 15	10	5	[3]
Bulgaria	5	0 / 5	5	[19]
Canada	5 / 15	10	5 / 10	[1] [21]
China	0 / 3	0 / 3	3	[20]
Croatia	5	10	10	
Cyprus	10	10	5	
Czech Republic	10	7	10	
Denmark	10 / 15	10	10	[3]
Ecuador	15	10	10	
Egypt	10	15	15	
Estonia	10	10	10	
Ethiopia	10	15	15	
Finland	5	5	2.5 / 5	[21]
France	10	10	10	
Georgia	8	10	5	
Germany	5 / 15	0 / 3	3	[3] [4]
Greece	20 / 45	10	5 / 7	[5] [21]
Hong Kong	0 / 3 / 5	0 / 3	3	[18]
Hungary	5 / 15	15	10	[6]
Iceland	5 / 10	3	5	[3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
India	10	10	10	
Indonesia	12.5 / 15	13	12.5 / 15	[3] [21]
Iran	10	8	10	
Ireland	3	0 / 3	0 / 3	[7] [21]
Israel	15	5 / 10	10	[12]
Italy	0 / 5	0 / 5	5	[1]
Japan	10	10	10 / 15	[21]
Jordan	15	13	15	
Kazakhstan	10	10	10	
Kuwait	0 / 1	0 / 1	20	[3]
Latvia	10	10	10	
Lebanon	5	5	5	
Lithuania	10	10	10	
Luxembourg	5 / 15	0 / 10	10	[2] [3]
Macedonia	5	10	10	
Malaysia	0 / 10	0 / 15	12	[13]
Malta	5 / 30	5	5	[14]
Mexico	10	15	15	
Moldavia	10	10	10 / 15	[21]
Morocco	10	10	10	
Namibia	15	15	15	
Netherlands	0 / 5 / 15	0 / 3	0 / 3	[8] [9] [21]
Nigeria	13	13	13	[15]
North Korea	10	10	10	
Norway	0 / 5 / 10	0 / 5	5	[1] [2]
Pakistan	10	10	13	
Philippines	10 / 15	10 / 15	10 / 15 / 25	[3] [12] [21]
Poland	5 / 15	10	10	[3]
Portugal	10 / 15	10	10	[3]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Qatar	3	3	5	
Russian Federation	15	15	10	
San Marino	0 / 5 / 10	3	3	[8]
Saudi Arabia	5	5	10	
Singapore	5	5	5	
Slovak Republic	10	10	10	
Slovenia	5	5	5	
South Africa	15	15	15	
South Korea	7 / 10	10	7 / 10	[3] [12] [21]
Spain	5 / 0	3 / 0	3	[1] [2]
Sri Lanka	13	10	10	
Sudan	5 / 10	5	5	[3]
Sweden	10	10	10	
Switzerland	0 / 15	0 / 5	10	[10]
Syria	5 / 15	10	12	[3]
Tajikistan	5 / 10	10	10	[3]
Thailand	15 / 20	10 / 20 / 25	15	[3] [16]
Tunisia	12	10	12	[17]
Turkmenistan	10	10	15	
Turkey	15	10	10	
Ukraine	10 / 15	10	10 / 15	[3] [21]
United Arab Emirates	3	3	3	[1] [2]
United Kingdom	10 / 15	10	10 / 15	[3] [21]
United States	10	10	10 / 15	[21]
Uruguay	5 /10	0 / 10	10	[3] [11]
Uzbekistan	10	10	10	
Vietnam	15	10	15	
Yugoslavia (applicable in Serbia and Montenegro)	10	10	10	[2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote
Yugoslavia (applicable in Bosnia and Herzegovina)	5 / 10	7	5	[2] [3]
Zambia	10	10	15	

Footnotes	
1	In the case of Australia, the lower rate is applicable if the dividend's beneficiary is a company (other than a partnership) owning directly at least 10% of the capital of the payer and the dividends are paid of profits that borne the normal rate of company tax. In the case of Bangladesh the lower rate is applicable if the beneficiary of dividends is a company owning directly at least 10% of the capital of the payer. In the case of Canada, the lower rate is applicable if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power in the company paying the dividends, except in case of dividends paid by a non resident-owned investment corporation that is resident of Canada. In the case of Italy, the 0% rate is applicable if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends on the date the dividends are paid and has done so or will have done so for an uninterrupted period of two years in which that date falls. In the case of the DTT concluded between Romania and Spain, the 0% rate for dividends is applicable if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends on the date the dividends are paid and has done so for an uninterrupted period of one year or is a pension scheme which is resident in one of the Contracting States. In the case of Norway, the 5% dividend tax rate is applicable if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends. Romanian-sourced dividends derived and beneficially owned by the Central Bank of Norway, the Government Pension Fund Global or a statutory body or any entity wholly or mainly owned by Norway shall be taxable only in Norway. In the case of UAE, Romanian-sourced dividends are non-taxable if the beneficial owner of the dividends is the Government of UAE or any governmental institutions or entity thereof, a company which is a resident of UAE and the capital of which is owned directly or indirectly (>25%) by the Government or governmental institutions of UAE.

