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International Double Taxation Avoidance (Domestic Legal Regulations and Fiscal Conventions Concluded by Romania)

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Abstract. *The avoidance of double taxation has been firstly introduced in the Romanian legislation in 1973. Due to the permanent development of the economic, legal, social, etc. and global environment, Romania adapted accordingly her legal tax provisions in tax law area. One of the most relevant moments is the accession of Romanian into European Union. During pre- and after accession phase Romania has adopted the mandatory European fiscal legislation. Beeing member of EU, Romania has indirectly amended many of its double tax treaties sparing the long process of legislative amendments, including individual renegotiation and amendment with each of the contracting EU member states.*

Keywords: taxes; fiscal area; international double taxation; fiscal conventions; external fiscal credit.

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By exercising its sovereign right to impose taxes and duties, each state has regulated the issue of fiscal taxation not only for its own citizens but also for those persons (non-residents) who earn income on the territory of the state, occasionally or on a temporary basis.

The exclusive competence a state has in the fiscal area, based on which it is unrestricted with regard to establishing and collecting taxes and duties within its sovereign territory, is known as fiscal sovereignty. Thus, each state is free to establish and institute its own fiscal system, to define the taxes that make up that system, to state the tax subjects, to determine the taxation base, to set the tax quotas, to fix the payment deadlines, to grant tax reliefs, to establish fiscal sanctions, to determine means of appeal and the procedure for settling fiscal litigations etc.(1)

This way, non-residents can be taxed twice: once in the state where they earn incomes (other than their state of residence, also called source state) and the second time in their state of residence. Moreover, it is noticeable that, as a general principle, source states most often have the tendency to apply internal taxes on the incomes of non-residents earn in this state, therefore decreasing the taxable base of the state of residence.

Or, such situations, called "international double taxation"(2), are beneficial neither for those earning an income in a different state than their state of residence, nor for the states involved (the source state and the state of residence respectively). If they did not regulate this issue, the involved states would find themselves in a continuous conflict over their right to tax the incomes earned on their territory, over the protection that they must give to their own citizens who earn incomes in other states, and it would even brake the free development of commerce at global level.

At the same time, the developing integration in the world economy and the globalization affect the competition of taxation. This hinders the political decision maker to increase the fiscal obligations of the tax payers and has a positive impact because an efficient taxation system allows the state to provide public goods, to protect resources and to redistribute the income.

Even more than that, the investment decisions of international investors are influenced by the taxation systems. States are trying to attract foreign investments through preferential tax policies due to the need to develop their own economies through imported capital. The fiscal advantage granted by the state from which capital is imported can be eliminated by the state of residence of the investor or can lead to double taxation. Double tax exemption contains a competitive advantage and the vice-versa, and double taxation contains a competitive disadvantage for multinational companies or international investors.

Obviously, the elimination of fiscal barriers, the elimination of double taxation and the elimination of double non taxation, customs agreements, non-bureaucratic administrative solutions are the most important interdependent factors in increasing or decreasing the volume of transactions in different states.

This is the frame within which we analyse the permanent concern of the states, including Romania (1. Internal regulations; 2. Conventions concluded with other states), to avoid the international phenomenon of double taxation through juridical means, peaceful (treaties) using specific levers (3. The External Fiscal Credit). Further on, we present Romania's obligation, as a member state of the European Union, to comply with the community principle on the avoidance of the international double taxation (4).

1. The regulations regarding the avoidance of the phenomenon of double taxation in Romanian law

At the moment, the international double taxation institution is regulated by the Fiscal Code provisions[(3)], its Methodological Norms of Application[(4)], as well as the international treaties ratified by Romania.

For the purpose of avoiding the double taxation, Romania uses unilateral legislative measures, as well as the legal provisions included in the bilateral fiscal conventions concluded with other states.

These two sets of juridical norms have the same purpose, that is, the avoidance of the international double taxation. At first, the two sets of legislative measures seem to exclude each other, but in practice they seem to successfully function simultaneously.

From a chronological point of view, from the point of view of the moment when the different legislative measures on the avoidance of the international double taxation were adopted in the Romanian law, the unilateral measures have been the first juridical instruments used for this purpose. After 1973, the first fiscal conventions have been signed by Romania with different states.

The international phenomenon of double taxation means the existence of a fiscal report with extraneous elements. That is, due to the fact that the taxable subject (natural or legal person) is a non-resident, it would mean that it has to be taxed on Romanian territory according to the norms of taxation of its residence state.

