

## ROMANIA

LEGISLATION	
<b>Existence of Transfer Pricing Laws / Guidelines</b>	Introduced in 1994, Article 11 of the Romanian Tax Code (Codul Fiscal or CF) contains the legal basis for applying the arm's length principle. Under this, the Romanian National Agency for Tax Administration (Agentia Nationala de Administrare Fiscala) has the right to adjust intra-group transactions of an enterprise to an arm's length price. Transfer pricing documentation requirements were introduced in September 2006. In February 2008, the Romanian tax authority provided a detailed list of information regarding the content of transfer pricing documentation. The Romanian transfer pricing rules are generally in accordance with the OECD Transfer Pricing Guidelines but they also include some local particularities.
<b>Transfer Pricing Scrutiny</b>	The risk of a transfer pricing audit can be considered medium to high. The Romanian tax authority has established a central team of transfer pricing specialists that may provide technical support to the general tax auditor under audit circumstances. There is no specific focus on special transactions; however continuous losses, fluctuating profitability and business restructuring are increasingly attracting attention. In general, tax inspections are scheduled according to the domestic statute of limitation in force, which is five years.
<b>Definition of Related Party</b>	<p>The definition of a relationship between two entities that would trigger the application of Article 11 of the CF is broad and encompasses legal as well as "de facto" control. As such, two legal entities are related parties if:</p> <ul style="list-style-type: none"> <li>- one entity holds directly or indirectly, including the shareholding of related entities, minimum 25% of the number/value of shares or voting rights in the other entity or it effectively controls the other entity, or</li> <li>- one entity holds directly or indirectly, including the shareholding of related entities, a minimum of 25% of the number/value of shares or voting rights in the two entities.</li> </ul>
<b>Transfer Pricing Penalties</b>	For non-compliance with the documentation requirements in force, there is a penalty of RON 12,000 – 14,000 (approximately EUR 3,000 – 3,500). In addition and most importantly, the tax authorities have the right to estimate the transfer prices by reference to generally available information on three transactions considered to be similar, using the arithmetic mean of prices on these three transactions as the estimate. The additional taxable profits resulting from this estimation or any transfer pricing adjustments are subject to the general 16% profit tax rate and related late payment interest of 0.1% per day of delay.
<b>Advance Pricing Agreement (APA)</b>	Government Ordinance 35/2006 introduced Romania's APA regime. This has been in place since June 2007 starting with the publishing of the detailed issuance procedure for APAs. The Romanian tax authority has a 4-stage application process, which is similar to most APA regimes. The fee for an APA application is EUR 20,000 in the case of taxpayers with transactions exceeding EUR 4 million or EUR 10,000, where the taxpayer has less than EUR 4 million in transactions.

## DOCUMENTATION AND DISCLOSURE REQUIREMENTS

<b>Tax Return Disclosures</b>	There are no specific tax return disclosure requirements relating to intra-group transactions entered into by Romanian taxpayers.
<b>Level of Documentation</b>	<p>The content of the file generally follows the guidelines included in the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union. The transfer pricing documentation file should include:</p> <p>A. Information on the group:</p> <ul style="list-style-type: none"> <li>• The organisational, legal and operational structure of the group, including shareholdings, history and financials;</li> <li>• A general description of the business and business strategy of the group, including changes in the business strategy as compared to the previous tax year;</li> <li>• A description of and information on the implementation of the transfer pricing methodology within the group;</li> <li>• A general description of the transactions between related parties within the EU: <ul style="list-style-type: none"> <li>- flows of transactions;</li> <li>- invoice flows;</li> <li>- amount of transaction flows;</li> </ul> </li> <li>• A general description of functions performed, risks assumed and a description of changes in functions and risks compared to the previous tax year;</li> <li>• Ownership of intangibles (patents, trademarks, brand names, know-how, etc.) and royalties paid or received;</li> <li>• A list of advance pricing arrangements entered into by the taxpayer or by other group member companies, except for those issued by the National Agency for Tax Administration.</li> </ul> <p>B. Information on the taxpayer:</p> <ul style="list-style-type: none"> <li>• A detailed description of related party transactions: <ul style="list-style-type: none"> <li>- flows of transactions;</li> <li>- invoice flows;</li> <li>- amount of transaction flows;</li> </ul> </li> <li>• A comparability analysis: <ul style="list-style-type: none"> <li>- characteristics of property or services;</li> <li>- functional analysis (functions performed, risks assumed, fixed assets used etc.);</li> <li>- contractual terms;</li> <li>- economic circumstances;</li> <li>- specific business strategies;</li> <li>- information on comparable domestic or foreign transactions;</li> </ul> </li> <li>• A list of related parties and permanent establishments involved in</li> </ul>

	<p>such transactions or agreements;</p> <ul style="list-style-type: none"> <li>• A description of the transfer pricing method applied and substantiation of the selection criteria:</li> <li>• A description of other conditions deemed as relevant for the taxpayer.</li> </ul>
<b>Record Keeping</b>	Romanian income tax legislation does not include any specific rules on keeping transfer pricing records or documentation, so the general income tax rules on record keeping and documentation apply.
<b>Language for Documentation</b>	Transfer pricing documentation, including the inter-company agreements, should be in Romanian, or provided with a Romanian translation.
<b>Small and Medium Sized Enterprises (SME's)</b>	Documentation requirements are the same for SMEs as for large taxpayers.
<b>Deadline to Prepare Documentation</b>	There is no specific deadline for periodically preparing transfer pricing documentation. The documentation needs to be prepared only upon specific request of the tax authorities during a transfer pricing audit.
<b>Deadline to Submit Documentation</b>	The transfer pricing documentation must be provided upon the official request of the Romanian tax authority during a tax audit. The deadline for submitting the documentation is set on a case by case basis, but cannot exceed three months. Upon request of the taxpayer, this deadline may be extended only once with a period equal to the one initially granted for presenting the documentation. Not submitting the documentation in due time or submitting incomplete documentation is subject to a fine and also gives rise to the tax authorities' right to estimate the taxpayer's transfer prices.

## STATUTE OF LIMITATIONS

The statute of limitations is 5 years except in the case of a tax fraud challenge, in which case the statute of limitations extends to 10 years.

## TRANSFER PRICING METHODS

The five OECD transfer pricing methods, i.e. the comparable uncontrolled price method, resale price method, the cost plus method, the transactional net margin method and the profit split method are all accepted. However, Order 222/2008 indicates a preference for the CUP method and then for the other transactional methods, as compared to the profit methods. Therefore, if the CUP method is not used the reasons for rejection should be presented. The reasons for rejection of the other transactional methods should also be provided if a profit method is used.

## COMPARABLES

Order 222/2008 expressly states that comparability should first be analysed at local level. If no or insufficient comparables are available, the search area can be extended to the EU level and then to a global level.

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