The tax rollercoaster

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Year 2014 commenced with contradictory new provisions in the tax field: on the up side, the long-awaited "holding regime" has been introduced while the previously mandatory cash-based VAT system has been modified and made optional (just in time to avoid an infringement from the EU Commission). On the down side, additional tax burdens were introduced: increases of the excise duties on fuel but also a new tax, the "pole tax". As covering all changes in the fiscal legislation would be a long story, we will briefly address only the high and the low of the ride.

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The high - the holding regime

After years of lobbying, the newly introduced holding provisions offer additional attractiveness to the local investment climate.

Under the new regime, subject to certain conditions, corporate tax exemption is available for certain income (dividends, sale of shares, liquidation of a Romanian entity) derived by investors (except companies not resident in "friendly" jurisdictions, i.e., with no Conventions for the avoidance of double taxation).

While the measure is certainly welcomed and long-awaited, some fine tuning is nevertheless required, as certain inconsistencies and negative effects have been noticed after the initial excitement has subsided.

On one hand, the profit obtained by investors from the alienation of shares in a Romanian company is now tax exempt; on the other hand, another (old) provision of the Fiscal Code qualifies the income obtained by non-residents from the sale of shares in real-estate companies as "real-estate income", not as income from the sale of shares, putting a question mark on the availability of the exemption in such cases. This seems to be rather a case of inconsistent implementation and not one of intentional exclusion, as taxation relief is available anyway under Conventions which do not have a so-called "real-estate clause" for capital gain purposes. As such, a real benefit would be obtained by investors solely if relief is provided under domestic legislation specifically in cases where shares in real-estate companies are alienated. Not to mention that the discrimination of non-resident investors selling shares in real-estate companies versus Romanian investors in the same position would be another infringement just waiting to happen.

The implementation of the holding regime also holds another surprise: while previously, dividend income received by a Romanian company from another Romanian company was not taxable (irrespective of the shareholding participation and/or holding period), starting 2014, such income is tax exempt only if the dividend beneficiary holds at least 10% of the shares for a period of minimum one year. This measure, deemed to encourage long-term, non-speculative investments, actually hits the small investors (companies), especially the stock exchange players, in a period when trading on the stock exchange is anyway anemic.

One can only hope that the required corrections will be made soon, so that the holding regime in Romania is indeed on a good path. Other measures would still be required in order to really make it functional and attractive, but this is a start.

Mihaela Pohaci

The low - the "pole tax"

The biggest surprise of last year has been, by far, the newly introduced tax on constructions, in force as of January 1, 2014. While other measures have been discussed, in greater or lesser details, with the business community prior to implementation, the tax on constructions has appeared virtually "out of the blue", making the hearts of CFO's everywhere skip a beat in the struggle to adjust their financial budgets.

Baptized almost immediately by tax advisors as the "pole tax", in reminiscence of past battles carried out in the early years of the Fiscal Code as to convince tax authorities that telecom poles are not buildings within the meaning of the local tax on building (and should not be subject to local tax), the newly introduced tax does just that: it levies on telecom poles, as well as on other constructions, a tax similar to the local tax. Although the "pole tax" is clearly not a local tax, one cannot help having a "deja-vu" feeling.

The present form of the legislation raises various concerns, starting with the catalogue based on which assets are classified as constructions for the purpose of this tax (catalogue dating back to 2005 and which is obsolete for certain modern day industries such as renewable energy), continuing with the application basis (gross book value of assets, which entails that differences in accounting standards and policies may lead to different results) and ending with the applicable rate (initial estimations prepared by the business community indicate that the 1.5% rate is too high for generating the target budget revenue desired). Add to that the lack of application norms, partial overlaps with local taxes due to inconsistent approaches of local tax authorities, as well as a rapidly approaching reporting and payment deadline of May 25 and you should have a fairly accurate image of the current status.

The business community has tried to bring implementation alternatives on the discussion table, aimed at correcting some of the drawbacks, such as: using fiscal values instead of accounting ones (since fiscal values are defined unitarily and exclude distortions caused by applying different accounting/reporting standards), using net fiscal values instead of gross values (as otherwise values which no longer exist would be taxed), as well as using a tax rate which is calibrated at achieving the desired budget revenues.

While initial reactions from the Ministry of Finance indicated that there may still be room for discussion in order to adjust the tax's effects and ensure a more level playing field among companies, the public declarations of the Minister of Finance seems to indicate that the tax on constructions is here to stay in its present form. At least for a year.

In this context, impacted companies should thoroughly review their accounting asset classification prior to submitting the 2013 financial statements, as any errors would generate undue burden and corrections throughout the year would not impact the tax due.

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