From the point of view of the relation between the internal fiscal law and the international one, one has to mention that the provisions of the bilateral fiscal conventions agreed by Romania prevail over the internal legal provisions in case of a dispute.

In this respect, through dispute one understands the incorrect attribution of the taxation competence, meaning that more authorities invoke such a taxation competence. In practice, such a situation often appears because of the lack of correlation between the current internal legal provisions and the stipulations of the fiscal conventions concluded by Romania in time. The reason is that, in the majority of the cases, the legal norms regulated by the convention texts on the avoidance of the double taxation are dispositions and „lead to the taxation competence «arrogation» attempts through the retention at source by the fiscal authorities of both signatory states, while our doctrine and jurisprudence are extremely poor in this matter" (5).

Thus, according to the view(6) of the Romanian legislator and the national tax authorities, as a rule, all the incomes earned in Romania may and must be taxed in Romania, as a state of earning these incomes. Therefore, the withholding of a certain tax quota of all the incomes earned in Romania (interests, dividends, dues, commissions, etc.) by a non-resident shall be followed by granting a tax loan in the residence state of that income beneficiary. This way, the tax paid in Romania (under certain limits and conditions) shall be removed from the tax owed in the residence state." (7)

On the one hand, the Romanian Fiscal Code may be noticed to establish the priority of the conventions avoiding the double tax towards an internal law regulation, and, on the other hand, Romania has negotiated and distributed with each state the competence of taxing every income category, establishing, for instance, a maximum percentage quota of the withheld tax. By exception, if the non-resident person does not fulfil the requirements of applying the provisions of the convention concluded by his/her state with Romania, or such a convention does not exist, then only the source state (respectively Romania) may impose the income earned by the non-resident on its territory.

These principles are expressly stated by the art. 118 of the Romanian Fiscal Code, which establishes that: "... if a tax payer is resident in a country Romania has concluded a convention for avoiding the double tax with, regarding the income and capital taxes, the tax rate being applied to the taxable income earned by that tax payer from Romania may not exceed the rate provided by the convention, that shall be applied to that income. If the tax rates of the internal laws are more favourable than the ones from the conventions for avoiding the double tax, the more favourable tax rates shall apply. In order to apply the provisions of the convention avoiding the double tax, the non-resident must submit to the income payer, when earning the income, the tax residence certificate issued by the competent authority from his/her residence state." If the tax residence certificate is not submitted within this term, the Romanian Fiscal Code provisions shall apply, which means that the non-resident shall be taxed in Romania as a resident for the same income categories. But if the tax residence certificate is delayed, however within the five years' prescription term applicable for tax matters, from that moment the provision of the convention avoiding the double tax shall be applied and the tax regularization shall be carried out.

If tax withholdings exceeding the provisions of the convention for avoiding the double tax have been performed in Romania, the amount of the exceeding withheld tax may be reimbursed on the income beneficiary's, respectively the non-resident person's request, within the legal prescription term.

The tax residence certificate submitted during the year for which the payments are performed is also available for the first 60 calendar days of the next year, excepting the case of the residence conditions being changed.

Paraphrasing the previously mentioned legal stipulations we can deduce rules according to which non-residents of the states Romania has concluded avoidance of double taxation conventions can either explicitly claim for the tax rate stipulated in the respective convention or benefit of the most favourable rate, if the legislation of the source state provides a better rate than the one stipulated in the convention.

Under a practical view, if the non-resident person that earns taxable incomes in Romania chooses the tax rate stipulated in the convetion, he/she must provide the Romanian state a proof of residence of the stipulated state (state of residence). In this way, the latter will benefit of exclusive jurisdiction tax, including the income earned in Romania (as a source state). If, however, a more favourable rate is being chosen, instead of the one stipulated in the convention, then, after paying the tax, the non-resident person must request the Romanian state (source state) the release of a document that certifies the payment obligation of the tax in this state. We must accentuate the fact that it is not clearly stated in the above mentioned law text (art. 118 Fiscal Code) if the more favourable rate is automatically applied, and thus mandatory for the Romanian tax authorities, or if it must be solicited by the non-resident. Consequently, although the given disposition may seem imperative, it must be adjusted to the text of each convention. Therefore, fortifying the disposition art. 118 Fiscal Code with the principle of prioritization of international treaty in national laws, one can conclude that the convention text expresses an exclusive capacity and not an alternative to the state of residence (in general, by indicating the word „however"), the non-resident obtaining incomes in Romania cannot choose to apply for a more favourable rate. The statute law of Supreme Court of Justice also passes regarding this matter(8).

