

## Corporate Tax - Romania

### Intra-group transactions: a tax risk to be tackled by companies

Contributed by **Musat & Asociatii**

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The price for which physical goods and intangible properties are transferred or services are provided at the intra-group level is a problem facing most companies and multinationals operating in Romania, especially considering the increasing number of inspections conducted by tax authorities relating to transfer pricing.

The transfer pricing issue was extensively debated at a symposium entitled "Legal Requirements in the Field of Transfer Prices – Challenge or Opportunity?", which was attended by officials of the National Agency for Fiscal Administration (ANAF) and representatives of the Romanian business community, including leading delegates from the pharmaceutical, energy, financial services, fast-moving consumer goods and IT sectors.

In practice, the tax authorities may request the files for transfer prices during all types of tax inspection (eg, general tax inspections, value added tax reimbursement inspections and partial tax inspections). As a rule, they focus on taxpayers that have incurred fiscal losses and concluded transactions with group companies. Nevertheless, the tax authorities use a non-unitary interpretation with respect to the determination of prices at which transactions are concluded among affiliates. However, their open-mindedness in understanding the complexity of the practical difficulties and their concern for identifying solutions to simplify the control methodology is greatly appreciated by many. This is all the more important as the European Union shows particular interest in the relationships between companies from the same group and the manner in which the authorities in various EU member states analyse the aspects of such transactions to determine the correct market price.

The symposium discussions also pointed to key elements that should be taken into account by a business when performing a transaction with an affiliated undertaking, and highlighted the services that are usually monitored by the authorities. Namely, ANAF often checks:

- management and consultancy services supplied by the companies within the group (in particular, foreign corporations);
- IT activities;
- research and development or engineering provided by affiliates (especially when the Romanian subsidiary fulfils specific functions within the group and was set up for this particular purpose); and
- sales of goods and products in Romania to affiliated entities.

The obligation to prepare a transfer price file applies to:

- transactions of merchandise, raw materials, fixed or intangible assets and intra-group financing; and
- consultancy, management, IT and legal assistance services.

ANAF will determine the market price for transactions among affiliates by using one of the measures set forth in legislation:

- the price comparison method;
- the cost-plus method;
- the sale price method;
- the net margin method; or
- the profit-sharing method.

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