

A large, blue, 3D geometric pattern of interconnected cubes and lines forms a spherical structure in the background of the top half of the page.

Romania

Taxation

FUNDS AND FUND MANAGEMENT 2010

3.1 Taxation of funds

There are two main categories of collective investment undertakings regulated by the applicable Romanian legislation:

Undertakings for collective investment in transferable securities (OPCVM) whose units should be, at the request of shareholders, re-purchased, or redeemed out of the undertakings' assets; OPCVM's can be organized as the following:

- Open-ended investment funds
- (Open-ended) investment companies

Other (closed-end) collective investment undertakings (AOPC); AOPC's can generally function in two distinctive structures:

- Closed-end investment funds, based on civil contracts, which have to redeem units at pre-determined intervals or at certain dates, according to their instruments of incorporation; but note that this structure is not commonplace in Romania.
- Closed-end investment companies, based on instruments of incorporation, which issue a limited number of shares and are listed on the market.

Open-ended investment funds (OPCVM's) and closed-end investment funds (AOPC's) which are not established as legal entities are not subject to taxation on their income.

(Open-ended) investment companies (OPCVM's) and closed-end investment companies, organized as joint-stock companies, are subject to corporate tax at the standard rate of 16 percent on their taxable profit (which includes capital gains), the same taxation treatment applicable to any Romanian company.

3.2 Taxation of resident unitholders/investors in a resident fund

Individual investors

Capital gains on disposal of investments

The Romanian fiscal code provides for different tax rules concerning capital gains obtained by individual investors depending upon whether the investments consist of holdings in closed companies or in entities other than closed companies. The term closed companies has not been fully clarified but our understanding is that it refers to companies not listed on a regulated stock exchange.

Capital gains on disposal of securities other than shares in closed companies

Individual investors are subject to different rates of tax upon sale or redemption of their securities, other than shares in closed companies, depending on the duration of their holding of the investment:

- A 16 percent tax rate applies to capital gains derived from the redemption or sale of the securities if the holding period is less than 365 days.
- A 1 percent tax rate applies to capital gains derived from the redemption or sale of the securities if the holding period is longer than or equal to 365 days.

The taxable gain or loss is computed as the positive or negative difference between the redemption price/sale proceeds and the investor's initial subscription price/purchase price, less any transaction-related costs (such as broker fees).

Redemption of securities held by an individual investor in an open-ended will be based on the F.I.F.O. method.

Irrespective of the duration of the holding period, the gain derived from each disposal is initially subject to a 1 percent withholding tax. This tax represents an advance payment for the individual's annual tax liability and needs to be withheld by the paying agent at the moment of each transaction and remitted to the state budget by the 25th of the month following the one of redemption/transaction. In case of transactions in fund units, the paying agent is considered to be the fund management company.

For the annual income tax purposes, it is possible to offset losses on transactions with securities other than shares in closed companies against profits on other transactions only if the holding period is the same (that is, losses on disposal of securities held for less than 365 days may be offset only

against profits on disposal of securities held for less than 365 days). Starting with the annual loss of 2010, if, after offsetting the capital losses incurred as a result of transactions with securities other than shares in closed companies, against gains of the same nature, individual investors derive an annual loss, they will have the possibility to carry forward these capital losses for the following fiscal year only (the annual loss recorded in 2009 will however not be carried forward).

The individual investor must file an annual return to declare the gains derived from the transactions carried out during the entire year. This document allows the tax authorities to establish the capital gains tax due, and to determine if the individual investor has liability to make further payments, or if there are amounts to be reimbursed to the individual investor, taking into account the tax withheld as advance payment.

Capital gains on disposal of shares in closed companies

Capital gains realized upon disposal of shares in closed companies, are subject tax at the rate of 16 percent, in this case the tax being final. The tax needs to be withheld by the person acquiring the shares in a closed company at the moment of the transaction and remitted to the state budget by the date when the documents for the registration of the transaction are filed with the Trade Registry or with the register entity keeping the shareholders register for the closed company.

