



Mazars US tax desk update

Transfer pricing and DAC 6 obligations for US multinationals in Romania

Transfer pricing (TP) has been a hot topic for the Romanian Tax Authorities (RTA) in the last 10 years. The number of TP audits has gradually increased during this period together with the amount of additional corporate tax assessed by RTA.

One of the main areas of TP dispute between the RTA and multinational groups in Romania is the requirement to prepare local benchmark studies, in addition to the EU/Pan-European benchmarks that are usually prepared by multinationals to cover European operations.

A common feature of the RTA approach is to deny operating losses registered by group companies, even in cases where the losses may have been generated by difficult economic conditions.

As Romania is not yet an OECD member, the provisions of the OECD TP Guidelines are subject to excessive interpretation by the RTA which may lead to disputes.

Here are some aspects US multinationals operating in Romania should analyse to ensure local compliance:

1. Newly established companies

We recommend new US companies review their TP methodology in respect of Romanian rules, before starting local operations. The analysis should focus on the TP method used, cost base applied, or the benchmark study used as a reference to set the mark-up.

The review should be a priority for companies that carry out transactions only with the group.

2. Companies that have not been subject to tax or TP audits

We recommend that US companies that have not yet been subject to tax or TP audit in Romania, review their tax liability and TP policy/documentation from a local perspective. The review will help identify and mitigate potential risk areas.

3. Transfer pricing report

US companies that perform transactions with related parties are obliged to prepare the transfer price file, depending on the value of the transactions, as follows.

Thresholds	Taxpayers	Deadline for presenting
<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">EUR 350,000 (without VAT) for acquisitions/sale of tangible or intangible goods</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">EUR 250,000 (without VAT) for provision of services</div> <div style="border: 1px solid black; padding: 2px;">EUR 200,000 (without VAT) or interest registered for financial services</div>	<div style="border: 1px solid black; padding: 5px;">Large taxpayers (Transfer pricing file due by 25 March). The deadline for submission of the corporate income tax return (D101) is usually 25 March for financial years ending 31 December.</div>	<div style="border: 1px solid black; padding: 5px; text-align: center;">10 days</div>
<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">EUR 100,000 (without VAT) for acquisitions/sale of tangible or intangible goods</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">EUR 50,000 (without VAT) for provision of services</div> <div style="border: 1px solid black; padding: 2px;">EUR 50,000 (without VAT) or interest registered for financial services</div>	<div style="border: 1px solid black; padding: 5px;">Large taxpayers and medium/small taxpayers</div>	<div style="border: 1px solid black; padding: 5px; text-align: center;">30-60 days with possibility of 30 days extension</div>

In Romania, the TP report must include the information from both the Local File and Masterfile documentation.

4. Local benchmark studies

Benchmarking studies are the critical part of any transfer pricing documentation file or policy.

The Romanian TP legislation specifically provides that the benchmarking studies must be first prepared on the Romanian market. Only if no local comparables are found the geographic criteria can be extended to the European Union level, Pan-European and Worldwide level.

Benchmark studies should be updated on an annual basis to reassess the impact of local market conditions on companies' profitability.

5. CbC reporting

Following the implementation of the provisions of EU Directive 2016/881 in the Romanian legislation, US companies who are part of Multinational Enterprise (MNE) Group with total consolidated income exceeding the threshold of €750 million have Country-by-Country (CbC) reporting obligations in Romania.

If the Romanian taxpayer is a constituent entity, it is obliged to submit the CbC notification. and if the Romanian company is a reporting entity, it must submit the CbC report.

If the Group submits the CbC report in the US or jurisdictions outside the EU, the Romanian company must require the report in Romania.

The following penalties are applicable:

- For failing to submit the CbC report, the penalty ranges from approx. USD 17,000 to approx. USD 24,000;
- For late or incomplete filing of the CbC report, the penalty ranges from approx. USD 7,200 to approx. USD 12,000.

6. APA

US companies that carry out transactions with affiliated companies can apply for an Advance Pricing Agreement (APA).

The APA can be concluded between the taxpayer and the Romanian tax authorities (unilateral) or between both related parties and other tax authorities (bilateral or multilateral). The deadline for a unilateral APA is 12 months while the one for bilateral APA is 24 months.

The APA is granted for a future period of maximum 5 years or longer depending on the terms of the contract. There is no possibility of roll-back.