Footnotes	
2	In the case of Luxembourg, the 0% tax rate applies if the loan generating the interest is guaranteed, insured or financed by the other State or by a financial institution which is a resident of that other State. In the case of Italy, Romanian-sourced interest is exempt from tax in Romania if: (a) the payer of the interest is the Romanian Government or a local organisation thereof, (b) the interest is paid to the Italian Government or local authority thereof or to a body or an agency (including a financial institution) which is wholly owned by Italy or local authority thereof, or (c) the interest is paid to other bodies or agencies (including financial institutions) dependent for their funds on the same above mentioned entities by virtue of agreements concluded between the Governments of the Contracting States. In the case of Norway, Romanian-sourced interest is exempt in Romania if it is derived and beneficially owned by the Government of Norway or a political subdivision, local authority or administrative - territorial unit thereof or any agency or bank unit or institution of Norway or political subdivision, local authority or administrative - territorial unit or if the debt claims of a resident of Norway are warranted, insured or financed by a financial institution wholly owned by the Government of Norway. In the case of UAE, Romanian-sourced interest is exempt in Romania if it is paid to the Government of UAE or its financial institutions or if it arises from institutions the capital of which is wholly or partially owned by the Government of Romania. In the case of Bosnia and Herzegovina, Romanian-sourced interest is exempt in Romania if it is derived and beneficially owned by the Government of Bosnia and Herzegovina or an administrative - territorial unit, political subdivision or local authority thereof or any agency or bank unit or institution of that Government or administrative - territorial unit, political subdivision or local authority or if the debt-claims of a resident of Bosnia and Herzegovina are warranted, insured or financed by a financial institution wholly owned by the Government of Bosnia and Herzegovina. In the case of Serbia and Montenegro, Romanian-sourced interest is exempt from tax in Romania if it is derived and beneficially owned by the Government of Serbia and Montenegro, a political subdivision, or an administrative-territorial unit or a local authority thereof or any bank of that Government, a political subdivision, or an administrative-territorial unit or a local authority thereof. In the case of the DTT concluded between Romania and Spain, the interest sourced from a Contracting State shall be exempt from tax in the other Contracting State if it is derived and effectively obtained by the other Contracting State or by a political subdivision or administrative-territorial unit thereof or by any agency or bank or an institution of the other Contracting State or of that political subdivision or administrative-territorial unit, or if the claims of a resident of the other Contracting State are guaranteed, secured or financed by a financial institution wholly or principally owned by the other Contracting State.

