



Appendix I

February 2010

Tax policy recommendations

The consultation process which should be initiated by the authorities is important as it enables the strengthening of the tax strategy and law, to meet the needs of both the authorities and the business communities.

In recent months the business environment has been witnessing a slow-down in the consultations between the Ministry of Public Finance and the representatives of the business community, with tax laws passed under emergency procedure and without observing Law 52/2003 governing decision-making transparency.

Propositions from the business community members, though constantly considering both the requirements arising from Romania's tax strategy and the businesses' need for development, have been disregarded.

In light of the above, the following bodies

- Romanian Association of Business Persons (AOAR),
- British Romanian Chamber of Commerce (BRCC),
- American Chamber of Commerce in Romania (AmCham Romania),
- Romanian-German Chamber of Commerce and Industry (AHK),
- Foreign Investors Council (FIC),
- The Netherlands – Romanian Chamber of Commerce, Industry and Agriculture (NRCC),

standing for over 1300 Romanian and foreign-participation businesses, joined under a common initiative, have proceeded to the in-depth analysis of the tax provisions in force in Romania. The outcome of the analysis translates into a series of 10 propositions aimed at improving the tax strategy and law in Romania, as detailed below.

1. Maintaining the flat tax rate system, removing all taxes and levies which distort this system and curbing para-fiscality

We appreciate the positive impact of the flat rate in the economy both on taxpayers – with more resources available for investment – and on the state – with a streamlined tax collection. Therefore we believe this measure should be maintained.

Also, it is worth mentioning the initiative of the Government aimed at supporting the business environment by pledging to remove or merge 189 para-fiscal taxes and levies. We believe this initiative should be carried on by identifying and removing other taxes and levies which distort the tax system.

2. Ensuring consistency between the Methodology instructions and the Tax code provisions by removing from the Methodology the provisions which exceed the Tax code

At present the Methodology instructions contain provisions which either exceed or conflict the Tax code regulations. This discrepancy causes difficulties for taxpayers and tax authorities in implementing the Tax code and breaches the legal principle according to which a methodology instruction cannot exceed the law.

Therefore we request that any such provisions be removed / amended.

3. Modernising the Fiscal Procedural Code and harmonising with the Fiscal Code provisions

In the last 5 years of existence of the Fiscal Procedural Code, there were noticed deficiencies and mismatches in the procedural-fiscal legislation, as well as non correlations of its dispositions with those of the procedural-fiscal legislation, reason for which we are of the opinion that it is necessary to amend and update the legislation, by means of:

- Assuring a better correlation of the procedural-fiscal legislation with the fiscal legislation and excluding in time, the procedural provisions from the Fiscal Code and including them in the Fiscal Procedural Code and in the secondary procedural-fiscal legislation;
- Modernising and simplifying the declaration and payment procedures for tax liabilities
- Amending the procedural-fiscal legislation regarding fiscal inspection, in order to ensure the rights stipulated in present for taxpayer, through abolishing the possibility of suspension without a given term of the fiscal inspection or the unjustified delays of the maximum legal terms of performing fiscal inspections.
- Regulating the option of taxpayers to offset directly overpaid or reimbursable taxes against other tax liabilities. At present, pursuant to art. 116 of the Fiscal procedural code offset is carried out by the tax authorities, at the request of taxpayers; this is a lengthy procedure which affects the businesses' cash-flow and resources;
- Clarifying and simplifying procedures for declaration and payment of the withholding tax payable on income derived by non-resident individuals, as well as the procedures for non-residents' tax registration.

4. Modernising tax administration and improving tax collection

In order to ensure efficient tax collection to the state budget, we propose that tax administration be modernised, and that the tax administration capacity be enhanced, by means of:

- Reform of the tax inspection and tax audit structures subordinated to ANAF (tax inspection, unit fighting economic crime unit (=Romanian garda financiara), anti-fraud and customs surveillance), by eliminating duplication of efforts in checking taxpayers, as well as variation in interpreting and enforcing tax laws; excluding the competences of the economic crime unit (Garda Financiara) related to fiscal inspection, as well as abolishing the current system of solving reimbursement requests of the excise duties, by splitting the competences of performing the operations that these processes imply between the customs authorities and fiscal authorities. The current procedure that implies significant and unjustified delays in the solving period.
- Improvement of the IT system within ANAF agency; in order to eliminate the practical deficiencies in fiscal administration, improvement of the functioning mechanism of the sole treasury account, as well as rethinking and restructuring the concept related to fiscal statement (fisa fiscala) of the taxpayer.
- Unfreezing the mechanism for issuance of advance individual tax rulings and / or advance pricing arrangements, in observance of the deadlines allowed as under the law;
- Observance of legal deadlines allowed for processing and answering refund claims, as well as of other requests submitted by the taxpayers to the fiscal authorities;

5. Amending the law to allow taxpayers to choose their tax year in conjunction with the accounting year; this may differ from a calendar year

Implementing the laws which would enable businesses to choose their own tax year in conjunction with the accounting year is a must as this would lead to improved tax collection and simplified tax administration apparatus. To the business environment, such a step would enhance tax planning, while allowing the even allocation of employee efforts throughout a calendar year, with an immediate positive impact on cost-effectiveness. To Romania, having such regulations in place would enhance its European integration and compatibility with the EU economies.

