

Statutory Document No. 2015/0363



Income Tax Act 1970

TAXES (ROMANIA) ORDER 2015

Approved by Tynwald: 15 December 2015

Coming into Operation: 18 December 2015

The Council of Ministers makes the following Order under sections 104B and 104C of the Income Tax Act 1970.

1 Title

This Order is the Taxes (Romania) Order 2015.

2 Commencement

If approved by Tynwald, this Order comes into operation on 18 December 2015¹.

3 Interpretation

In this Order “**applicable arrangement**” means the arrangement for the exchange of information relating to tax matters contained in an agreement between the Government of the Isle of Man and the Government of Romania signed in London on 4 November 2015 and set out in the Schedule.

4 Information exchange arrangement

It is declared that –

- (a) the applicable arrangement has been made with the Government of Romania with a view to the exchange of information foreseeably relevant for carrying out laws (whether in the Island or Romania) concerning any taxes to which the applicable arrangement relates; and
- (b) the arrangement should have effect as part of the law of the Island.

¹Tynwald approval is required by section 104B(6) of the Income Tax Act 1970.

MADE 11th November 2015

W. Wlow.
Chief Secretary



*EXPLANATORY NOTE**(This note is not part of the Order)*

This Order is made under sections 104B and 104C of the Income Tax Act 1970. It implements an arrangement negotiated between the Government of the Isle of Man and the Government of Romania for the exchange of information relating to tax matters.

AGREEMENT BETWEEN
THE GOVERNMENT OF THE ISLE OF MAN
AND
THE GOVERNMENT OF ROMANIA
FOR
THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS

Whereas the Government of the Isle of Man and the Government of Romania (hereinafter referred to as "the Parties") wish to enhance and facilitate the terms and conditions governing the exchange of information relating to tax matters,

Whereas it is acknowledged that the Isle of Man under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of Romania,

Now, therefore, the Parties have agreed to conclude the following Agreement:

ARTICLE 1
OBJECT AND SCOPE OF THE AGREEMENT

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

ARTICLE 2
JURISDICTION

The requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3
TAXES COVERED

1. The existing taxes to which this Agreement shall apply are:
 - (a) in the Isle of Man, taxes on income and taxes on profit; and
 - (b) in Romania, the tax on income and the tax on profit.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letters. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4

DEFINITIONS

1. For the purposes of this Agreement, unless otherwise defined:
 - (a) the term "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
 - (b) the term "Romania" means the state territory of Romania, including its territorial sea and air space above them, over which Romania exercises sovereignty, as well as the contiguous zone, the continental shelf and the exclusive economic zone over which Romania exercises sovereign rights and jurisdiction, in accordance with its legislation and with the rules and principles of international law;
 - (c) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (e) the term "competent authority" means:
 - (i) in the case of the Isle of Man, the Assessor of Income Tax or his or her delegate; and

- (ii) in the case of Romania, the Minister of Public Finance or his delegate;
- (f) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (g) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- (h) the term "information" means any fact, statement or record in any form whatever;
- (i) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- (j) the term "person" includes an individual, a company and any other body of persons;
- (k) the term "principal class of shares" means the class or classes of shares representing a majority of the voting rights and value of the company;
- (l) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

- (m) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- (n) the term "requested Party" means the Party requested to provide information;
- (o) the term "requesting Party" means the Party requesting information;
and
- (p) the term "tax" means any tax to which this Agreement applies.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5
EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the jurisdiction of the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b)
 - (i) information regarding the legal and beneficial ownership of companies, partnerships, foundations and other persons, and within the constraints of Article 2, any other persons in an ownership chain, including in the case of collective investment funds or schemes, information on shares, units and other interests;
 - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and
 - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5. This Agreement does not create an obligation for either Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;

- (b) a statement of the information sought including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the territory of the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- (f) a statement that the request is in conformity with the law and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- (g) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall forward the requested information as soon as reasonably possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the

requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and

- (b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

ARTICLE 6
POSSIBILITY OF DECLINING A REQUEST

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice; or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the requesting Party in the same circumstances.

ARTICLE 7

CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

ARTICLE 8
COSTS

The incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Parties.

ARTICLE 9
IMPLEMENTATION LEGISLATION

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

ARTICLE 10
LANGUAGE

Requests for assistance and answers thereto shall be drawn up in English.

ARTICLE 11
MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the mutual agreements referred to in paragraph 1 of this Article, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5 and 8.

3. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement under this Article.

4. The Parties may also agree on other forms of dispute resolution.

ARTICLE 12
ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the later of the dates on which each of the Parties has notified the other in writing that the procedures required by its law for the entry into force have been complied with.

2. Upon entry into force, the provisions of this Agreement shall have effect:
 - (a) for criminal tax matters on that date; and
 - (b) for all other matters covered by Article 1 on that date, but only in respect of taxable periods beginning on or after the date of signature of this Agreement or, where there is no taxable period, for all charges to tax arising on or after the date of signature of this Agreement.

ARTICLE 13
TERMINATION

1. This Agreement shall remain in force until terminated by a Party.

2. Either Party may terminate the Agreement after the expiration of a period of two years from the date of its entry into force by giving a written notice of termination at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect on the first day of January in the calendar year next following the calendar year in which the notice of termination is given.

3. Notwithstanding any termination of this Agreement, the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at London this 4th day of November 2015, in two originals in the English and Romanian languages, both texts being equally authentic.


**FOR
THE GOVERNMENT OF
THE ISLE OF MAN**


**FOR
THE GOVERNMENT OF
ROMANIA**