Footnotes	
3	The lower rate is applicable if the beneficiary of dividends is a company owning directly at least 25% of the capital of the payer. In the case of Thailand, an additional requirement applies (i.e. the company paying the dividends engages in an industrial undertaking). In the case of Albania, Australia, Austria, Denmark, Germany, Iceland, Luxembourg, Poland, South Korea, Sudan, Syria, Tajikistan, Thailand, Ukraine, Uruguay dividends distributed to partnerships are taxed at higher rate, irrespective of the participation share. In the case of Kuwait, the 0% rate is applicable if the beneficial owner of dividends is a company resident in the other state and owned to an extent of at least 51% by the Government (or assimilated institutions provided in the Convention) of the state directly or indirectly, and the remaining capital is owned by national residents of that State. Also, the 0% rate for interest is applicable if the beneficial owner of interest is a company resident in the other state and owned to an extent of at least 25% by the Government (or assimilated institutions provided in the Convention) of the state directly or indirectly, and the remaining capital is owned by national residents of that State. In the case of the Philippines, the lower rate applies for dividends received by a company (other than a partnership) which owns during the part of the paying company's taxable year, preceding the dividend payment date, and, where appropriate, during its entire prior taxable year, at least 25% of the outstanding shares of the voting stock of the company paying the dividends. In the case of Portugal, the lower rate applies for dividends received by a company which, for an uninterrupted period of two years prior to the payment of the dividends, owns directly at least 25% of the capital stock of the company paying the dividends. In the case of the UK, the lower rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the voting power in the company paying the dividends. In the case of Austria, interest arising in Romania shall not be taxable in Romania if the interest is paid in respect of a loan granted, approved, guaranteed of insured by the Government of a Contracting State, the Central Bank of a Contracting State or any financial institution owned or controlled by the Government of a Contracting State, the interest is paid in respect of a loan granted by a bank or any other financial institution (including an insurance company), the interest is paid on a loan made for a period of more than two years, the interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment. Starting 1 January 2015, the interest arising in Romania may be tax exempt in Romania only to the extent that the receiver of the interest is a legal entity, resident for tax purposes in Austria.
4	The 0% rate is applicable in Romania if the interest is paid to the German Government, Deutsche Bundesbank, the Kreditanstalt fur Wiederaufbau or Deutsche Investitions und Entwicklungsgesellschaft (DEG) or interest paid for a loan guaranteed by HERMES-Deckung. The zero rate is also applicable in Germany for interest paid to Romanian Government, if it is derived and beneficially owned by the Government of Romania, an administrative-territorial unit or a local authority thereof or any agency or bank unit or institution of the Government of Romania, an administrative-territorial unit or a local authority or if the debt claims of a resident of Romania are warranted, insured or financed by a financial institution wholly owned by the Government of Romania. Also, if and as long as the Germany, under its domestic legislation, levies no withholding tax on interest paid to a resident of Romania, the percentage provided for in paragraph 2 of Article 11 (3%) shall be reduced to 0%. Dividend and interest income arising in Romania may be taxed in Romania if the income is derived from debt claims carrying a right to participate in profits, including income derived by a silent partner from his participation as such, or from a loan with an interest rate linked to borrower's profit or from profit sharing bonds within the meaning of the German tax law and under the condition that they are deductible in the determination of profits of the debtor of such income.
5	The lower rate is applicable to dividends paid by companies resident in Romania.
6	The lower rate is applicable if the beneficiary of the dividends is a company owning directly at least 40% of the capital of the payer.

Footnotes	
7	Some of the DTTs that Romania entered into, provide that the zero rate is applicable if the interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or on any loan granted by a bank or financial institution (including Insurance Companies), on any loan made for more than a two year period, or on any debt-claim of whatever kind guaranteed, insured or directly or indirectly financed by or on behalf of the Government of either Contracting State. Ireland is one of the cases.
8	The 0% rate applies if the beneficiary of the dividends is a company (other than a partnership) owning directly at least 25% of the capital of the payer. The 5% rate applies if the dividends' beneficiary is a company (other than a partnership) owning directly at least 10% of the capital of the payer. The 15% rate applies to other dividends. In case of San Marino, the 0% rate applies if the beneficial owner of the dividends is a company (other than a partnership) owning directly at least 50% of the capital of the payer. The 5% rate applies if the beneficial owner of dividends is a company (other than a partnership) owning directly at least 10% of the capital of the payer. The 10% rate applies to other dividends.
