



cutting through complexity

Global Transfer Pricing Review

Romania

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TAX



Romania



KPMG observation

The Romanian legislation on transfer pricing documentation follows the principles of the European Union (EU) regulations on transfer pricing (e.g. the EU Code of Conduct on Transfer Pricing).

Although transfer pricing documentation requirements were introduced some time ago, many Romanian taxpayers prefer to wait for a specific request issued by the Romanian tax authorities in order to start preparing their transfer pricing documentation.

The Romanian tax authorities tend to adopt a simple approach when it comes to transfer pricing topics. Cases arise where the tax authorities challenge various aspects of a taxpayer's position, and typically the only way to resolve the resulting dispute is in court.

With respect to the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) initiative, and the United Nations' (UN) Practical Transfer Pricing Manual for Developing Countries issued October 2012, it is likely that the Romanian tax authorities will intensify their current practice of reclassifying transactions based on substance.

Transfer pricing study snapshot

The purpose of a transfer pricing study

	Applicable	Not applicable
Legal requirements	●	
Protection from penalties	●	
Reduce risk of adjustment		●
Shifts burden of proof	●	

Basic information

Tax authority name

Ministry of Public Finances; National Agency for Fiscal Administration (ANAF).

Citation for transfer pricing rules

Article 7 of the Romanian Fiscal Code — defining "related parties."

Article 11 (2) of the Romanian Fiscal Code and its application Norms – providing for the arm's length principles and transfer pricing methods.

Article 42 and article 79 of the Romanian Fiscal Procedure Code approved by Government Ordinance no. 92/2003, as further amended and completed — requiring the preparation of a transfer pricing file.

Government Decision no. 529/2007, regarding the procedure of issuing the advance tax rulings and Advanced Pricing Agreements (APAs).

Order of the President of National Agency for Fiscal Administration no. 222/2008, regarding the content of the transfer pricing documentation file, as well as the postponement of the control until the transfer pricing file is ready.

Effective date of transfer pricing rules

1 January 2004, the obligation to comply with transfer pricing principles was reinforced.

In May 2007, the procedure to be followed by taxpayers in order to obtain an APA ruling from the Romanian tax authorities was enforced. In July 2007, the obligation to have transfer pricing documentation files available was enforced. In February 2008, the obligation to have specific transfer pricing documentation available were enforced, thus creating a more stable regulatory environment for transfer pricing purposes.

Although the obligation to document domestic intragroup transactions for Romanian transfer pricing purposes was clearly stated in the Fiscal Code as of May-June 2010, there is still a risk that the previous text of the relevant provision of the Fiscal Code could be interpreted in a way that such documentation obligation was also applicable in the past.

What is the relationship threshold for transfer pricing rules to apply between parties?

Direct or indirect ownership of a minimum of 25 percent of the participation titles or voting rights or effective control.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from filing date.

Also, a tax audit can be performed for tax liabilities arising in the last 10 years in case of a fiscal evasion.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No. There is no specific transfer pricing disclosure is required in the annual corporate tax return. A summary of transactions carried out with related parties must be disclosed when preparing the financial statements, but there is no disclosure requirement on the tax return.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to submit disclosures?

Not applicable.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, with some additional local requirements regarding the TP documentation.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

Yes, 90 days.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

Based on the local legislation, the transfer pricing documentation file needs to be submitted to the tax authorities

upon their written request. From the date of the official request, the taxpayer has up to three months to submit its documentation, with the possibility of an extension equal to the initial period granted within the tax authorities' official request.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Taxpayers can challenge a transfer pricing adjustment at administrative level, by submitting an appeal against the decision issued by the Romanian tax authorities, or in a court of justice. According to the Romanian transfer pricing legislation, when transfer pricing adjustments are made with respect to transactions between Romanian related parties, an automatic adjustment is to be made at the level of the other related parties involved in the adjusted transactions. Although the procedure to be followed in such a case is not very clear, the companies may apply for it. The possibility to apply the Mutual Agreement Procedure (MAP) is provided in the majority of double tax treaties concluded by Romania.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Starting from 1 March 2014 the late payment interest decreased from 0.04 percent per day to 0.03 percent per day, while another late payment penalty of 0.02 percent per day of delay may also be added to such upward adjustments.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

Comprehensive and proper transfer pricing documentation.