To access the APA program, the taxpayers should pay a fee of:

- For large taxpayers and other categories of taxpayers who register a consolidated value of the transactions included in the agreement of more than approx. USD 4,755,000, the fee is approx. USD 23,700. If the advance pricing agreement is modified, the fee is approx. USD 17,800.
- For the taxpayers who register a consolidated value of the transactions included in the agreement of less than approx. USD 4,755,000 the fee is approx. USD 11,800. If the advance pricing agreement is modified, the fee is approx. USD 7,100.

Any US company that performs transactions with related parties can apply for an APA. However, based on our practice, the APA is highly recommended to eliminate the risk of local TP adjustments for:

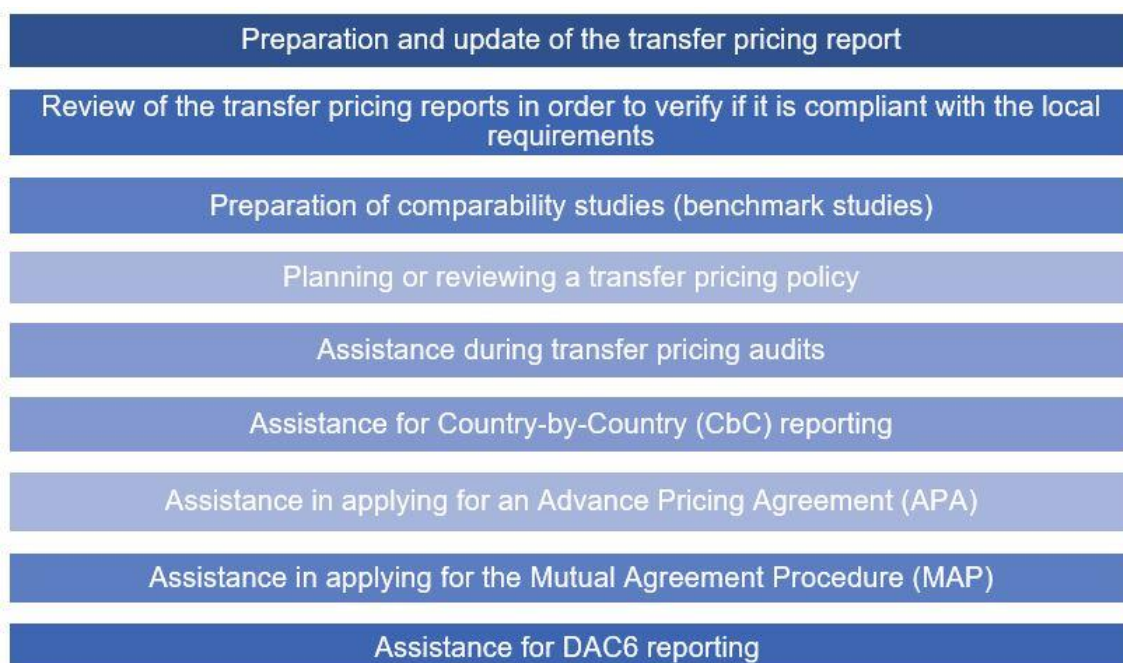
- Companies that have 1-2 transactions of large amounts with related parties;
- Companies that are at the beginning of their activity in Romania;
- Companies that sell products or provide services only to group companies or to clients referred by the group.

7. DAC6 reporting

The EU Directive on Administrative Cooperation 822/16/EU (DAC6) introduced the obligation to report cross-border tax arrangements. The DAC6 regulations oblige intermediaries and taxpayers to report EU cross-border arrangements exhibiting specifically defined “hallmarks” and in instances where the main benefit of the arrangement is a tax advantage.

Under Romanian law, the following penalties are applied:

- Failure to report or late reporting by intermediaries or relevant taxpayer: approx. USD 4,800 - USD 24,300;
- Failure to notify another intermediary or the relevant taxpayer: approx. USD 1,200 – approx. USD 7,200.
- US companies operating in Romania should:
- Review the potential reportable cross-border arrangements;
- Offer training for their employees, so that they become accustomed to the cross-border arrangements that need to be monitored and understand the importance of this exercise;
- Prepare internal procedures, both in respect of tracking information and identifying reportable cross-border arrangements;
- Use a software platform for managing the reporting obligations.



Contacts

Edwin Warmerdam, Mazars Romania
Partner, Head of Tax services
Edwin.Warmerdam@mazars.ro

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