

GMS Flash Alert

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Romania – Fiscal Code Changes Rules on Investment Income

On 23 May 2022, Law 142/2022 to amend the Fiscal Code (Law no. 227/2015) was published in the *Monitorul Oficial* (Official Journal of Romania) (no. 502).¹ This law brings changes in the taxation of certain types of investment income and will come into force on 1 January 2023.

The changes have been adopted by the government to stimulate the Romanian capital market, to attract new investors, and to increase the funding of Romanian resident companies by decreasing the taxation rates for certain capital gains and to ease the reporting obligations for individual investors.

WHY THIS MATTERS

The new changes have an impact on the personal income derived by individuals, expatriates or private clients who invest through Romanian intermediaries. Furthermore, banks that provide such services in Romania and fall under the intermediary definition provided under the law are also affected, as they have additional reporting obligations.

Main Amendments

Certain intermediaries now have additional obligations in relation to the capital gains obtained through them. These intermediaries are “intermediaries as defined by the current legislation – investment management companies, self-managed investment companies, administrators of alternative investment funds, Romanian tax residents and tax non-residents that have a permanent establishment in Romania and are considered intermediaries.”²

In addition to the requirement to calculate the gain/loss for each transaction undertaken on behalf of a taxpayer, and to report information relating to annual gains/losses to the taxpayer and the *Agenția Națională de Administrare Fiscală* (ANAF), these intermediaries are also required to **calculate, withhold, declare and pay income tax for every transaction**,

on income obtained from Romania as well as on income obtained from abroad, except for income obtained from the transfer of investment gold.

For the capital gains obtained through these intermediaries, **the taxation rates decrease from 10% to 1% or 3%, depending on the holding period** (1% for holding periods longer than 365 days, 3% for periods shorter than 365 days).

Also, in order to determine the capital gain, it is now clarified that the fiscal value of the shares sold is calculated by using the weighted average cost method, and includes the fees for each transaction, for each symbol, regardless of the period of ownership.

However, losses incurred through these intermediaries, from the transfer of securities or derivatives, can no longer be carried over and offset by future gains; thus, these losses represent a permanent loss for the taxpayer.

The law also includes several transitional measures in relation to capital gains obtained for tax year 2022.

KPMG NOTE

As under current law, the favourable tax treatment (i.e., reduced tax rates) applies only to those transactions carried out through Romanian intermediaries or through tax nonresident entities that have a permanent establishment in Romania that is an intermediary. In all other cases, the tax rate remains the same, i.e. 10%, which could be considered discriminatory. This could lead to cases in which the taxation rate could be different for the same income, obtained from the same source. Furthermore, in practice, the outcome of the law may not be the intended one, as the decreased rates may apply also to capital gains obtained from non-Romanian companies, on foreign markets, but through Romanian brokers.

FOOTNOTES:

1 For the published laws and other statutory instruments of Romania (in Romanian), see the Web site for *Monitorul Oficial* at: <http://www.monitoruloficial.ro/>.

2 Art. I, point 7, Law 142/2022 for the amendment and completion of Law no. 227/2015 regarding the Fiscal Code.

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