NON TAX AGREEMENT AND ROMANIAN REGULATION

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Abstract: *The specific agreements that were signed by the Romanian government for regulating the taxation policy when international aspects are involved are the main issues of analysis in this paper. The Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the North Atlantic Treaty Organization agreement and other European treaties and agreements are some of the reviewed agreements, but the investigation is not necessarily linked to a specific tax issue. When a specific tax issue is particularly mentioned, the paper raises some question at first sight. The taxation of subjects of law involved in international activities represents a key issue in international relations. Although the research is specific to domestic cases, the paper presents the theoretic background that applies to every member state that has signed the agreements in question. The position of these agreements in the hierarchy of the sources of law is explained.*
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INTRODUCTION

Although the present article might seem specific to a certain country, in this case Romania, most of the provisions that are applied by the Romanian tax system are similar to the ones in other countries. Most of the treaties that are discussed in this article are treaties that are at their core politically and thus at first look would not have any influence in tax provisions of the countries engaging in them. At a closer look, all the treaties have a certain effect on the tax system of the signing countries. The most frequent case is the taxation of individuals that are taking part in the implementation of the treaty but there are also other issues that have to be treated with precision. In the article we have decided to study each type of treaty separately and study its effect on the Romanian tax system.

TAX PROVISIONS OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS AND THE VIENNA CONVENTION ON CONSULAR RELATIONS

The premises of consular offices enjoy, from a tax point of view, the same privileged status as the premises of the foreign missions (United Nations, 2005a, Vienna Convention on Consular Relations, (pp.13-14). Retrieved at http://untreaty.un.org/ilc/texts/instruments/english /conventions/9_2_1963.pdf). The Vienna Convention on Consular Relations (further noted as VCCR) comprise provisions concerning tax and levies exempt for consular premises, and, for lack of treaty rules the tax exemption for the premise of consular offices used in the public interest of a foreign sovereign state has been acknowledged by the courts in certain states.

The taxes consulates levy for specific private services (for the performance of notarization, succession assignments for visa granting and passport issuing, etc.), are tax exempt

in compliance with consular regulations, the respective taxes belonging to the sender sovereign state. That is why, in compliance with the general principles of international law, these funds cannot be burdened with taxes or levies with national or local character; this rule is laid down in the VCCR as well (United Nations, 2005, Art. 39).

The VCCR usually establish personal tax exemption in the benefit of consular officers; for lack of conventional provisions, the residence state's laws and regulations often regulate the matter, by granting the personal tax exemption based on reciprocity. The VCCR provides for the direct tax exemption from which consular officers, employees and their families benefit (United Nations, 2005, Art. 49). Tax exemption does not apply to the following: excises that are normally incorporated in the price of merchandise and services, taxes paid for public services (water, electricity, gas, etc.), taxes related to private real estate, as well as taxes on the revenue from commercial or industrial activities or the liberal professions, as well as activities performed by consular officers on their own behalf, and not within their consular duties.

Where customs duties are concerned, it is expressly permitted in state practice, as it is substantiated in the national legislation and bilateral conventions, that consular positions are exempt from customs duties for all imported items meant for official use.

The legal foundation for this exemption lies in the idea that the assets belonging to the sending state, meant for the public use of this state, are covered by jurisdictional immunity with respect to the residence state. If the consular office enjoys customs duties exemption for all assets meant for official use, the office staff (consular officers and employees) has a different status. International practice acknowledges two concepts: the first ascertains that consular officers are entitled to tax exemption solely for the assets they bring to the residence state in due time since they are instated in the second permits the customs duties exemption for all items destined to the officer's personal use and those of the members in his family that he lives with, regardless of their import date. The personal luggage of the consular officers and the members of their families that they live with are free of customs control, under the same conditions applicable to diplomats. The principle of reciprocity is the guideline for tax exemption status through internal laws and regulations, by lack of certain treaty rules. Other privileges and immunities, such as exemption from alien registration and residence permits, exemption from work permits, exemption from social security liabilities, are granted to consular officers under certain conditions set out in the VCCR.

After having described the essential features of the privileged status of consuls, their duties to the residence state should be specified, duties that make possible all consular activities.

With no prejudice to their privileges and immunities, the consular officers and employees and the other persons enjoying the same, have – as do diplomats – the duty to abide by the laws and regulations of the residence state: at the same time they are not allowed to interfere in the internal affairs of that state.

