KPMG
cutting through complexity™

October 30, 2015
2015-131

flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

Romania – Revised Fiscal Code May Lighten Burdens on Assignees, Employers
by KPMG Tax, Bucharest
(KPMG in Romania is a KPMG International member firm)

Starting 1 January 2016, the current Romanian Fiscal Code will be revised with new provisions that include changes to the rules on taxing worldwide income, the tax treatment of allowances paid to Board members, and the list of benefits-in-kind that are not subject to tax.[1]

The new provisions generally enter into force on 1 January 2016, although some of the changes will be effective as of 1 January 2017.

Why This Matters

The changes to the Fiscal Code bring additional clarity to the expatriate taxation regime in Romania. On one hand, the new rules eliminate an important exception regarding worldwide taxation of Romanian tax residents; on the other hand, they lighten the tax burden for certain categories of individuals.

Further, companies offering equity-based compensation plans should take note of the new parameters around the new stock option taxation regime so that their equity plans continue to qualify for beneficial tax treatment.

Careful analysis of the changes should help determine the correct liabilities and compliance obligations with respect to affected international assignees.

Changes Effective 1 January 2016

- ***Changes to taxing worldwide income of foreign individuals*** – Foreign individuals who meet the residence test in Romania will be liable to pay Romanian personal income tax on their worldwide income as of the date they become residents.

  KPMG Note

  Previous legislation allowed for an exception for foreign individuals who become residents of Romania to be exempt from tax on their worldwide income until the second consecutive year in which they meet the residency test. This change eliminates this important exception according to which the above-mentioned foreign individuals will now be subject to tax in the year they establish residency in Romania.

- ***When assignees are allowed to declare their income after extending an assignment*** – Assignees who were initially assigned to Romania for a period not exceeding the period mentioned under the pertinent income tax treaty (DTT), and subsequently who extend their assignment in Romania past this period, are able, under the revised provisions, to declare the income derived during the assignment in the month following the month in which the period mentioned in the DTT is exceeded. Doing so carries no risk of interest and penalties for late payment being assessed, provided certain administrative procedures are fulfilled.

- ***Allowances paid to Board members*** – Individuals appointed as members of a Board of Directors of a Romanian entity will benefit from the tax exemption typically available to employees for daily allowances received during assignments or business trips, with similar caps applying as for employees.

- ***Changes to benefits-in-kind treated as non-taxable*** – New categories of non-taxable benefits are introduced, such as benefits-in-kind deriving from the use of a company car for private purposes, for which expenses are considered as deductible for corporate tax purposes (within a 50-percent limit).

- ***Deduction for rental income*** – The notional deduction available for rental income increases from 25 percent to 40 percent (of gross income). No supporting documents have to be presented in order to claim this deduction upon calculating the personal income tax due.

- ***New definition for "stock option plans"*** – A new definition is introduced for "stock option plans" which are deemed to include any programs set up by a legal entity whose shares, or securities, are listed on a regulated capital market or an alternative trading market, under which employees or directors of the issuing entity or of other entities affiliated to the issuing entity have the right to acquire a certain number of such securities at a discounted price or even free of charge. In order to qualify as a "stock option plan," the program has to include a vesting period of a minimum of one year between the grant date and the exercise date.

  KPMG Note

  Given the above, the KPMG International member firm in Romania recommends companies undertake a thorough analysis of their equity-based plans to determine whether the plan qualifies as a stock option plan within the meaning of the new legislation – and consequently can benefit from favorable tax treatment.

- ***Late payment interest/penalties*** – Interest and penalties assessed by the Romanian tax authorities for late payment of an individual's tax liability will decrease from 0.05 percent per day to 0.03 percent per day of the outstanding amount.

- ***A "concealing penalty"*** – A so-called concealing penalty in the amount of 0.08 percent per day of the outstanding amount may be assessed by the Romanian tax authorities for liabilities that have not been declared or have been incorrectly declared and for which the Romanian tax authorities issued a tax assessment.

- ***Deadline for filing informative returns*** – The deadline for filing the informative form[2] regarding the start/end date of an assignment to Romania is extended from 15 days to 30 days as of the start/end date of the assignment. Fines may be assessed for the late filing of this return.

Changes Effective 1 January 2017

- The income tax rate for dividend income will decrease from 16 percent (the current rate) to 5 percent.

- The taxable basis for an individual's health insurance contribution will be extended to cover most types of income earned by individuals (employment income, income from independent activities, rental income, investment income, pension income, farm income, other income). The taxable basis for the annual health insurance contribution will be capped to five times the average monthly gross salary, multiplied by 12, and cannot be lower than the level of the minimum wage multiplied by 12.

KPMG Note

Individuals who have no income or whose income is lower than the national minimum gross wage (currently RON 1,050, or approximately EUR 240) will continue to be required to pay health insurance contributions, calculated at the value of the minimum gross wage.

Footnotes:

1 Law no. 227/2015 regarding the Fiscal Code ("herein after the "New Fiscal Code") has been published in *Monitorul Oficial* (Official Journal of Romania), no. 688 of 10 September 2015. 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 Informative form regarding the start/end of Romanian assignment (code 222).

* * * *

For further information or assistance, please contact your local GMS professional or Madalina Racovitan (tel. +40 372 377 782 or e-mail: mracovitan@kpmg.com), GMS country leader with the KPMG International member firm in Romania.

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

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click **here**. To learn more about our GMS practice, please visit us on the Internet: click **here** or go to http://www.kpmg.com .