2 Conventions concluded by Romania with other states to avoid international double taxation

Although it is believed these sort of attempts have begun during early feudalism, great concerns regarding the ruling-out of international double taxation[9] are known from the beginning of our century, at the same time with the development of interstate merchandise exchange. [10]

The interstate bilateral or multilateral tax treaties have the objective[11] of reducing the disadvantages of double taxation. The effects of taxation by different tax treaties are described in the international taxation theory which distinguishes between the neutrality of imported capital ("NCI") and the neutrality of exported capital ("NCE"). The legal framework governing these concepts is composed of the Global Merchandise Organization's regulations (GMO), and of the community law dispositions, or included in the conventions model of avoiding the double taxation adopted to an international level.

By concluding the conventions[12] of avoiding double international taxation both contracting parties must agree upon a public international law obligation, namely, total or partial abdication of the imposition of certain materials. These conventions are subject to the rules of public internation law. Basically, the conclusion of international fiscal conventions represent the caryring out of fiscal sovereignity of a state to freely agree upon the fiscal sovereignity limits according to its own economical, fiscal, social interests.

So far Romania has concluded 83 tax conventions with the EU[13] members, as well as with third states, and usually uses the OECD Model-2005, or the UN Model. The favourite method for avoiding double taxation is that of ordinary crediting. There are also situations where the conventions derogate substantially from the OECD Model, such as the bilateral tax convention with the USA.[14] Within the convention, the two states pledged themselves that their respective authorities notify reciprocally as to: any amendments to the taxation laws mentioned in the convention, adopting any of the taxes mentioned or any amendments to the laws in force or adopting new laws in the field.

Also, different from other tax conventions, the tax convention with USA details the notion of "royalty" (whether it is "cultural royalty" [15] or "industrial royalty" [16] or "cultural and industrial royalties" [17]).

We can also find interesting positive right standards within the Convention between the Romanian and Moldavian Governments, to avoid double taxation and prevent tax evasion pertaining to income taxes and capital taxes.[18] Therefore, art. No. 20 of the convention prescribes seven years tax exemption[19] for the revenues of students and practitionners, that they use for education and professionnal training.

A brief analisys of the tax conventions to avoid double taxation concluded between Romania and other states reveals the fact that, usually, the incomes deriving from investments as capital contribution to companies set up in the source state or deriving from granting or transferring, in any form, such securities, is done by the state of residency.

Therefore, out of the 83 conventions concluded by Romania, approximately 60 provide taxation of capital gains within the state of residency of the beneficiary of the respective capital.

Within approximately 20 bilateral tax conventions (such as those concluded with Armenia, Australia, Austria, China, North Coreea, Croatia, Iceland, Israel, Malta, San Marino, France etc.) Romania acceded taxation, within the source state of the shares of a company residing in the source state, if the majority of the company's patrimony assets is formed by capital assets.

3. External tax credit

Romanian legislation regulates the ”tax credit” institutuion in favor of the Romanian citizens that make incomes abroad. In other words, the Romanian citizens can deduct the taxes already paid abroad, from the tax due in Romania, for some incomes made in a source state.

The tax credit institution was initially regulated by Government Ordinance no. 70/1994 regarding the income tax(20) and by the Law no. 32/1991 regarding the wages tax. (21)

At present, the legal framework of this institution is provided by art. 31 of the Tax Law (applicable to Romanian legal persons), and, respectively, art. 91 (applicable to resident natural persons).

The ”tax credit” provisions included in the afore-mentioned laws are also applied to fiscal rapports with extraneity elements as unilateral measure to avoid double taxation. (22) Thus, art. 31 of the Fiscal Code provides that “if a Romanian legal person obtains incomes from a foreign state through a permanent office or incomes subject to withholding tax and the incomes are taxed both in Romania and in the foreign state, the tax paid to the foreign state either directly(23) or indirectly by withholding and transfer by another person is deducted from the profit tax”.

The deduction for the taxes paid to a foreign state in a fiscal year cannot exceed the profit tax calculated by applying the profit tax quota of 16% to the taxable profit obtained in the foreign state or to the income obtained from the foreign state.