The consular premises must be used for consular activities; their use in a manner that is incompatible to these activities is forbidden (United Nations, 2005, Vienna Convention on Diplomatic Relations, Retrieved at http://untreaty.un.org/ilc/texts/instruments/english /conventions/9_1_1961.pdf). Art. 35 VCDR) that was ratified by Romania through the Decree no. 566 of 8 July 1968. It is specified that the legal institutions that have their origin in unwritten law, as revealed in the way the majority of the articles are applied in practice in Romania. Where the innovations put in place by the convention are concerned with respect to diplomatic law,

most of them were either suggested by the socialist countries or embraced by the same. The diplomatic privileges constitute a special treatment owed to diplomatic agents; their contents refer to the benefit from certain facilities determined by special services and it is expressed in the granting by the residence state of certain exceptional facilities that have a mainly positive content, not necessarily involving a special activity on behalf of the beneficiaries.

Article 34 VCDR provides that "The diplomatic agent is exempt of any personal or actual taxes and levies, may they be national, regional and communal, except for:"

- excises that by their nature are normally incorporated in the price of merchandise and services;
- levies and taxes on private real estate located in the receiving state, except for the situation when the diplomat is the holder of the assets on behalf of the sending state, for the purposes of the mission;
- the succession rights granted by the receiving state, subject to the provisions of paragraph 4, Article 39 [1];
- levies and taxes on private income that originated in the receiving state and the capital taxes on investments made in commercial ventures located in the receiving state;
- levies and taxes on remuneration for actually provided services;
- registration rights, record office, mortgage and stamp regarding real estate assets, subject to the provisions of Article 23 [2].

According to the Romanian Law, diplomatic agents, administrative and technical staff, consular officers, consular employees and service staff, together with members of their families forming part of their household (spouses and dependent minor children not gainfully employed in Romania) should be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- indirect taxes of a kind which are normally incorporated into the price of goods or services;
- dues and taxes on private immovable property situated in the territory of the receiving state, ...
- estate, succession or inheritance duties levied by the receiving state, ... ;
- dues and taxes on private income having its source in the receiving state and capital taxes on investments made in commercial [or financial] undertakings in the receiving state;

VAT is an indirect tax incorporated in the price of goods and services. Therefore, VAT on the purchase of property and services intended to meet the requirements of foreign agents posted to Romania could not be refunded in Romania. However, as a courtesy, certain purchases of property or products on the domestic market may be exempted from duty and taxation under certain conditions:

- personal vehicles of agents holding a residence permit
- products subject to quotas such as liquor, tobacco and fuels are the subject of annual quotas allocated to Missions within the limits set by the Ministry of Foreign Affairs and the Ministry of Economy, and Ministry of Finance.

Save as otherwise provided in international tax agreements that may impose compliance with certain conditions or rule differently, members of diplomatic or consular missions who are not Romanian nationals or permanent residents are deemed to be resident in the sending state. Their official remuneration is not taxable in Romania. Honorary consular officers are relieved from income tax only for the allowances they receive to cover expenses incurred in the exercise of their functions.

Property tax is payable by the owner of the premises. Only the official residence of heads of diplomatic and consular missions, which is part of the official premises, is relieved from the payment of property tax. Other properties are not exempt from property tax. Dues and taxes levied for specific services rendered such as road sweeping, connection to the sewer network, refuse collection, and airport tax (included in the price of the plane ticket), must always be paid.

FISCAL EXEMPTIONS RELATING TO PREMISES AND RESIDENCES

1. Lands and buildings situated in the territory of the receiving state which are owned by the sending state or are leased by it for the requirements of a consular establishment, or as residences for the consular officers or consular employees, shall be exempt from all taxes and charges in the receiving state, with the exception of charges for special services rendered.
2. The exemptions referred to in the above paragraph of this Article shall not apply if, under the law of the receiving state, such taxes and charges are payable by the person who contracted with the sending state or with the person acting on its behalf.