6. VAT grouping and simplification measures pertaining to VAT payment

The VAT grouping was implemented early 2007 as an option available to major taxpayers. This was a positive step towards a simplified tax administration of related parties. However, in practice only a few companies fall under the major taxpayer category. The VAT grouping should treat as outside the VAT scope the operations between group member firms, as well as widen the scope of the tax regulations governing VAT grouping to include all categories of taxpayers, as in force in other EU member-states (e.g. Belgium, Germany).

Simplification measures (reverse charge) pertaining to VAT should be (re)implemented as VAT pre-financing is a heavy burden on investors. In most EU member-states, e.g. Austria, Belgium, The Netherlands, Italy, Ireland and Luxembourg etc. the reverse charge mechanism is in place.

Simplification measures (reverse charge) pertaining to VAT payment proved their positive impact on the growth of the business environment in 2007, so renouncing them would only put a brake on Romania's economic growth. Therefore we request that the former provisions of the Tax code pertaining to VAT payment simplification measures be re-enacted under emergency procedure.

7. Review of secondary legislation governing excise duties with a view to harmonising it with the Community and the national Fiscal code regulations

Council Directive 118/2008 on the general arrangements for excise duty has been transposed in the national law, with the new regulations – approved under Emergency Ordinance 109/2009 – to enter into force on 1 April 2010. It is only natural for the appropriate amendment of the secondary legislation to be the next step.

At present, the Methodology instructions include provisions which hamper or preclude altogether the application of the Fiscal code regulations, particularly when it comes to the procedure regulating excise duty exemptions and the excise duty reimbursement procedure. The methods of applying payment exemption of the customs duties are unclear, because of the present confusion caused by the rules governing excise duty-exempt supplies and those governing supplies under excise-duty suspension arrangements.

Given that the issues above, we propose the review of the secondary legislation governing excise duties, by means of structuring and unifying the provisions now included in several items of law (Governmental Decisions, Finance Minister orders, ANAF chairman orders), so that the new methodology instructing on the application of the excise duty-related section of the Fiscal code becomes a user-friendly tool for both the civil service officers having administration and inspection duties and for the taxpayers whose businesses involve excisable products. In the same time, the provisions from the Methodology instructions that extend the scope of the rules governing the movement of excisable goods under duty suspension arrangements so as to include the supplies under excise-duty exemption arrangements should be removed.

8. Removing provisions which discriminate between resident and non-resident taxpayers

We propose that provisions which discriminate between resident and non-resident taxpayers be removed, as they may lead to infringements on the freedoms stipulated in the Community laws, pursuant to cases solved by the European Court of Justice. We highlight such examples:

- Pursuant to national law, dividends paid to Romanian companies by other Romanian companies are treated as non-taxable revenues, irrespective of the shareholder's stake, whereas dividends paid to a Romanian company by a non-resident are subject to 16% tax in Romania.
- Pursuant to the Tax code, if a Romanian company has a working unit in Romania, the latter will be treated as part of the company, therefore incurred losses will be offset against the profit of the Romanian company. At the same time, if a Romanian company has a permanent establishment in another EU member-state and incurs losses, the losses cannot be deducted from the profit derived in Romania.
- In Romania withholding tax is levied on the gross interest income paid to non-residents, whereas profit (net gain) is taxed in the case of resident companies.

9. Lower social security contributions, capped taxable base and enacting social security contributions in the Tax code

Considering the beneficial effects of the flat tax rate mentioned above, we appreciate that the reduction of social security contributions together with a cap on the taxable base of such contributions could be equally successful, which would translate into higher revenues for the various social security budgets.

For purposes of simplified and uniform legislation, a special chapter dealing with social security contributions should be inserted in the Tax code.

10. Introducing tax concepts which are not regulated at present

▪ Developing and promoting legislation pertaining to holdings in Romania

This would involve:

- Defining the holding concept for commercial and tax purposes
- Setting specific tax regulations on the tax treatment of dividends and capital gains of holdings
- Inserting provisions in Law 31/1990 and in the Tax code to allow the distribution of advance payments to shareholders, counting towards dividend payment, before the approval of the yearly balance sheet
- Identifying a specific tax treatment for advance pay counting towards dividend payment

▪ Introducing the tax consolidation option for profit tax purposes

Introducing tax consolidation for profit tax purposes would involve offsetting the fiscal losses incurred by some group-member companies against the profits of other group members and would imply the consolidated calculation, reporting and payment of profit tax at the group level.

▪ Tax on capital gain

Tax on capital gain is one of the taxes not specifically regulated under the Tax code. For purposes of uniform calculation, declaration and payment of the **tax on capital gain**, as well as the tax registration for capital gain tax purposes, we recommend that a new chapter be inserted in the Tax code, by merging provisions on taxation of capital gain from Headings II, III and V into a distinct chapter or heading of the Tax code. Such a distinct chapter could stipulate, among others:

- i. the definition of capital gain (by reference to a definition which could be inserted in Heading I), the list of capital gains subject to taxation in Romania,
- ii. reduced tax rate on capital gains derived from trade in unlisted securities and stock in limited liability companies, providing that that such shareholding lasts for minimum 365 days, (with the actual reduced rate and the qualifying requirements to be determined) aimed at stimulating long-term private investments and non discrimination compared to investments on the regulated capital market.