

GMS Flash Alert

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Romania - Change of Filing Deadline for Expatriates Tied to Treaty Period

A recent Government Decision has made changes to the Romanian filing deadline for tax returns for individuals who extend their assignments in Romania beyond the period noted in the applicable double taxation treaty (hereinafter "DTT").¹

WHY THIS MATTERS

The deadline has been extended for the submission of monthly tax returns for individuals whose intended period of presence in Romania was shorter than the period mentioned in the DTT, but who subsequently extend their stay in Romania beyond the above-mentioned period. Provided the individual follows the correct procedure upon starting the assignment, the filing deadline has been moved from 15 days since the last day of the period, to the 25th of the month following the month when the period was exceeded.

This extension of the deadline may help individuals to avoid potential fines and/or penalties imposed by the Romanian authorities and allows better planning, for instance, in terms of cash flow.

Amendments Made to Tax Return Filing Deadline for Individuals Who Extend Their Assignment in Romania

As a general rule, where a resident of a state with which Romania has concluded a DTT derives employment income related to an activity carried out in Romania, this income may be exempt from taxation in Romania, provided that all the criteria below are fulfilled:

- The individual is present in Romania for a period not exceeding 183 days in any 12-month period (or other period mentioned in the DTT).
- The remuneration is not paid by, or on behalf of, an employer that is a resident of Romania.

- The remuneration is not paid by a permanent establishment or a fixed base which the employer has in Romania.

The employment income, however, may be taxed in Romania if the **stay in the country is subsequently extended for a period which exceeds 183 days** in any 12-month period, or any other number of days mentioned in the DTT.

Furthermore, the Fiscal Code states that individuals exceeding the period mentioned above are liable to Romanian income tax on employment income earned from the activity carried out in Romania as from the day of their arrival in the country.

In this case, the taxpayer is required to complete monthly tax returns setting out the monthly income obtained during the period prior to the extension in Romania and to pay the Romanian income tax due, without, however, having to pay late-payment interest and penalties. (This is an exception to the general rule, whereby, due to the monthly tax filing rule, late tax declaration and payment are penalized with fines of RON 50 to 500 per tax return together with penalties and interest of 0.03 percent of the principal amount per day of delay.) Under the recent changes to the Fiscal Code, the payment deadline is now the 25th of the next month after exceeding the period mentioned in the DTT. (Previously it was 15 days following the date upon which the number of days specified in the DTT have been exceeded.)

Example

Take the example of Sophie, an Austrian resident assigned to Romania from 5 May 2017 for a period of four months. Her salary income will initially be exempt from taxation in Romania (provided no permanent establishment of the employer exists in Romania and the Romanian company does not act as an economic employer, as per the DTT), so no monthly filings would be required. When Sophie is informed that her assignment is to be extended, she would need to consider that she may exceed 183 days of stay in Romania and as such, she needs to declare and pay Romanian income tax, monthly. Luckily, she followed the correct procedure upon starting her activity in Romania, and now the retroactive filing of tax returns, as of the first month of activity in Romania, would not trigger additional costs, such as penalties and fines. Following the recent changes, assuming she will exceed 183 days on 4 November 2017, the tax return and income tax payment are due before 25 December 2017.

KPMG NOTE

In practice, there are many situations where individuals are sent to Romania for a short-term period on specific projects or assignments and afterwards, due to business reasons, the assignment is extended. In such cases, it is important for both individuals and employers to be aware of the procedures to be followed in order to foster proper, timely tax compliance without the risk of incurring additional penalties and fines should the assignment be extended beyond the period of activity set out in the relevant DTT.

The new deadline also allows a better estimation of when the tax returns should be submitted and the income tax should be paid, consequently reducing the risk of non-compliance. It can also impact, in a positive way, cash flow for the employee and the employer.

FOOTNOTE:

1 Government Decision no. 284/2017 to amend the Norms for the application of the Fiscal Code (Law no. 227/2015) / *HOTĂRÂRE Nr. 284/2017 din 27 aprilie 2017 pentru modificarea și completarea Normelor metodologice de aplicare a Legii nr. 227/2015 privind Codul fiscal, aprobate prin Hotărârea Guvernului nr. 1/2016* was published in the *Monitorul Oficial* (Official Journal of Romania) no. 319 of 4 May 2017. The *Monitorul Oficial* can be found at: <http://www.monitoruloficial.ro>.

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