The condition imposed by the Romanian lawmaker for the application of deduction and the avoidance of double taxation is (i) presentation of documents that certify the payment of tax paid abroad and (ii) the existence, respectively, the application of a convention of avoidance of double taxation concluded by Romania and the foreign state concerned. This last condition has been recently introduced by amending art. 31 para. 3 of the Fiscal Code by the passage since 1st July 2010 of Emergency Ordinance no. 58/2010 for the amendment and supplementation of Law no. 571/2003 regarding the fiscal code and other fiscal financial measures.

The same rule also applies if the Romanian legal person obtains incomes from several states, and in this case the external fiscal credit is calculated by each source of income separately.

We must mention that the income deducted this way (credited) cannot be higher than the amount owed according to Romanian legislation (presently, the sole quota of 16%).

The application of the external fiscal credit generated certain questions in practice. First of all, it was questioned if for the application of provisions regarding the external credit, it implies the existence of a convention of avoidance of double taxation with the state in which the incomes were obtained and taxes were paid by the Romanian legal person.

Until 1st July 2010, Romanian legislation did not provide any express provision that imposes such a condition for the application of external fiscal credit, which led to the interpretation that this institution can be used independently from the existence of a fiscal bilateral convention and only by presenting the proof of having paid the tax abroad.

Starting from 1st July 2010, by the passage of the Emergency Ordinance no. 58/2010 for the amendment and supplementation of Law no. 571/2003 regarding the Fiscal Code and other fiscal financial measures, the condition of the existence of a convention of avoidance of double taxation concluded between Romania and the foreign state was expressly introduced in art. 91 para. 2 of Fiscal Code.

By this clarification, the Romanian lawmaker eliminated the possibility of different interpretations in case of application of external fiscal credit for legal persons of Romanian nationality, respectively the resident natural persons.

As for the resident natural persons, according to art. 91 of the Fiscal Code, for the same income and during the same taxable period, the taxpayers resident natural persons that are subject to income tax both on the territory of Romania and abroad, have the right to the deduction of the tax paid abroad from the income tax owed in Romania.

In order to grant foreign tax credit, the following conditions should be cumulatively fulfilled:

(a) the provisions of the double taxation avoidance convention concluded between Romania and the foreign State in which tax was paid;

(b) the tax paid abroad for the income earned abroad was effectively paid directly by the individual or his legal representative or by withholding by the payer of income. Foreign tax payment is proved by a justificatory document, issued by the competent authority of that foreign state;

(c) the income for which the tax credit is granted, is a part of the categories of income referred to in Art. 41

We point out still that if the resident taxpayer has paid a tax which is not regularized/taxed in Romania, then it cannot be inferred. For example, in Austria, taxpayers have paid tax on inheritance and donations until August 1st, 2008, when this tax was repealed. Another example is tax on income from the exercise of an option such as the Stock Option Plan, which is a non-taxable income in Romania.

As in the case of companies, the foreign tax credit is granted to resident individuals considering the tax paid abroad, but cannot be greater than the income tax due in Romania related to taxable income from abroad. In the situation that the taxpayer receives income from abroad in several countries, the foreign tax credit allowed to be deducted from payable tax in Romania will be calculated, according to the above procedure, for each country and each category of income. In the situation that the taxpayer pays tax rate higher than he would have paid in Romania for the same category of income, the difference also is not reimbursed.

After Romania joined the European Union, as defined in art. 124[(24)] of the Fiscal Code, for the income resulted from savings, obtained by the resident individuals in those Member States[(25)] that have specified the transition in art. 124 of the Fiscal Code, the double taxation elimination method is applied under art. 124, 2nd paragraph of the Fiscal Code.

4. Double taxation agreements in the context of Romania's EU accession

Once Romania joined the European Union, Romanian tax law had to take into consideration the EU tax law provisions. Thus, art. 293 of E.C.T. requires to Member States *"if necessary, to negotiate with each Member State the double taxation elimination within the Community for the benefit of their citizens."* From this article we can deduce that the Member States are free to choose, when necessary, the method to eliminate double taxation (by double taxation avoidance conventions or unilateral fiscal measures, etc.). The purpose of this provision is to ensure that international activities are not disadvantaged compared to the national ones. At the same time, neither discrimination, nor double taxation resulting from the transnational character of an operation can be tolerated on the Community internal market. This shows a significant difference of approach to countries that are not members of the EU (third countries).

