

## FISCAL SETTLEMENTS REGARDING TAXING THE INCOMES OF NON-RESIDENT INDIVIDUALS AND LEGAL PERSONS IN ROMANIA

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### 1. Application field. The notion of non-resident

Non-resident means any foreign juridical person, any non-resident individual and any other foreign entities, including collective assets placing organisms, not registered in Romania, according to the law. The foreign juridical person is any juridical person not established according to Romanian legislation or that does not have Romania as effective leading place. The non-resident individual is, according to legislation, any individual that is not a resident individual. An individual is a resident if fulfills at least one of the following conditions:

- he has the domicile in Romania;
- the center of the person's vital interests is placed in Romania;
- he is present in Romania for a period of time or a few periods of time that overcome 183 days, during 12 consecutive months, that ends in the vized calendar year;
- he is a Romania citizen that works abroad, as officer or Romania's employee in a foreign state.

### 2. Incomes categories liable to taxing

According to law, liable to taxing are the following incomes categories:

#### *Dividends*

In Romania are liable to taxing the dividends received from a Romanian juridical entity, no matter they are received in Romania or abroad. Dividend means a distribution in money or nature,

made by a juridical entity to a participant to that juridical entity. There are not considered dividends the following:

- a supplementary participation title distribution that does not modify the participation titles percentage of any participant to a juridical entity;
- a distribution in money or nature made connected to a compensation of the participation titles to the juridical entity, other than that making part from the compensation, that does not modify the percentage of participation titles of any participant to the juridical entity;
- a distribution in money or nature, made connected to the liquidation of a juridical entity;
- a distribution in money or nature, having as reason the decrease of the share capital effectively constituted by the participants;

The law also considers a dividend receiving by a shareholder/associate the value of some goods or services delivered to the juridical entity, if the paid amount overcomes the market's price for these kind of goods or services; the difference is treated as dividend. Also, if the paid amount by a juridical entity for the goods or supplied services in favor of a shareholder or an associate of that juridical entity is made for the personal purpose of these, then the respective amount is treated as a dividend.

#### *Interests*

The interest represents any amount that has to be paid or received for the use of money, no matter if it has to be paid or received within a debt, a deposit or a financial leasing contract, installments payment sale or any sale

with postponed payment. There are taxed the incomes obtained in Romania, no matter if they received in Romania or abroad, meaning the interests from a resident or from a non-resident person that has a permanent headquarters in Romania, if the interest is an expense of the permanent headquarters.

#### *Due*

Due means any amount that has to be paid in money or nature for the use or the usage right of any of the following:

- Author right over a literary, artistic or scientific work, including over movies, tapes radio or TV shows, and performing of audio or video registering;
- Any license, invention, innovation, commerce or factory mark, project, drawing, model, plan, sketch, secret formula or fabrication procedure or software;
- Any transmission, including to public, direct or indirect, through cable, satellite, optical fiber, or similar technologies;
- Any industrial, commercial or scientific equipment, any transportation mean or container;
- Any know-how;
- Numbers or image of any individual or other similar rights referring to an individual.

Due also comprises any other amount that has to be paid in money or nature for the right to register or broadcast any form of spectacle, show, sport event or similar activities.

There are taxed the dues obtained in Romania, no matter if they are received in Romania or abroad, meaning the dues from a resident or from a non-resident person that has a permanent headquarters in Romania, if the due is an expense of the permanent headquarters.

#### *Fees*

Fee means any payment in money or nature made by a broker, a fee agent, a general fee agent or any other person assimilated to a broker or a general fee agent, for the intermediary services performed connected to a commercial operation.

There are taxed the fees obtained in Romania, no matter if they are received in Romania or abroad, meaning the fees from a resident or from a non-resident person that has a permanent headquarters in Romania, if the fee is an expense of the permanent headquarters.

#### *Incomes from sport and entertaining activities*

According to law, there are taxed the incomes from sport or entertainment activities developed in Romania, no matter if the incomes are received by the persons that effectively take place to these activities or by any other person. All these incomes are considered as being obtained in Romania, no matter if they are received in Romania or abroad.

#### *Incomes from management or counseling services*

Incomes from management or counseling services in any field are considered as obtained in Romania, no matter if they are received in Romania or abroad, if these incomes are obtained from a resident or if the fee is an expense of the permanent headquarters.

The incomes obtained from Romania from management or counseling services in any field, that are not performed in Romania, or the incomes that are expenses made for a permanent headquarters in Romania of a non-resident are liable to tax if there are conventions concluded for avoiding double taxing in Romania and the residence state of the income beneficiary or when the income beneficiary does not present the documents regarding the fiscal residence.

#### *Incomes from remunerations*

It concerns the remunerations received by non-residents that have the quality of administrators, founder or member in the Board of Directors of a Romanian juridical entity. The remuneration can be established, according to law, through the constitutive deed of the Romanian juridical entity or the decision of the General Meeting. There must be mentioned that, according to Romanian law concerning commercial companies, the quality of

shareholder/associate can be assigned to an individual or a juridical entity.

#### **Incomes from services performed in Romania**

It concerns the incomes obtained from any type of services performed in Romania, not matter their nature, less the incomes obtained from international transportation and performed services accessories to this kind of transportation.