What trends are being observed currently?

Currently, the strategy of the Romanian tax authorities is to focus on loss-making companies and on companies with high turnover.

Special considerations

Are secret comparables used by tax authorities?

As a matter of principle, Romanian tax authorities use public information and databases. Additional information may be found via exchange of information with other tax authorities.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. For Romanian transfer pricing purposes, in order to determine the arm's length character of prices charged between a Romanian entity and its related parties, a local market benchmark study has to be carried out first. It is only in the case of insufficiently available information regarding local comparables that Romanian tax authorities will accept a pan-European search. Nevertheless, the search for comparables in the local market has to be documented and justified as "not possible". In practice, we noticed that the Romanian tax authorities are asking for Romanian comparables, and other benchmarks (on the EU market or on extended markets) are usually rejected by the Romanian tax authorities.

Do tax authorities have requirements or preferences regarding databases for comparables?

No. However, the Amadeus database is most commonly accepted by the Romanian tax authorities.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Yes, the interquartile range is taken into account in a TNMM analysis. In most cases in practice, the tax authorities focus on the search criteria used to select the comparable companies, in order to ensure that the criteria is in line with the Romanian legal requirements. However, in some cases the authorities did not agree with the comparable companies selected and performed separate benchmarking studies.

What level of interaction do tax authorities have with customs authorities?

The exchange of information with the customs authorities on transfer pricing adjustments is increasing. Customs base adjustments are also made in accordance with the General Agreement for Trade and Tariffs (GATT).

Are there limitations on deductibility of management fees beyond the arm's length principle?

Yes, some. General corporate conditions must be cumulatively met: the service is actually rendered; the taxpayer can provide supporting documents attesting that the service was provided (that is, written agreement, timesheets, reports, etc.); and the service is rendered for the benefit of the taxpayer's business.

In the absence of such supporting documents, tax inspectors may deny the deductibility of these service fees. Management services are often scrutinized by tax inspectors trying to question their deductibility.

Also, management fees should be priced at the market-price level.

Are management fees subject to withholding?

Yes.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

Yes. There are no specific rules or limitations regarding the deductibility of royalties. The general corporate rules for deductibility must be observed (see above). In practice there are cases where the tax authorities tried to reject the deductibility of royalties charged to Romanian taxpayers.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes. There is nothing in the Romanian legislation to prohibit year-end adjustments, which may be subject to other tax consequences depending on the nature of the underlying transaction.

Other unique attributes?

If a transfer pricing documentation file does not include all the sections required by the legislation, there is a risk that the file may be considered as incomplete, which gives the right to the tax authorities to make adjustments.

Transfer pricing adjustments may be made by the tax authorities based on three independent transactions (qualifying as similar with the one that is being analyzed). The simple average will be used.

In practice, the Romanian tax authorities do not accept loss-making companies to be included in benchmark studies.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Frequently.

When may a taxpayer submit an adjustment to competent authority?

No specific provision.

May a taxpayer go to competent authority before paying tax?

No formal rules exist in this area.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral, multilateral.

Is there a filing fee for APAs?

Yes. The tariff which would be charged for releasing the APA is 10,000 euros (EUR) up to EUR20,000 (in the case of large taxpayers, as well as in the case of other categories of taxpayers of which the consolidated value of transactions exceeds EUR4 million). The tariff for amendments of an already released APA is EUR6,000 up to EUR15,000 (in the case of large taxpayers, as well as in the case of other categories of taxpayers of which the consolidated value of transactions exceeds EUR4 million). It is

payable in RON at the National Bank of Romania's foreign exchange rate, valid at the date of payment.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

Not applicable. The APA program is developing slowly. So far, it seems that only four APAs have been concluded between the Romanian tax authorities and taxpayers.

KPMG in Romania

Teodora Alecu

Tel: +40 (372) 377 800

Email: talecu@kpmg.com

As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.

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