Thus, according to the tax conventions on avoidance of double taxation concluded with these countries, Member States should take account of the internal market requirements regarding non-discrimination(26) and of the four freedoms(27) established by the EC Treaty. In other words, according to art. 10 (2) of the EC Treaty "*Member States shall refrain from any measure which could jeopardize the attainment of the objectives of this Treaty.*" Conclusion of a bilateral agreement with a third country containing provisions contrary to Community law would imply, without doubt, a breach by that Member State of its obligations deriving from the Treaty.

Likewise, we should highlight the subtle difference existent between the allocation of taxation powers, on the one hand, which pertain to the sovereign power of the Member States, and the exercise of taxation powers, on the other hand, according to which, whenever dealing with a responsibility of the Member States, the EC fundamental freedoms established by the Treaty should be complied with.

It is also important to stress out that in the tax field the objectives of the European Communities and of the Member States respectively have been and still are (within certain limits) different to some extent, fact that impacts on the distribution of powers. Thus, on the one hand, the objective(28) of the European Community to achieve an economic and monetary union and a common internal domestic market of the Member States, capable to ensure free movement of goods, persons, services and capital and the freedom of establishment is partly contrary to the responsibilities of Member States to meet the increasing public expenditures in areas such as health, education, defence, government and justice.

The circumstances above and the condition regarding elimination of fiscal barriers between Member States have called for elimination of import tax and for the refunding of taxes paid on exports (now called intra-Community acquisitions and deliveries). To facilitate the achievement of this objective, Community institutions are now enjoying almost full legislative and executive powers in the field of indirect taxes (VAT, excise duties, etc.).

If indirect taxation affects the domestic trade, direct taxes influence direct investment and free unrestricted and non-discriminatory movement, on the Community territory, of capital and labor. This is the reason why, at least for now, the issue of the conclusion of a convention on avoidance of double taxation regarding direct taxes between Member States was left at their choice, the Community legislative(29) efforts in this field being still in their infancy.

Romania's fiscal policy was concerned, during the pre-accession to EU period, about removing State aids, exemptions and exceptions from the payment of taxes and focused on providing a fiscal environment favorable to domestic and foreign investment, on supporting economic growth and fair competition and on providing transparency of budget revenues and expenditures.

Also, both in the pre-accession period and after acquiring the statute of Member State, Romania harmonized its national legislation with the Community legislation on direct taxes[30], and, as a consequence, implementing relevant Community directives, indirectly influenced as well the content of the conventions on avoidance of double taxation that it had already concluded with Member States.

Although Community law has a strong influence in matters of taxation, it may be noticed the further maintaining of fiscal sovereignty of Member States, which must observe, apart from the said Directives, only the Community principle concerning the removal of double taxation.

Notes

(1) See I. Condor, *Evitarea dublei impuneri internaţionale*, Editura Regia Autonomă „Monitorul Oficial", Bucureşti, 1999, p. 31.

(2) Double taxation can be defined as the taxing of the same income or good twice or several times, within the same financial operation. The juridical instrument most frequently used by states in fiscal juridical relations for the elimination or limitation of international double taxation are the conventions for avoiding double taxation. Double taxation can be of two types: economic double taxation and juridical double taxation. Economic double taxation_represents the taxing of a taxable income to two or more taxes in favour of the same authority or of different public authorities, during the same fiscal year. A common example of double taxation would be the taxing of the profit of a commercial entity and then the taxing once more of this amount by taxing the dividends distributed to associates/shareholders. Juridical double taxation_ represents the phenomenon of taxing the income of a person once or several times, in the same state or in different states.

(3) According to Law no. 571/2003 on the Fiscal Code, OG no. 927 from Dec 23, 2003, as further amended and completed.

(4) See GD no. 1860/2006, OG no. 1044 from Dec. 24, 2006, as further amended and completed.

(5) See R. Bufan, *Taxation of extranous operations (I),* Revista de Drept Comercial no. 1/2005.

6) According to Art. 1 paragraph 3 of the Fiscal Code states that "*On fiscal matters, the provisions of this code are above all any other provisions of legislative acts, in case of*

conflict between these, the Fiscal Code provisions being applied", and the paragraph 4 of the same article states that „*if any provision of this code is against a provision of a treaty Romania is part of, the provision of that treaty shall be applied*."

