

Tax & Legal Alert

ROMANIA 12 May 2008

European Commission sends formal notice to Romania regarding outbound dividends taxation

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The European Commission issued a press release on 6 May 2008 revealing that it had sent a letter of formal notice to Romania. Letters of formal notice represent the first step in the infringement procedure.

This letter refers to Romania's regulations regarding dividends paid to non-resident companies, which may be taxed more heavily than domestic ones.

Further to the application of the EU Parent Subsidiary Directive, "qualifying dividends" (distributed between companies resident in the EU holding a 15% shareholding in the paying company for minimum 2 years) are subject to nil WHT.

"Non-qualifying dividends" distributed between Romanian companies are subject to 10% WHT under Romanian legislation. On the other hand, non-qualifying dividends distributed to non-resident shareholders are subject to 16% WHT, if there is no tax residency certificate or no Double Tax Treaty ("DTT") between Romania and the country of residence of the dividends recipient. If there is a tax residency certificate and a DTT, the WHT rate is set at that provided by the DTT or 10%, whichever is lower.

Considering relevant EU jurisprudence, it can be concluded that non-qualifying dividends distributed to companies resident in countries with which Romania does not have a DTT are treated in a discriminatory manner compared to domestic non-qualifying dividends.

As Romania has concluded DTTs with all the European Union member states, this discrimination affects residents of Iceland and Liechtenstein (members of the

European Free Trade Association, which applies EU jurisprudence) with which Romania does not have a DTT.

[Source: European Commission press release from 06 May 2008]

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