#### ***Incomes from independent professions***

It concerns the incomes from independent professions unfolded in Romania as: doctor, lawyer, engineer, dentist, architect, auditor and other similar professions. There are liable to taxes only the incomes obtained in other conditions than through a permanent headquarters or in a period of time or some periods of time that do not overcome a total of 183 days during 12 consecutive months that close in the vised calendaristic year.

#### ***Incomes from pensions***

There are liable to tax the incomes from pensions received from the social insurances budget or state budget, if the monthly pension overcomes the limit of 1.000 lei.

#### ***Incomes from prizes***

This category includes and concerns taxing of all the incomes from prizes granted at contests organized in Romania, no matter their nature, less the prizes obtained by non-residents at artistic, cultural and sport contests, financed by public funds and awards granted to non-residents students at contests financed by public funds.

#### ***Incomes from gambling***

It concerns any income from gambling practiced in Romania. The incomes are considered as taxing base at every gambling, if they are obtained from the same organizer in a single day.

#### ***Incomes from liquidation or dissolving without liquidation***

It concerns any income from liquidation or dissolving without liquidation of a Romanian juridical entity. The gross profit achieved from liquidation or dissolving without liquidation of a

Romanian juridical entity represents the sum of the exceeding distribution in money or nature that overcomes the contribution at the share capital of the beneficiary juridical entity/individual.

### **3. Tax share**

The tax on the non-residents incomes is of 16 %, except the following:

- 10% for the incomes from interests and dues, if the effective beneficiary of these incomes is a resident juridical entity from a state member of the European Union or one of the states from the Free Exchange European Association, respectively Island, Liechtenstein and the Kingdom of Norway, or a permanent headquarters of a company from any of these states. This taxing share applies in the transition period, from the date of the Romania's adhering to the European Union until the 31<sup>st</sup> of December 2010, under the condition that the effective beneficiary of the interests or dues owns minimum 25% from the value/number of participation titles at the Romanian juridical entity, for an uninterrupted period of at least 2 years, that closes at the payment date of interests or dues.

- 10% for the dividends paid by a company, Romanian juridical entity, to a juridical entity resident in a member state of the European Union, or one of the states from the Free Exchange European Association, respectively Island, Liechtenstein and the Kingdom of Norway, or a permanent headquarters of a company from any of these states;

- 20 % for the incomes obtained from gambling practiced in Romania.

As a transitory disposal, in case of the incomes obtained from term deposits, constituted current accounts, deposit certificates, and saving instruments, obtained before the 1<sup>st</sup> of January 2007, the tax share is applied from the constituting – achieving date.

The incomes from term deposits, deposit certificates, and other saving instruments, at banks and other authorized credit in Romania, constituted

/achieved between 4<sup>th</sup> of June and 31<sup>st</sup> of December 2005 inclusive, are taxed with 10% from their amounts. The incomes from interests at term deposits, deposit certificates, saving instruments, at banks and other authorized credit in Romania, constituted /achieved starting with January 1<sup>st</sup> 2006, are taxed with 16% .

Starting with 1<sup>st</sup> of January 2007, the interests at constituted deposits and current accounts are not taxed, no matter the inter-banking interests' rates at one month deposits.

The incomes that represent remunerations received by non-residents that have the quality of administrator, fonder or member of the Board of Directors of a Romanian juridical entity are assimilated to salaries and are taxed according to the regulations of the IIIrd Title of the Fiscal Code.

#### **4. Tax free and tax exempt incomes**

Starting with the 1<sup>st</sup> of January 2009 are considered tax free the followings:

- incomes obtained by the collective placing organisms without juridical entity, non-resident, from value titles transfer, respectively of the participation titles owned directly or indirectly in a Romanian juridical entity;

- incomes obtained in Romania by non-residents from derivate financial instruments transfer;

- incomes obtained by non-residents on foreign capital markets from transfers of participation titles, owned at a Romanian juridical entity, and from the transfer of value titles issued by Romanian residents.

There are tax exempt the followings:

- interests to deposits/current accounts;

- interest afferent to public debts instruments in Ron or foreign currency and incomes obtained from transactions of state titles and bonds issued by the administrative-territorial units in Ron or foreign currency on internal and/or international financial markets, and also

the interest afferent to instruments issued by the national Bank of Romania, for achieving the monetary policy objectives, and incomes obtained from transactions of movables issued by the National Bank of Romania;

- interest to instruments/receivable titles issued by Romanian commercial companies, established according to Romanian law, if the instruments/receivable titles are transactioned on a movables market regulated by the state authority where this market is placed and interest is paid to a person who is not affiliated to the issuer of the instruments/receivable titles;

- prizes of a non-resident individual obtained in Romania, as a consequence of a participation to artistic, cultural and sport national and international festivals financed from public funds;

- prizes granted non-resident students to contests financed from public funds;

- incomes obtained from non-residents in Romania, that supply counseling services, technical assistance and other similar services in any field, within contracts financed through loans, credit, or other financial agreement concluded between international financial organisms, and the Romanian state or Romanian juridical entity, including public authorities, having the guarantee of the Romanian state, and also within contracts financed through loan agreements concluded by the Romanian state with other financial organisms, if the perceived interest is under the level of 3% per year;