(7) According to R. Bufan, M. Minea, Codul fiscal comentat, Editura Wolters Kluwer, 2008, p. 604.

(8) *For further information access www.iccj.ro**:** Supreme Court, administrative section, Decizia nr. 919 of March 7, 2003, I.C.C.J. administrative department, Decizia nr. 2323/2001 etc.*

(9) *The international double taxation occurs when a person is unlimited imposed to a tax obligation on the territory of two states.*

(10) According to I. Condor- op.cit.

(11) *Specifically this implies: protection against the risk of double taxation of taxable income in two states, the fight against tax evasion practices, supporting the safety of international trade treatment; warning of tax discrimination between international contributors, etc.*

(12) *Conventions for avoiding international double taxations may be subject to income taxes and/or wealth (capital).*

(13) Except for Lichtenstein.

(14) Convention between the Government of the Socialist Republic of Romania and the United States of America Government regarding the avoidance of double taxation and preventing tax evasion, B. Of. no. 168 from 28.12.1974.

(15) "Cultural royalties" are any form of payments made for the usage or for the right to use copyrights with regard to literary, artistic or scientific works, including the copyrights for movies or films or recorded tapes used for radio or television shows.

(16) "Industrial royalties" are any kind of payments made for the usage or for the right to use patents, drawings, models, designs, procedures or secret formulas, brands or any other similar property or rights, or for knowledge, experience, know-how.

(17) "Cultural and industrial royalties" include profits from selling, exchanging or any other means of using any such rights or properties, up to the limit where the incomes from such sales, exchange or any other way of using them are conditioned by productivity, usage or disposition of such rights or properties.

(18) Published in the Official Gazette, Part I No. 127 from 23.06.1995

(19) This category includes: a) payments received from sources outside the contractual state, for maintainance, education, research and training; (b) donations, scholarships or other payments made by the Government or scientiffic, educational, cultural organisations or by other non-profit organisations.

(20) Republished in OG no. 40 from 12.03.1997.

(21) Republished in OG no. 185 from 12.08.1996.

(22) For further information concerning the tax credit in the light of GO no. 70/1997, see I. Condor, *Impozitele, taxele şi contribuţiile datorate de persoanele juridice*, Tribuna Economică, 1998, pp. 49-50.

(23) Direct taxes are the taxes that are established and paid in a direct relation between the public authority and a certain taxpayer, such as the income tax, the wages tax or the tax on income from independent activities, etc.
The indirect taxes are levied with the circulation of goods, service provision, the provision of certain forms of consumption in general (VAT, excise duties, etc.)

(24) That is Austria, Belgium and Luxemburg.

(25) TCE – European Community Traty, in its revised version adopted in Nice, see www.europe.eu.int.

(26) Article 2 of the EC Treaty provides that any discrimination on the grounds of nationality is prohibited.

(27) Article 39 of the EC Treaty stipulates that the freedom of movement for workers shall be secured within the Community, such freedom entailing the abolition of any discrimination based on nationality. Article 43 prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. Article 294 requires the Member States to accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms.

(28) For further details on the EU tax policy see R. Bufan, M. Minea, Codul fiscal comentat, Editura Wolters Kluwer, 2008, p. 60.

(29) In terms of direct taxes the following Community acts have been adopted: Directive No. 90/435/EEC of 23 July 1990 on the common fiscal regime applicable to parent companies and subsidiaries located in different Member States; Directive No. 90/434/EEC of 23 July 1990 on the common fiscal regime applicable to mergers, divisions and contributions to the formation of a company; Directive No. 2003/48/EC of 26 June 2003 on taxation of savings income in the form of interest payments; Directive No. 2003/49/EC of 26 June 2003 on the fiscal regime applicable to interest and royalty payments between associated companies in different Member States – Romania has agreed a transition period of four years, effective of 1 January 2007; Code of conduct for Business Taxation, of 3 June 2003 – a non-binding document, having as purpose to remove harmful tax competition existing between Member States; Code of Conduct on transfer pricing, Recommendation No. 94/79/EC of 21 December 1993 on the taxation of certain items of income received by non-residents in a Member State other than that in which they are residents of 29 December 1994; Recommendation No. 94/390 of 25 May 1994 concerning the taxation of small and medium-sized enterprises of 9 July 1994.

(30) By implementing in the Fiscal Code the acts adopted at Community level.

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