

Briefing

16 June 2017

New reporting obligations for multinational enterprise groups

The Government Emergency Ordinance no. 42/2017 amending Law no. 207/2015 regarding the Fiscal Procedure Code ("**GEO 42/2017**"), entered into force on 13 June 2017, transposes within the Romanian legislation the EU Directive 2016/881 which provides the mandatory automatic exchange of information from reports that multinational enterprise groups ("**MNE Groups**") must submit to the competent authorities in the Member State of the parent company.

Scope of GEO 42/2017. GEO 42/2017 imposes more transparency requirements aiming to respond to several practices of tax evasion and "aggressive" taxation planning, deriving from, among others, exploiting technical details existing in taxation regimes or inconsistencies between two or more taxation systems which reduce or avoid tax duties. Some negative consequences of these practices, which are addressed by GEO 42/2017, refer to: (i) double deductions, when the same expense is deducted both in the origin and residence states; (ii) double non-taxation, when incomes are excluded from taxation both in the origin and residence states of the beneficiary; (iii) transfers of profits subject to taxation to countries with a more favourable taxation system.

Subject entities. GEO 42/2017 details the conditions under which reporting obligations are imposed on certain companies, such as ultimate parent companies of MNE Groups having their tax residence in Romania, or companies appointed to submit the country-by-country report in the jurisdiction where they have their tax residence. MNE Groups that have a total consolidated group revenue of less than EUR 750 million in the year prior to the reporting taxation year are excluded from the obligation to submit country-by-country reports.

Information to be submitted. The country-by-country report shall contain two categories of information with respect to the MNE Group: (i) aggregate information relating to the amount of revenues, profit / loss prior to taxation, income tax paid, income tax accrued, stated capital, undistributed profit, number of employees, and tangible assets other than cash or cash equivalents for each jurisdiction in which the MNE Group operates; and (ii) an identification of each constituent entity of the MNE Group, including its tax residence jurisdiction and the one under which it is organised, as well as the nature of its main business activities.

Use of information from the country-by-country reports. According to GEO 42/2017, the information transferred between Member States is used by state authorities for: (i) evaluating high level risks corresponding to transfer prices; (ii) evaluating risks corresponding to the erosion of the taxation base and those corresponding to profit transfers, including the risk of non-compliance by the members of the MNE Group with the applicable rules concerning transfer prices; (iii) for statistic and economic analysis; (iv) as start for further investigations of in-advance price agreements of the MNE Group; (v) other tax aspects during tax controls. Adjustment of transfer prices by tax authorities from the recipient Member State cannot be based on the information which is exchanged through this mechanism.

Requirements for the mandatory automated exchange of information. The report for each reporting taxation year must be submitted within 12 months of the last day of the reporting taxation year of the MNE Group. The competent authority that receives the country-by-country report, through automatic exchange by electronic means and without any prior requests, shall transmit the report to any other Member State where at least one constituent entity of the MNE Group has its tax residence or is subject to taxation with respect to the business carried out through a permanent establishment. This transmission must take place within 15 months of the last day of the taxation year of the MNE Group to which the country-by-country report relates, except for the first country-by-country report corresponding to the taxation year beginning at 1 January 2016 or subsequently, in which case the term is extended to 18 months.



Sanctions for non-compliance. GEO 42/2017 sanctions late submission, submission of incorrect or incomplete information and failure to submit the country-by-country report by reporting entities with fines ranging between RON 30,000 and 100,000 (approx. EUR 6,580 and 21,930).

This material is for general information only and is not intended to provide legal advice. For further information on this topic please contact us at: office@volciucionescu.com. The Volciuc-Ionescu website can be accessed at www.volciucionescu.com.