9	Romania will not impose WHT on interest as long as Dutch domestic law is not imposing tax on this type of payments.
10	A Protocol for the amendment of the DTT between Romania and Switzerland signed in February 2011 became effective 1 January 2013. According to this Protocol, the dividend tax rate applicable in the state of source is of 15%. However, it is reduced to nil if the beneficial owner is (i) a company (other than a partnership) holding directly at least 25% of the payer's capital, (ii) a pension fund or a similar institution supplying pension schemes (iii) the Government of that other state, a political subdivision, local authority or administrative-territorial unit thereof or the central bank of that other State. As regards taxation of interest, per the Protocol, interest shall be taxed in the state of source at a rate of 5% or it can be reduced to 0% in case the beneficiary company holds at least 25% in the capital of the Romanian paying company or in case a third company holds at least 25% of the capital of both the payer and the recipient or the interest is related to a loan, debt claim or credit which is due, realised, provided, guaranteed or insured by the Government of the other state or a political subdivision, local authority, administrative- territorial unit or export financing institution thereof.
11	The interest arising in Romania and paid towards a resident of Uruguay shall be exempted from withholding tax in Romania in case the beneficial owner of such interest is represented by the Government of Uruguay or a political subdivision, a local authority or an administrative territorial unit or any agency or bank unit or institution of the Government of Uruguay, political subdivision, local authority or administrative territorial unit, or in case the debt claim of the resident of Uruguay is warranted, insured or financed by a financial institution wholly owned by the Government of Uruguay.
12	The lower rate is applicable only if the interest paid is related to sales on credit of industrial, commercial or scientific equipment, any merchandise sold between enterprises or any loan granted by a bank. In the case of South Korea, the interest paid regarding credit sale of any industrial or scientific equipment shall be taxable only in the Contracting State in which the beneficiary resides. In the case of the Philippines the lower rate is applicable for interests paid regarding credit sale of any industrial, commercial or scientific machine or equipment or similar installation or for any loan, regardless of its nature, granted by a bank or if the interests are paid regarding public issues of bonds, debentures and other similar obligations. The higher rate is applicable for interests paid in respect with the sale on credit of any means of transport and all other cases not mentioned in the Convention.
13	Dividends paid by a resident company of Malaysia to a resident of Romania who is the beneficial owner, shall be exempt from any tax in Malaysia imposed in addition to the tax on Malaysian company's income. The interest paid to a resident of Romania shall be exempt from tax if the loan or debt for which the interest is paid is an approved or a long term loan.

Footnotes	
14	The higher rate is applicable when dividends are paid by a company which is a resident of Malta to a resident of Romania who is the beneficial owner.
15	If the recipient of dividends/ interests is subject to taxation in the other Contracting State.
16	The 10% rate is applicable for interests received by any financial institution (including an insurance company), the 20% rate is applicable for interest related to sales on credit and the 25% rate is applicable in any other cases.
17	The 10% rate does not apply for interests on loans granted and guaranteed directly or indirectly by a Contracting State, a territorial- administrative unit, a local or public authority (including financial institutions or state-owned banks).
18	The 5% rate applies if the recipient of dividends is the beneficial owner. The reduced 3% dividend tax rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 15% of the capital of the company paying the dividends. The 3% rate on interest payments applies if the recipient of dividends is the beneficial owner but may be reduced to 0% if Hong Kong levies no withholding tax on interest under its domestic law. The 3% rate applies if the recipient of royalties is the beneficial owner. Romanian-sourced dividends and interest may also be exempt in Romania if they are derived and beneficially owned by the Government of the Hong Kong Special Administrative Region, the Hong Kong Monetary Authority, the Exchange Fund, a financial institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the Contracting Parties.
