

New Trends in Banking Tax Inspections

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14 March 2019



1. RTA's profit shifting approach

Economic substance reclassification

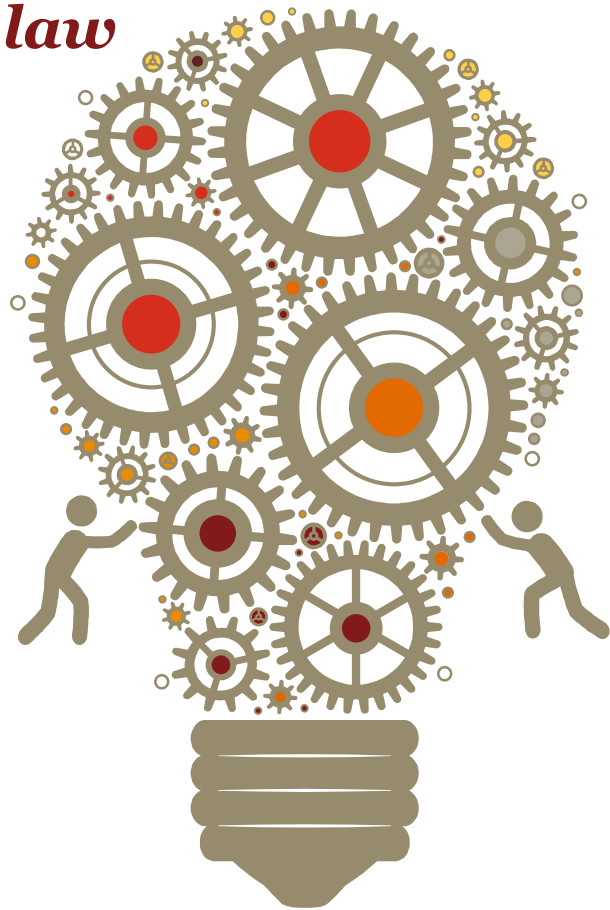


What is on the tax authorities radar?

- ✓ Intra-group banking transactions (e.g. assignment of credit portfolios, credit clubs, credits generated for a foreign affiliate)
- ✓ Intra-group services agreements
- ✓ Taking over of tax losses

1. RTA's profit shifting approach

The law



Fiscal Code

Article 11 – Domestic anti-abuse rule
*“the fiscal authorities may **disregard** a transaction that **does not have an economic purpose** or may **re-characterize the form** of a transaction to reflect the economic substance of the transaction.”*

- + **Cross-border artificial transactions** – are excluded from the scope of Double Tax Treaties

1. RTA's profit shifting approach

Economic substance reclassification of core banking transactions

1.1. Sub-participation/Assignment of performing loan portfolios reclassified as subordinated loans

1.2. Disallowance of intercompany deposits and subordinated debt

Tax implications

1
Reassessment of CIT base
Fiscal loss reduction /
additional CIT liabilities

2
Reassessment of WHT base
Denial of DTT and EU
Directives benefits

1. RTA's profit shifting approach

Economic substance reclassification of core banking transactions

Assessment of economic substance of foreign vehicles used in inter-banking transactions



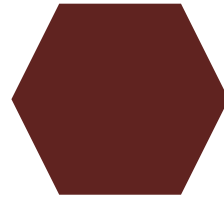
Exchange of information between member states

Tax implications

Denial of DTT and EU Directives benefits

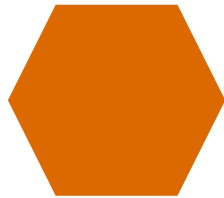
1. RTA's profit shifting approach

Intra-group services



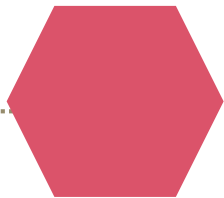
Cost-basis

- ❖ More aggressive approach
- ❖ More visibility on the cost structure, allocation and reasonability compared to the need and benefits
- ❖ Use transfer pricing policies, master files, local transfer pricing files, etc.



Actual benefit

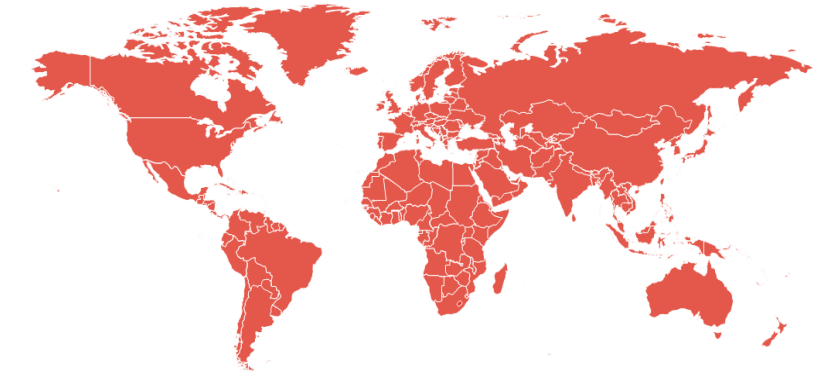
- ❖ Strong back-up documentation in order to demonstrate the actual rendering of the services received



Necessity

- ❖ Strong back-up documentation to prove the necessity of those services for the business of the Romanian taxpayer

2. RTA's approach in TP methodologies



- Multiplication of inter-company cost structure and allocation
- Interest on long-term deposits adjusted to short term-deposit level
- Credit rating adjustments are denied and / or challenged
- Comparability criteria are challenged – e.g. sector, instrument, different views to internal CUP method
- Long – term placements/deposits reclassified into lending/borrowings
- Imposing/ Disallowing the database – Bloomberg/DealScan/NBR
- Performing only unfavourable TP adjustments

1

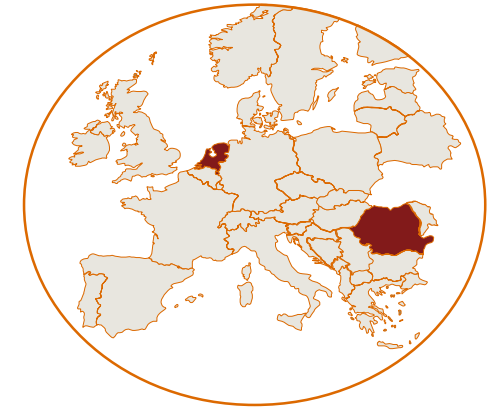
TP adjustments by disregarding the TP method

2

TP adjustments based on substance re-characterisation

- Adjustment of interest paid abroad at the lowest interest rate paid by the taxpayer under existing financing transactions
- Adjustment of the assignment prices

2. RTA's approach in TP methodologies



Tax audits generating TP adjustments for **interest** & **royalties** paid abroad

Additional WHT base

For the statute of limitation period

- TP adjustments generate WHT on excess interest / royalties paid abroad
- Denial of more favorable provisions of double tax treaties and/or EU directives;
- Grossed-up WHT (19% effective tax rate) plus late payment interest and penalties

Moving forward together!!

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