Tax provisions of the Convention on the Privileges and Immunities of the United Nations and of other international (bilateral and multilateral) agreements concluded by your country and (more or less) copied from this Convention. Romania has entered into a series of multilateral conventions. The agreement of 14 October 2005 (hereinafter: the 2005 Agreement) between the Romanian Government and the Latin Union concerning the set-up of a Latin Union office in Bucharest and the privileges and immunities of the Latin Union Office on the Romanian territory, published in the Official Gazette of 23 May 2006 (Official Gazette 444/2006) based on the Convention of the Latin Union creation, adopted in Madrid on 15 May 1954, that Romania adhered to by the State Council Decree no. 421 of December 5, 1979, considering that the parties agreed, by the VIII Congress of the Latin Union that took place in Paris in 1986, to set up a Latin Union office in Romania, the following were agreed upon: "the assets provided to the office for its official mission shall be free of direct taxes in compliance with the Romanian legislation in force; nevertheless, the exempt does not address to the taxes perceived for the payment of provisioned services. The purchase or rent by the Latin Union of the building spaces necessary for the official mission of the office is exempt of registration taxes, the real estate advertising tax, rent tax and any other similar taxes. The Latin Union benefits from the exemption with deduction right of the value added tax for the assets deliveries and service performance in its favor. The return of the value added tax shall be made in compliance with the procedure provisioned by the Romanian legislation for accredited international intergovernmental organizations in Romania." This type of immunity is not found in any other treaty concluded by Romania.

Taxation of individuals, setting up Romanian law after an international treaty

International treaties become part of Romanian legislation upon the consent of the Romanian State to become party to the treaty. The consent may be expressed under the following procedures: ratification, approval, adhesion, or acceptance. According to the Law No. 590/2003 on treaties, the provisions of the treaty ratified by Romania prevail over the domestic law and are binding for all Romanian authorities as well as for all Romanian legal entities and individuals. Furthermore, the domestic provisions cannot be invoked for justifying failure to apply the provisions of a treaty, which is in force in Romania. The provisions of an international

treaty cannot be modified or revoked by internal regulations subsequent to the date of the treaty's entry into force but only according to its provisions or the approval of the parties involved. According to the Constitution of Romania, when the provisions of an international treaty are contrary to the Constitution, the mentioned treaty will not be ratified by the Romanian authorities until the appropriate amendments of the Constitution's provisions have been made. The Romanian Fiscal Code provides that, in the cases in which the withholding tax rate applicable under domestic law for income derived by a non-resident/foreign legal entity in/from Romania is different than the tax rate set out under the double tax treaty, the most favourable rate between the two tax rates will apply.

According to the Romanian Fiscal Code, the definition of resident contains an exception: a resident natural person does not include a foreign citizen with diplomatic or consular status in Romania, a foreign citizen who is an official or employee of an international and intergovernmental organization that is accredited in Romania, a foreign citizen who is an official or employee of a foreign state in Romania and members of the family of such foreign citizens. According to Art. 42 of the Romanian Fiscal Code "For purposes of the income tax, the following income is not taxable: income received by members of diplomatic missions or consular offices for and incomes received by officials of international bodies and organizations from activities carried out in Romania in their official capacity, on the condition that the position of the official is confirmed by the Ministry of Foreign Affairs; income received by foreign citizens for consulting activities carried out in Romania in accordance with agreements of non-reimbursable financing entered into by Romania with other states, with international bodies and nongovernmental organizations. Income received by foreign citizens from activities carried out in Romania in the capacity of press correspondents, on the condition that reciprocal treatment is granted to Romanian citizens for incomes from such activities and on the condition that the position of such persons is confirmed by the Ministry of Foreign

TAX PROVISIONS OF STATUS OF FORCES AGREEMENTS

The NATO SOFA is a multilateral agreement that has applicability among all the member countries of NATO. As of June 2007, 26 countries, including the United States, have either ratified the agreement or acceded to it by their accession into NATO. Additionally, another 24 countries are subject to the NATO SOFA through their participation in the NATO Partnership for Peace (PfP) program. The program consists of bilateral cooperation between individual countries and NATO in order to increase stability, diminish threats to peace and build strengthened security relationships. The individual countries that participate in the PfP agree to adhere to the terms of the NATO SOFA. On 30 October 2001 Romania signed the Agreement between Romania and USA regarding the Status of US Armed Forces in Romania.

According to Article X, the United States forces and its contractors, identified in Article XXI, are not subject to direct or indirect taxation in respect of matters falling exclusively within the scope of their official or contract activities or in respect of property devoted to such activities. Deliveries made and services rendered by the force or such contractors to members of the force or civilian component and dependents must also be regarded as such activities. With respect to the value added tax (VAT), exemptions apply to articles and services acquired by the United States contractors in Romania solely for the purpose of supporting the United States

forces may not be subject to any form of income or profits tax by the Government of Romania or its political subdivision.

