

Image not found or type unknown

Published in: Hotnews (http://www.hotnews.ro/stiri-dosare_de_fiscalitate-21240226-brexite-cateva-possibile-consecinte-fiscale.htm)
Written by: Alexandru M?nucu
Article link: [/web/](#)
Publisher: <#>

One of the major tax implications of Brexit may apply to the income tax of British residents in Romania. While the architecture of the future agreement between the United Kingdom and the European Union (EU) is yet to be determined, its potential impact illustrates a burdensome level of duties and taxes that could keep British investors very far away from Romania following Brexit.

The results of the vote of the British citizens have triggered a series of surprising reactions among those who were expected to take a stand, and those who became experts in the area sooner than the polls preceding the voting were overturned. Maybe the most unexpected reaction was the winners' lack of genuine joy.

What are the reasons for this? What happens next? These are questions to which even the well-informed may only attempt to offer possible solutions. Most likely, the future holds the only conclusive answer. Until then, let's imagine what the impact on the business relationships between Romania and the United Kingdom might be from a tax perspective, if the British people no longer enjoyed their capacity as member of the EU overnight.

If the United Kingdom ceases to be an EU member then the payments made among Romanian entities, on the one hand, and entities from England, Scotland, Wales and Northern Ireland, on the other hand, will be subject to the provisions of the laws in the source country designated for the exchanges among non-residents, without observing the rules specific to transactions among community members. Of course, it would still be possible to apply the favourable provisions of the Convention on the Avoidance of Double Taxation, which were however agreed more than 40 years ago.

By way of example, let's have a look at the manner in which the tax on income such as dividends, interest and royalties, obtained by British residents in Romania, is currently determined, and the way in which the same income would be taxed if no other similar agreements were concluded further to Brexit.

According to the general rule, 16 per cent from the amount of the income which is subject to this type of tax is withheld by the payer (i.e., the Romanian company), amount which should be declared and transferred to the state budget by the 25th day of the month immediately following the one in which payment is made. The amounts thus withheld and paid extinguish the tax obligation due by the non-resident in Romania in relation to the obtained income.

However, the tax obligation may be decreased by pursuing the treatment designed for payments made in Romania by entities that are residents in EU Member States. Thus, income representing interest or royalties received by entities in other Member States from Romanian companies, in which their shareholdings equal no less than 25 per cent of the share capital for a period of minimum two years, are exempted from any tax applied in Romania.

For dividends, the tax exemption in Romania is obtained even more easily. It is sufficient that the beneficiary entity holds, for a period exceeding one year, no less than 10 per cent of the share capital of the Romanian entity paying the dividends. Of course, it is mandatory that the payments be made among EU Member States.

Alternatively, if such agreements no longer applied in the aftermath of Brexit, the Romanian entities making payments of dividends, interests or royalties to the United Kingdom would consider the provisions of the Convention on the Avoidance of Double Taxation.

In this case, the rate of taxation at source for interest payments could be decreased from 16 per cent, the standard applicable in Romania, to 10 per cent. According to the aforementioned Convention, the dividends and royalties could be subject to the same treatment (i.e., 10 per cent), provided that a series of restrictive conditions are satisfied. Otherwise, the favourable treatment would be translated into a reduced rate of 15 per cent, as opposed to the 16 per cent rate applicable in Romania to royalty payments.

However, the obsolete nature of the Convention for the Avoidance of Double Taxation is best reflected in the favourable rate assigned to dividends, which, even in the best case scenario (i.e., 10 per cent), is the double of the one provided by the Tax Code (i.e., 5 per cent).

Upon a simplistic calculation, a company residing in the United Kingdom, which has been carrying out activities on the Romanian market for more than two years by means of a subsidiary, could find itself in an unpleasant situation of "leaving" 5 per cent of the dividend amount, 10 per cent of the due interest amount and at least 10 per cent of the royalties in Romania.

</p>It is understandable how, in such conditions, by the passing from exemption to taxation, Brexit may be translated into “exit” for British investors. While statistics show that the United Kingdom is not ranked amongst the top five foreign investors in Romania, a prospective worsening of taxation rules potentially caused by Brexit will certainly not help foster a positive change in this respect.