19	The 5% rate applies if the recipient of dividends/ interest/ royalties is the beneficial owner. The 5% dividend tax rate does not apply to income assimilated to dividends for tax purposes under the Romanian law; in such case, the domestic rate applies. Romanian-sourced interest is tax exempt in Romania if it is derived and beneficially owned by Bulgaria or an administrative - territorial unit or a local authority thereof, or the Central Bank of Bulgaria, or any agency or bank or institution of Bulgaria or administrative - territorial unit or local authority or if the debt claims of a resident of Bulgaria are warranted, insured or financed by a financial institution wholly owned by Bulgaria.
20	The 3% rate applies if the recipient of dividends/ interest is the beneficial owner. Romanian-sourced dividends are tax exempt in Romania if paid to China or a political subdivision, local authority or administrative-territorial unit thereof, or any entity wholly or mainly owned by China (>50%). Interest arising in Romania and beneficially owned by a resident of China shall be taxable only in China to the extent that such interest is paid in respect of indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services; any loan of whatever kind granted by a financial institution of China; to China or a political subdivision, local authority or administrative-territorial unit thereof, or any entity wholly or mainly owned (>50%) by China.

Footnotes	
21	In the case of Canada, the reduced rate applies for Romanian-sourced royalties if they are (i) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting), or (ii) royalties paid as consideration for the use of, or the right to use, computer software or any patent or for information concerning industrial, commercial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement). In the case of Finland, the reduced rate applies for Romanian-sourced royalties received for the use of, or the right to use, computer software, or industrial, commercial or scientific equipment. In the case of Greece, the reduced rate applied for Romanian-sourced royalties paid as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for television or radio broadcasting. In the case of Indonesia, the 15% rate applies for Romanian-sourced royalties received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work. In the case of Ireland, Romanian-sourced royalties received as a consideration for the use of, or the right to use: any copyright of literary, artistic or scientific work including motion pictures or films, recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission are non-taxable in Romania. In the case of Japan, the 10% rate applies for cultural royalties, while the 15% rate applies for industrial royalties. In the case of Moldavia, the reduced rate applies to royalties received as a consideration for the use, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific fields. In the case of the Philippines, the 10% rate applies to royalties paid by an enterprise registered with the Romanian Agency for Development and engaged in preferred pioneer areas of activities, while the 15% rate applies to royalties relating to cinematographic films and tapes for television of broadcasting. In the case of South Korea, the reduced rate applies to royalties paid for the use of or the right to use any patent, trade mark, design or model plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. In the case of Ukraine, the reduced rate applies to royalties paid for the use of or the right to use any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. In the case of the US, the 10% rate applies to cultural royalties, while the 15% rate applies to industrial royalties. In the case of the United Kingdom, the reduced rate applies to royalties received as consideration for the use of, or the right to use, any copyright of literary, dramatic, musical, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting). In the case of the Netherlands, as long as the Netherlands, under its national legislation, levies no withholding tax on royalties paid to a resident of Romania, the tax applicable to Romanian-sourced royalties is reduced to 0%.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

According to the Romanian tax legislation, the statute of limitations for tax liabilities for which the Romanian tax authorities may perform tax audits is 5 years, computed starting with 1 July of the year following the one for which the tax obligation is due. In certain circumstances, this period may be extended to 10 years in cases where the taxpayer committed an act sanctioned by the criminal law. In this regard, a tax due diligence exercise can be performed for the entire period open for tax audit, however, generally such exercises may cover the last 3 years open for tax audit and this can then be extended to the 5 year term if material issues are identified.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Copy of the taxpayer factsheet (Rom. *"fisa pe platitor"/"fisa sintetica"*) drawn-up at a recent date.
2	Tax Due Diligence	General	Details regarding the accrual policy applied at the level of the Target.
3	Tax Due Diligence	General	Copy all correspondence with the tax authorities during or related to the period under review.
4	Tax Due Diligence	General	The Transfer Pricing file (if available).
5	Tax Due Diligence	Corporate income tax	Annual analytical trial balances and general ledgers (prepared based on the Romanian accounting regulations) in electronic format (Excel) for the period under review.
6	Tax Due Diligence	Corporate income tax	Copy of the annual initial/ rectifying corporate income tax returns (Form 101) submitted for the period under review (and the related submission proofs).