Vehicles, vessels and aircraft owned or operated by or for the United States forces may not be subject to the payment of landing or port fees, pilotage changes, navigation, overflight, or parking changes or light or harbor dues, or any other changes in connection with carrying out missions related to its operations or with the use of state owned or operated facilities in Romania; however, the United States must pay reasonable changes for services requested and received. The provisions of Romanian laws and regulations pertaining to the withholding of payment of income taxes and social security contribution are not applicable to United State citizens and non-Romanian employees of the United States forces or United States contractors exclusively serving the force in Romania.

The personal tax exemptions are defined in Article XI. With respect to Articles X and XI of the NATO SOFA, and in accordance with Article X of this agreement, members of the force, or of the civilian component are not liable to pay any tax or similar changes, including the value added tax, in Romania on the ownership, possessions, use, transfer amongst themselves, or transfer, in connection with death, of their tangible movable property imported into Romania or acquired there for their own personal use. Motor vehicles owned by a member of the force, or civilian component or a dependent are exempt from Romanian circulation taxes, registration or license fees, and similar charges. The exemption from taxes or income provided by Article X NATO SOFA also applies to income received by members of the force or civilian component or dependents from employment with the organizations referred to Article I, paragraph 1, and Article XVII of this agreement, and to income derived from sources outside Romania.

According to the agreement, with reference to Article XI NATO SOFA, the importation of equipment supplies, provisions, and other goods into Romania by the United States forces or by United States contractors for or on behalf of US forces is exempt from duties. The United States forces are liable for the payment of changes for services performed by the Romanian Government or any political subdivision thereof only when such services have been requested and received. Equipment, supplies, provisions and other goods are exempt from any tax or other charges, which would otherwise be assessed upon such property after its importation or acquisition by the United States forces. The exportation from Romania by the United States forces of the equipment, supplies provisions, and other goods referred to above are exempt from all types of Romanian tax under terms and conditions, including payment of taxes, imposed by authorities of Romania. The exemptions provided above also apply to services, equipment, supplies, provisions, and other property imported or acquired in the Romanian domestic market by or on behalf of the United States forces for use by a contractor executing a contract for such forces. The United States forces must cooperate fully with the appropriate Romanian authorities to prevent abuse of these privileges. Deposit of the certificate provided for in Article XI, paragraph 4 NATO SOFA will be accepted in lieu of the customs inspections by Romanian authorities of the items imported or exported by or for the United State forces under the provisions of the agreement.

The members of the US force or civilian component and their dependents may import their personal effects, furniture, private motor vehicles and other good intended for their personal or domestic use or consumption free of duty during their assignment in Romania. The property referred to above and other goods acquired free of taxes and duties may not be sold or otherwise

transferred to persons in Romania not entitled to import such property duty free, unless such transfer is agreed upon by the appropriate Romanian authorities. This provision does not apply to gifts to charity. Members of the force, or civilian component and their dependents may freely transfer such property amongst themselves and to or from the force, and such transfers are free of tax or duty. The US forces are responsible for maintaining records, which will be accepted as proof by Romanian authorities of these transfers of tax of duty-free merchandise. The Romanian authorities must accept copies of duly filed police reports as proof that duty-free property of members of the force or civilian component or dependents has been stolen, which shall relieve the individuals of any liability for payment of the tax or duty.

Members of the force or civilian component and their dependents may re-export, free of exit duties or charges, any goods imported by them into Romania or acquired by them during their period of duty in Romania. The Romanian authorities will honor the registration and licensing by United States military and civilian authorities of motor vehicles and trailers of the force, or members of the force, or the civilian component or dependents. Upon the request of United States military authorities, the Romanian authorities will issue license plates, without charge, which are indistinguishable from those issued to the Romanian population at large. The United States military authorities must provide for the safety of motor vehicles and trailers registered and licensed by them or used by the force in Romania, and must cooperate with the Romanian authorities to safeguard the environment.

According to the agreement, Romania must take all appropriate measures to ensure the smooth and rapid clearing of imports and exports of forces, members of the force, the civilian component and dependents by Romanian customs authorities. Customs inspections under the agreement will be carried out in the facilities in accordance with procedure mutually agreed between the appropriate Romanian authorities and the United States forces. Any inspection by Romanian customs authorities of incoming or outgoing personal property of members of the force or civilian component or dependents must be conducted when the property is delivered to or picked up from the individual s residence. United States military authorities must establish the necessary customs controls at facilities where United States forces are located to prevent abuses of the rights granted under the NATO SOFA and the agreement. United States military authorities and Romanian authorities will cooperate in the investigation of any alleged offenses involving customs violations.