- incomes of the foreign juridical entities unfolding in Romania consultancy activities within free financing agreements, concluded by the Romanian Government/public authorities with other governments/public authorities or governmental or non-governmental international organizations;

- dividends paid by a company, Romanian juridical entity, to a resident juridical entity in another state member of the European Union, or in one of the

states of the Free Exchange Association or to a permanent headquarters of a company in one of these states, placed in another state member of the European Union or of the European Association of Free Exchange, if the beneficiary of the dividends owns minimum 15% from the participation titles to a company Romanian juridical entity, for an uninterrupted period of at least 2 years, that closes at the dividend payment date. The minimum owning condition will be of 10%, starting with 2009;

- incomes from savings under the form of interest payment, obtained in Romania by resident individuals in state members of the European Union;

- the incomes from interests and dues obtained in Romania by resident juridical entities in states members of the European Union or European Association of Free Exchange, starting with January 1<sup>st</sup> 2011, if the effective beneficiary of the interests and dues owns minimum 25% from the value/number of the participation titles to a Romanian juridical entity, for an uninterrupted period of at least 2 years, that closes at the payment date of interests and dues.

## 5. Tax payment

The tax due by non-residents for the taxable incomes obtained in Romania is calculated and retained when the payment is made at the state budget by the income payers until the 25<sup>th</sup> day of the following month inclusively. The interest is calculated, retained and paid in Ron, at the state budget, at the exchange rate of the market, communicated by the National Bank of Romania, valid for the day when the tax is retained for non-residents.

In case of distributed dividends, not paid to shareholders or associates by the end of the year for which were approved the annual financial statements, the tax on dividends is declared and paid until the 31<sup>st</sup> of December of the respective year.

For the incomes representing interests to term deposits, deposit

certificates and other saving instruments at banks and other credit institutions authorized and located in Romania, the tax is calculated and retained by the payers of this kind of incomes at the moment of registration in the deposit account of the holder, respectively at the paying off moment, in the case deposit certificates and saving instruments. Taxing for the incomes from interests is made monthly, until the 25 inclusively of the following month of registration/paying off.

The contributors have the obligation to present an informal declaration regarding the retained tax and paid during the year, on income beneficiaries, to the appropriate fiscal authority, until the 28<sup>th</sup>, respectively 29<sup>th</sup> of February of the following year. The declaration will contain the payments and payment arrangements to non-resident persons, purpose and amount of each payment, name and address of the beneficiary. The declaration does not contain the engaged or paid amounts for imported goods or for international transportation.

Income payers under the form of interests have the obligation to present an informative declaration regarding the payments of this kind of incomes made to individuals resident in states members of the European Union. The declaration is presented until the last day of February of the current year, concerning the information referring to interests payments made during the previous year.

The income payers that have the obligation retain taxes from the incomes obtained by contributors in Romania must supply the contributor written information regarding the nature and amount of the taxable incomes, and also the retained tax in the contributor's name. The information is sent to each contributor until the last day of February of the following year to that for which the tax is paid.

## 6. Avoiding international double taxing

If a contributor is a resident of a country that has concluded a convention with Romania for avoiding double taxing regarding tax on income and capital, the tax share that applies to the taxable income obtained by that contributor from Romania can not overcome the tax share regarded by the convention, that applies to that income. If the tax shares from internal legislation are more favorable than those from the conventions regarding avoiding double taxing, then the more favorable tax share apply.

In order to apply the stipulations of avoiding double taxing convention, the non-resident has the obligation to present to the income payer, when the income is achieved, the fiscal residence certificate issued by the appropriate authority from his/her residence state. If the residence fiscal certificate is not presented in due time, there applies the stipulations of the Romanian legislation. When the residence fiscal certificate is presented, there applies the stipulations of the convention regarding avoiding double taxing and is also made the tax regularization within legal prescription term, if the residence fiscal certificate mentions that the beneficiary of the income had, within prescription term, fiscal residence in the contracting state for the period the incomes were achieved in Romania.

The fiscal residence certificate presented during the year for which the payments are made is also valid in the

first 60 days of the following year, if the residence conditions do not change.

In order to prove the residence, there can also be presented another document issued by another authority than the fiscal one that has attributions residence certification field, according to the legislation of that state. The non-residents that are beneficiaries of the incomes from Romania will present to the income payer the original document or a copy of the fiscal residence certificate or the translated and authenticated document.

A non-resident can be considered resident of a state also as a consequence of the information received on basis of the information exchange initiated/amiabile procedure initiated by a avoiding double taxing convention partner country.

## 7. Conclusions

The new fiscal regulations continue the previous principles, protecting the investments developed in Romania by residents from European Union, that have a fiscal organization more favorable in what concerns the tax on income than the non-residents from the extra-European area.

It is important to mention that, from the total of 164 countries, Romania has conclude conventions of avoiding double taxing with 82 countries, meaning that the non-residents from the other countries will be taxed for the incomes obtained in Romania according to Romania law.

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