

GMS Flash Alert

2016-107 | September 29, 2016



Romania - Order 1099/2016 Brings Clarifications to Determining Individuals' Tax Residence

A recent Order¹ provides clarifications on determining an individual taxpayer's tax residence in Romania.

The Order:

- makes certain clarifications on how fiscal residence is determined in light of changes ushered in by Romania's new Tax Code, in effect from 1 January 2016;
- updates the so-called "Questionnaire for determining an individual's tax residence upon arrival in / departure from Romania" and the "Notifications on fulfillment of the residence conditions."

WHY THIS MATTERS

There has been some ambiguity about the date on which a foreign individual becomes a Romanian tax resident and, consequently, the date when the foreign individual becomes liable to Romanian income tax on his or her worldwide income. Now it is clear that from 1 January 2016, foreign individuals who meet the residence test are liable to Romanian personal income tax on their worldwide income as from the date they become tax residents.

The clarifications under this new Order will help foreign individuals and their tax service providers to better determine when the individual becomes tax resident, under which conditions, and with what consequences. This should help them – as well as their multinational employers – with planning and budgeting for the international assignments to Romania, as well as the tax compliance requirements for such individuals.

Since the taxpayer needs to complete the Questionnaire for determining tax residence upon arrival in / departure from Romania, it is important that he or she understands what changes have been made and what 'new' information is required.

Highlights of What's Been Clarified by Order (OMFP 1099/2016)

Tax Residence for Individuals Who Arrive in Romania

An individual who meets the tax residence conditions (i.e., has his/her centre of vital interests in Romania or spends more than 183 days in Romania during any 12-month period ending in the fiscal year concerned) and cannot prove that he or she is a resident of another state with which Romania has concluded a tax treaty, is deemed a tax resident in Romania and has full tax liability in Romania as from the date he or she meets the "centre of vital interests" test or the "more than 183 days in Romania during any 12-month period ending in the fiscal year concerned" test, and thereby becomes a Romanian tax resident. Under the prior legislation, an individual was liable to Romanian income tax on his or her worldwide income as of 1 January of the year following the year during which he or she became tax resident in Romania.

Between the date of arrival in Romania and the date he or she becomes a Romanian tax resident, the individual is considered a tax non-resident and is liable to Romanian income tax only on his or her Romanian source income.

Tax Residence for Individuals Leaving Romania

According to the new provisions, a Romanian tax resident with a Romanian domicile is liable to Romanian income tax on his or her worldwide income up to the date when his or her tax residence status changes. The individual must submit to the Romanian tax authorities a tax residence certificate (*Certificat de rezidență fiscală*) together with the Questionnaire for determining the tax residence upon departure from Romania, proving the change in residence.

A tax non-resident who later becomes a Romanian tax resident but then leaves Romania will be liable to Romanian income tax on his or her worldwide income up to the date of leaving Romania for any one period or several periods which exceed an aggregate 183 days in any 12-month period. Under prior legislation, the individual was liable to Romanian income tax on his or her worldwide income for the period up to the end of the calendar year during which he or she left Romania.

The Questionnaire for Determining an Individual's Tax Residence

The *Questionnaire to determine tax residence upon arrival in/departure from Romania*, as well as the related notifications have been updated to include: (i) the date on which the individual becomes a tax resident (so, liable to Romanian income tax on his/her worldwide income), or (ii) when leaving Romania, the date as on which the individual becomes a tax non-resident (so, no longer liable to Romanian income tax on his/her worldwide income). (Please note there are separate questionnaires for arrival in Romania and for leaving Romania.)

Individuals who leave Romania for a period or periods which exceed an aggregate 183 days in any 12-month period are required to fill in and submit the Questionnaire for determining an individual's tax residence when leaving Romania. Previously, under Order 74/2012, the Questionnaire had to be submitted by individuals leaving Romania for more than 183 days during a calendar year.

When submitting the Questionnaire for determining tax residence upon arrival in Romania, the foreign individual must also present a document issued by his or her home country tax authority attesting to his or her removal from its tax records.

KPMG NOTE

The new provisions on tax residence have only recently been introduced into Romanian tax legislation and, consequently, certain practical aspects still have to be clarified. However, the updated Questionnaire to determine tax residence has already been issued.

One important point to emphasize is that individuals who arrive in / depart from Romania may qualify as Romanian tax residents **for part of the calendar year** and consequently they may be liable to Romanian income tax on their worldwide income earned during that part of the year only. We consequently believe that it is important for individuals to re-analyze their residence status, in view of these new clarifications.

International assignees coming to Romania and tax service providers working with assignees coming to Romania should verify that they have the appropriate documentation and certificates, understand the modified Questionnaire and be prepared to complete and submit it, and establish the tax obligations of the assignee depending on his or her residence status.

International assignees in Romania and tax service providers working with international assignees in Romania should be taking steps to assess the tax residence status of the assignee, establish his or her tax liability in Romania (e.g., only on Romania-source income or on worldwide income), and understand – should the assignee leave Romania for a period or several periods that exceed on aggregate 183 days in any 12-month period – the taxpayer’s obligation with respect to the Questionnaire.

FOOTNOTE:

1 *Ordinul Ministerului Finanțelor Publice nr. 1099/2016 pentru reglementarea unor aspecte privind rezidența în România a persoanelor fizice* / Order of the Ministry of Public Finance no. 1099 / 2016 of 12 July 2016 on individual Romanian tax residence was published in *Monitorul Oficial* (Official Journal of Romania) no. 577 of 29 July 2016. It can be found at: <http://www.monitoruloficial.ro>.

RELATED RESOURCE

For a related article (in Romanian and English), see “[Changes to Some Fiscal Residence Rules for Individuals](#),” in *Tax Newsflash* (issue 352), a publication of the KPMG International member firm in Romania.

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The information contained in this newsletter was submitted by the KPMG International member firm in Romania.

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