According to the Agreement between Romania and NATO, the Organization shall have the same exemption or relief from taxes and rates, other than taxes on the importation of goods, as is accorded to a foreign sovereign power. The Organization is granted exemption from taxes on the importation of goods directly imported by the Organization for its official use in Romania or for exportation, or on the importation of any publication of the Organization directly imported by it, such exemption to be subject to compliance with such conditions as the Minister responsible for finance may prescribe for the protection of the revenue. Except in so far as in any particular case any privilege or immunity is waived by the Government of the member which they represent, every person designated by a member of the Organization to be its principal permanent representative to the Organization in Romania and such members of his official staff resident in Romania as may be agreed between the parties.

The representatives of the Organization enjoy the like immunity from suit and legal process, the same inviolability of residence and the same exemption or relief from taxes as is

accorded to a diplomatic representative accredited to Romania. Where the incidence of any form of taxation depends upon residence, any representative to whom this paragraph applies must not be deemed to be resident in Romania during any period when he is present in Romania for the discharge of his duties. Where the incidence of any form of taxation depends upon residence, official clerical staff to which this paragraph applies, if accompanying such a representative as aforesaid, must not be deemed to be resident in Romania during any period when they are present in Romania for the discharge of their duties.

TAX PROVISIONS OF CULTURAL EXCHANGE AGREEMENTS

The OECD Model Tax Convention does not include an article dealing specifically with visiting teachers and researchers. The reason why some tax treaties have a separate article that provides a tax exemption in the state of source ("state of visit") for such individuals is to stimulate the cross-flow of academics, not so much to allocate taxing rights between the contracting states. In Articles 20 and 21 of the agreements regarding the avoidance of double taxation concluded by Romania, this income class is a stand-alone class with regard to taxation. Accordingly, a person who is a resident of a contracting state, temporarily visiting the other contracting state, at the invitation of the authorities of that state, or of a university or another educational institution acknowledged by the contracting state, for the purpose of teaching or carrying out research at a university or other educational institution in that state, is exempt from tax in the first-mentioned state on any remuneration for such teaching or research for a period not exceeding two years from the date of his visit to that state for that purpose. These provisions do not apply to income resulting from research, if such research is not carried out for the public interest, but mainly for the benefit of private individuals. Consequently, income drawn by a teacher or researcher of a contracting state who carries out such activities over a limited period of time in the other contracting state may only be taxed in the state of residence. In this sense, most tax treaties concluded by Romania stipulate the tax exemption of income obtained from teaching or research in the state in which such activity is carried out (the host state), the exemption being granted for a period not exceeding two years.

To qualify for the exemption in the state of visit, the individual must be resident in the other contracting state immediately before making the visit. One issue is whether the exemption applies only to an individual who remains resident in his home state or becomes a resident of the state of visit during the period of the visit or whether the exemption also applies to an individual resident in neither of the two states. The latter view implies that the article is not subject to the restriction in Art. 1 (Persons covered) of the OECD Model in the absence of express wording to the contrary and is supported by the fact that the OECD Model itself contains provisions, such as Art. 24(1), that extend treaty benefits to a third-state resident. The visit must be at the invitation of a university, college, school or other similar educational institution that is recognized by the competent authority in the state of visit. In the absence of a treaty definition, the word "invitation" takes its ordinary meaning in the state applying the treaty. The visit must be solely for purposes of teaching or research or both at an educational institution. Because of the word "solely", it is not clear whether an academic who concurrently takes up an advisory or consultancy engagement for a government or private organization or statutory board would lose the exemption altogether. Such work is likely to complement and relate closely to his teaching or

research, and this is particularly so if taking up such work is an expectation of the educational institution that engaged him. The individual's remuneration for teaching or research is considered to remain eligible for the exemption, but the income derived separately from the advisory or consultancy work is not exempt under the teachers and researchers article because the work is not performed at an educational institution. As a practical matter, although this is not strictly necessary from the wording, the educational institution would be the payer of the remuneration, and the teaching or research or both would be conducted for (and not only at) the institution as well. A separate paragraph is usually included in the teachers and researchers article which provides that income from research will not be exempt in the state of visit if the research is undertaken, not for the public interest, but primarily for the private benefit of a specified person. The public or public interest will be analyzed from case to case. Generally, the teachers and researchers article does not require that the source of the payment be outside the state in which the teaching or research is done.