7	Tax Due Diligence	Corporate income tax	Copy of the quarterly initial/ rectifying tax returns regarding the corporate income tax for the period under review (and the related submission proof).
8	Tax Due Diligence	Corporate income tax	Annual corporate income tax computations for the period under review, accompanied by details regarding the non-taxable items, non-deductible expenses, tax deductions.
9	Tax Due Diligence	Corporate income tax	Copies of loan agreements regarding loans contracted by the Target during the period under review and the computation of the tax deductible interest expenses (if the case).
10	Tax Due Diligence	Corporate income tax	Information regarding the computation of tax depreciation of tangible and intangible fixed assets.
11	Tax Due Diligence	Corporate income tax	Information about any increases, reductions of share capital, movements of reserves, liquidations, mergers, dissolutions, spin-offs, contributions in kind to the share capital of the Target or to other companies, acquisitions and sale of shares of other companies, etc.

Nº.	Category	Sub-Category	Description of Request
12	Tax Due Diligence	Corporate income tax	Copies of the Top 5 yearly contracts entered with service suppliers (e.g. management, consultancy marketing etc.) for the period under review and sample back-up documentation.
13	Tax Due Diligence	Corporate income tax	Information / details on the existence and, if the case, accounting entries and tax treatment for: a) sales of fixed assets b) joint-venture agreements, lease or rental agreements, free lease agreements, etc. (if the case). c) agreements for sales/acquisitions with the payment in advance or by instalments. d) sponsorship agreements concluded by the Target (if the case).
14	Tax Due Diligence	Corporate income tax	Details regarding the recharge method towards other related parties and brief summary of the cases where recharges are performed.
15	Tax Due Diligence	Corporate income tax	A breakdown detailing the fiscal losses reported from previous years at the level of the Target, accompanied by the related annual corporate income tax returns.
16	Tax Due Diligence	Value added tax	Copies of the monthly VAT returns (form 300), recapitulative statements (form 390), returns regarding the delivery / provision of services and the purchases made on the national territory (form 394), copies of the monthly purchases and sales journals and the copy of the register of capital goods for the period under review.
17	Tax Due Diligence	Value added tax	Description of the VAT policy at the level of the Target in relation to the following: protocol expenses, sponsorship expenses, fuel and other car related expenses, leasing.
18	Tax Due Diligence	Value added tax	The accounting and VAT treatment and information regarding the write-off for destroyed, lost or stolen goods, quality damaged goods, goods granted for free as samples within promotions, goods granted for boosting sales, write-off of fixed assets.
19	Tax Due Diligence	Value added tax	Information regarding input VAT adjustment in case of capital goods.
20	Tax Due Diligence	Withholding tax	Copy of the monthly and annual tax returns submitted regarding the withholding tax for the income obtained from Romania by non-residents for the period under review.
21	Tax Due Diligence	Withholding tax	Copies of the tax residency certificates for each year under review issued for the non-residents towards which the Target performed payments subject to WHT in Romania during the period under review.

Nº.	Category	Sub-Category	Description of Request
22	Tax Due Diligence	Withholding tax	Summary of the payments made by the Target to non-resident service providers.
23	Tax Due Diligence	Personal income tax and social security contributions	Details regarding the benefits policy (benefits in cash or in kind) granted to employees during the period under review, as well as the tax treatment applied.
24	Tax Due Diligence	Personal income tax and social security contributions	Details regarding individual income tax exemptions applied for employees (if applicable), as well as regarding other amounts exempted.
25	Tax Due Diligence	Personal income tax and social security contributions	Copies of the mandate agreements for the individuals in the Target's management positions, if the case.
26	Tax Due Diligence	Personal income tax and social security contributions	Details regarding the types of service agreements signed by the Target with independent contractors/ agents/ microenterprises / etc. and details with respect to the tax regime applied by the Target to such payments.
27	Tax Due Diligence	Local taxes	Information regarding buildings and land, such as acquisitions/ sales during the year, tax statements files, tax payments and correspondence with the local tax authorities.

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