The capital gain or loss is computed as the positive or negative difference between the sale proceeds and the investor's initial purchase price, less any transaction-related costs (such as, broker fees). The purchase price used for the computation of tax on capital gain derived from transactions with shares in closed companies is established using the weighted average price method. Losses on transactions with shares in closed companies cannot be offset against profits from other (similar) transactions.

Dividend income

The payment of dividends to individual shareholders of open-ended investment companies or closed-end investment companies is subject to the same tax treatment as the payment of dividends by any other legal entity. Upon distribution of dividends to a Romanian individual investor a withholding tax rate of 16 percent applies. This tax must be withheld by either the managing company of the investment company (if any) or by the company itself and is a final tax not subject to further taxation for the individual investor.

The due date for the payment of the withholding tax on dividends is the 25th of the month following the month when it was withheld. In case of dividends distributed but not yet paid to the individual shareholders by the end of the year

during which the annual financial statements were approved, the deadline for the payment of dividend tax is 25 January of such year.

If the prospectus of a closed-end fund provides for distributions to be made by the fund to its investors, then distributions made to individual investors would qualify as dividends for individual income tax purposes, and a withholding tax rate of 16 percent applies. The tax must be withheld by the managing company of the fund, if the fund has concluded a management agreement with such managing company or, otherwise, by the fund itself. The tax is payable by the 25th of the month following the month in which the distribution is made.

Companies

Capital gains on disposal of investments

In principle, unrealized gains recognized in the income statement on investments (including investments in open-ended and closed-end investment undertakings) are non-taxable (equivalent losses are not deductible) if according to the applicable accounting rules the investments are marked-to-market by the investor and the differences are recorded via its profit and loss account. Gains or losses are recognized for tax purposes on a realization (cash) basis, that is, at the moment of disposal of fund units or shares. In all cases, capital gains are subject to the regular corporate tax of 16 percent (please note that a tax holiday existed in the year 2009).

Dividend income

For dividends paid by open-ended and closed-end investment undertakings that are incorporated as legal entities to Romanian legal entity investors, as well as to Romanian open-ended funds, a withholding tax rate of 10 percent on the gross amount is applicable, except when a minimum investment of 10 percent of the capital of the open-ended or closed-end investment company is held by the investor for an uninterrupted period of at least two years, in which case dividend tax is reduced to nil. Dividends distributed to a Romanian legal entity are not further taxed at the level of the Romanian legal entity receiving the dividends, and no credit is granted to the legal entity in respect of the 10 percent tax withheld.

The due date for the payment of the withholding tax on dividends is the 25th of the month following the month when it was withheld. In case of dividends distributed but not yet paid to the shareholders by the end of the year during which the annual financial statements were approved, the deadline for the payment of dividend tax is 25 January of such year.

If the prospectus of a closed-end fund which is not incorporated as a legal entity provides for distributions to be made by the fund to its investors, then distributions made to corporate investors would qualify as taxable revenues for

the receiving company and taxed at the standard tax rate of 16 percent (such distributions are not however subject to withholding tax at the level of the distributing entity).

3.4 Taxation of a resident unitholder/investor in a non-resident fund

Individual investors

Taxation of individual investors in a non-resident fund is similar to the taxation of investments in resident funds described at point 3.2 above (that is, the Romanian resident will be liable to a tax of 16 percent or 1 percent applicable on the gains derived from the redemption or sale of the securities, depending on the holding period). However, a Romanian tax credit is available in respect of non-Romanian taxes suffered, but this credit may not exceed the Romanian tax due.

Companies

Taxation of Romanian companies investing in a non-resident fund is similar to the taxation of investments in resident funds described at point 3.2 above, except for dividend income that is included in the taxable income of the receiving company and subject to corporate profit tax at a rate of 16 percent. Any foreign tax suffered on such income may generally be deducted from the Romanian tax, by way of a tax credit.

