New Double Tax Treaty between Bulgaria and Romania

KPMG's Tax News outline and highlight legislative changes and trends in the area of tax.

The fourth issue in 2016 analyzes some of the provisions of the new Double Tax Treaty between the Republic of Bulgaria and Romania which entered into force on 29 March 2016 and will be effectively applied as of 1 January 2017.

Introduction

On 24 April 2015, the Republic of Bulgaria and Romania signed a new Double Tax Treaty ("the new DTT with Romania") which will replace the currently applicable DTT signed in 1994 ("the currently applicable DTT with Romania"). The new DTT introduces rules which significantly differ from the currently applicable provisions.

Residency

According to the new DTT with Romania, if a person other than an individual, e.g. a company, is considered a resident of both contracting states, its residence status shall be determined by a mutual agreement between the competent authorities of the contracting states. Under the currently applicable DTT with Romania, in such a case this person shall be considered a resident of the contracting state where its place of effective management is situated.
Under the new DTT with Romania, a building site, a project construction, assembly or installation project will constitute a permanent establishment in the other contracting state only if it lasts more than 12 months. Pursuant to the currently applicable DTT with Romania, a building site, a project construction or assembly or the execution of related supervisory activities will form a permanent establishment in the other contracting state if the project or the related activities continue more than 9 months within any twelve-month period.

**Interest**

The new DTT with Romania introduces a reduced withholding tax rate of 5% on interest in the source country if the beneficial owner of the interest is a resident of the other contracting state.

The new DTT still provides for certain exceptions where interest shall be exempt in the source country.

**Royalties**

The new DTT with Romania introduces a reduced withholding tax rate of 5% on royalties in the source country if the beneficial owner of the royalties is a resident in the other contracting state.

There are changes in the definition of “royalties” related to the use of or the right to use any copyright of literary, artistic or scientific work. Payments for the use of software shall be considered royalty payments.

**Capital gains**

The new DTT with Romania introduces taxation in the source country of the capital gains acquired by a resident of one contracting state (Country A) from the transfer of shares in the other contracting state (Country B), in case the shares derive more than 50% of their value directly or indirectly from immovable property situated in Country B.

**Pensions and annuities**

Pursuant to the provisions of the new DTT with Romania, the principles of taxation of pensions and other similar remuneration would be preserved. The scope of this provision also includes annuity payments representing periodically payable amounts at specified times in accordance with the obligation to make payments in return for adequate and full consideration in money or money’s worth.
Other income

According to the provisions of the new DTT with Romania, other items of income not provided for in the convention would be taxed in the country in which the recipient is a resident, wherever arising.

Top

Tax avoidance

New provisions are introduced with respect to dividends, interest, royalties and other income, pursuant to which no DTT relief shall be available where the main purpose or one of the main purposes is to take advantage of the DTT provisions.

Top

Elimination of double taxation

Under the new DTT with Romania, the double taxation in Bulgaria shall be eliminated by applying the ordinary tax credit method for income derived by a resident in Bulgaria, which in accordance with the provisions of the convention may be taxed in Romania. Where in accordance with the new DTT with Romania income derived by a resident in Bulgaria is exempt from tax in Bulgaria, the exemption with progression method shall be applied.

Top

Other amendments

The new DTT with Romania introduces other amendments as well, for example in relation to the taxation of dividend income, income of teachers and researchers, income related to the maintenance, education and training of students, etc. New provisions are also introduced with respect to the exchange of information and the assistance between the two contracting states in the collection of taxes. The definitions of some basic terms are also amended and new definitions are introduced, whereby other provisions are removed.

Top

Entry into force and application

The new DTT with Romania entered into force on 29 March 2016 and will be effectively applied from 1 January 2017.

We should note that the DTT application approvals for the currently applicable DTT with Romania issued by the Bulgarian revenue authorities will no longer apply for income under long-term agreements accrued in periods after the new DTT with Romania enters into force.

If you perform, or expect to perform, transactions with Romania, we would advise you to contact a representative of the Tax Department of KPMG in Bulgaria for advice on the treatment of the income and the application of the new DTT.
For information

Kalin Hadjidimov  
Partner, Tax & Legal  
Tel: + 359 (2) 9697 700  
Fax: + 359 (2) 9697 878  
hadjidimov@kpmg.com

Desislava Dimova  
Assistant Manager, Tax  
Tel: + 359 (2) 9697 700  
Fax: + 359 (2) 9697 878  
ddimova@kpmg.com