3.4 Taxation of non-resident unitholder/investor in a resident fund

Capital gains on disposal of investments

Non-residents (both individual investors and companies) deriving income from trading on foreign capital markets in securities issued by Romanian residents are not subject to tax in Romania.

The taxation of non-resident investors, both individuals and companies, in an investment undertaking which is incorporated as a legal entity in Romania (open-ended investment company or closed-end investment company) is similar to the taxation of similar investments made by resident investors described at point 3.2 above. Depending upon the tax residence of the investor it is possible that Tax Treaty relief may apply to bring the tax down to 0 percent.

Capital gains tax exemption

Capital gains derived from the transfer of securities held in a Romanian legal entity (including open-ended investment companies and closed-end investment companies or which is a Romanian open-ended fund), earned by non-resident collective investment undertakings not established as legal entities (that is, open-ended investment funds), are not subject to tax in Romania. This tax exemption was expressly stated in the law as of 1 January 2009.

Dividend income

As a general rule, a 16 percent withholding tax is due upon payments of dividends distributed by Romanian companies to non-residents.

Nevertheless, the domestic tax on dividends distributed by Romanian companies (whether open-ended investment companies or close-end investment companies) to companies which are resident of an EU Member State or of a European Free Trade Association (EFTA) Member State has been reduced from 16 percent to 10 percent as of 1 January 2009.

Moreover, under the provisions of the Parent-Subsidiary Directive, dividend payments are exempt from Romanian withholding tax if the recipient company resident of an EU Member State has held at least 10 percent of the share capital of the Romanian distributing company continuously for at least two years.

The domestic tax rate may be reduced further, subject to the applicability of a double tax treaty (see also section 3.7 below).

3.5 Taxation of fund management/custodian companies

Management and custodian companies are generally organized as joint stock companies. The current corporate income tax rate for joint stock companies is 16 percent.

An offshore management company is not subject to Romanian taxation on incomes earned outside Romania unless and to the extent that the incomes are derived via a Romanian permanent establishment.

To the extent that an offshore management company earns fees from Romanian customers, potentially it is liable to a 16 percent withholding tax on service fees payable. Such withholding tax is not due to the extent that the fees are attributable to a Romanian permanent establishment of the management company (in which case profit related to the fees is taxed at 16 percent) or to the extent that the management company is tax resident in a

jurisdiction, which benefits from double tax treaty protection in the case of such tax.

3.7 Double tax treaties

Distributions made by non-resident collective investment undertakings to Romanian residents and by Romanian collective investment undertakings to foreign residents may benefit from the provisions of the relevant double tax treaty (if more favorable than the domestic legislation).

However, for distributions made by Romanian collective investment undertakings to non-residents, this is subject to submission to the Romanian tax authorities of a certificate of fiscal residence of the foreign investor confirming that it is a resident of the respective country for tax purposes and that the provisions of the treaty concluded between Romania and the respective country are therefore applicable to it.

Romania has concluded approximately 80 double tax treaties with various countries.

3.8 Other tax-favored vehicles

Currently there are no specific incentives granted for the investments made through Romanian collective investment undertakings.

3.9 Transfer taxes, stamp duty, and capital duty

Generally, a tax is payable on the purchase or sale of shares traded on a securities market (Bucharest Stock Exchange), at flat rate of 0.08 percent of the value of the transacted securities, payable to the National Securities Commission (NSC). This tax is payable by the purchaser. Also, there is an annual tax to be paid to the NSC, amounting to 0.1 percent of the value of the net assets of the investment fund (including open-ended and closed-ended funds).

3.10 Value-added tax (VAT)

For Romanian VAT purposes, a Romanian collective investment undertaking is generally viewed as engaged in exempt financial services and is therefore not subject to VAT.

The management of a collective investment undertaking is a VAT exempt operation. Services of depositaries, in relation to the assets of a collective investment undertaking are not however, exempt from VAT, in line with the conclusions of the European Court of Justice (ECJ) Decision no. C-169/04 Abbey National.

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