PROTOCOL OF THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

The structures of the institutions of the European Union as a supranational organization created on the basis of the Treaty establishing the European Union enjoys privileges and immunities vis-à-vis the EU Member States. In this context the term 'privileges' means that national legislation is either not applicable to the European Union or is differently applicable. Thus, the European Union is partially exempt from national laws. In contrast to this, 'immunities' (immunity from jurisdiction and enforcement) do not affect the applicability of national law but its enforcement. National authorities and national courts are prevented from enforcing it by means of constraint. Such privileges and immunities are not unusual in public international and Community law. All international and supranational organizations enjoy privileges and immunities vis-à-vis their member states in order to enable them to perform their tasks independently and impartially. If an international organization were subject to national law, a member state.(in particular the host state) could exert undue influence on the organization's activities. Privileges and immunities are granted on the basis of public international or Community law. They are usually laid down in the organization's statute and/or in the headquarters agreement between the international organization and its host state.

The legal basis of the privileges and immunities granted to the European Union is Article 291 EC. The provision reads as follows: 'The Community shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities. The same shall apply to the European Central Bank, the European Monetary Institute, and the European Investment Bank. That provision is reiterated by Article 40 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter: 'ESCB Statute') which provides that 'The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks..'

These general provisions are implemented by the Protocol on the privileges and immunities of the European Communities of 8 April 1965 (hereinafter: 'Protocol'). The Protocol is an integral part of the EC Treaty and is binding on all Member States of the European Union; it takes precedence over national law. Since privileges and immunities primarily concern the

relationships with the host state of the territory where the organization is established, the EU institutions concluded a number of treaties with the host states concluded that took the form of a headquarters agreement implementing the Protocol (hereinafter: 'Headquarters Agreement'). The Headquarters Agreement is an agreement under public international law and is binding on the EU Member States legislator and the EU authorities. The status of international organizations under international law is similar to that of sovereign states. Both enjoy privileges and immunities vis-à-vis other states. However, the scope and nature of their respective privileges and immunities differ. Whereas states enjoy worldwide unlimited immunity for acta iure imperii (activities undertaken in the exercise of their sovereign powers), they are not immune with regard to acta iure gestionis (activities which are not part of the state's sovereign power, such as the procurement of shoes for soldiers).

In contrast to this, in principle international organizations enjoy full immunity for all their actions regardless of their nature. According to Article 12, second paragraph, of the Protocol, European Union staff 'shall be exempt from national taxes on salaries, wages and emoluments' paid by the European Union institutions. However, income from other sources (e.g. interest income and rents) is fully subject to national tax law. According to Article 13 of the Protocol, such income is taxed in the country where the member of staff had their domicile before entering the service of the European Union institutions. The exemption from national taxation, which is often criticized, reflects a well-established international practice. The reason underlying this exemption is that the taxation of salaries in accordance with national law would raise a number of difficult legal questions. If the salaries were taxed in accordance with EU Member State tax law, that state would realize an unjustified profit from the fact that the seat of the European Union Institution is in that state. Alternatively, the salary received by a member of staff could be taxed in the staff member's country of origin. Due the different tax systems this would, however, entail unequal treatment of staff members. In order to avoid such distortions, the EU has established its own tax system for salaries, wages and emoluments paid to its servants. According to Article 12, first paragraph, of the Protocol 'Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities...'.

Such an internal tax system is fully in line with the general rule that servants of international organizations are exempt from tax; that exemption is limited to national tax law. On the basis of Article 12 of the Protocol, the Council adopted Regulation No 260/68which also applies to European Union staff. It allows the refutation, at least in part, of the criticism that EU officials and European Union staff, unlike all other European citizens, are exempt from taxation. The implementation of Article 12, second paragraph, of the Protocol exempting salaries, wages and emoluments from national taxation has raised a number of legal questions. In a number of judgments the ECJ has stressed that the provision must be interpreted broadly. This applies initially to the terms 'salaries, wages and emoluments'. These include all kinds of payments received from the European Union in consideration for services rendered by the member of staff. The term 'emolument' covers all kinds of allowances, including for instance widows' allowances. The term 'taxes' has equally to be interpreted broadly. Article 13, paragraph 2, precludes any national tax, regardless of its nature and the manner in which it is levied, which is imposed directly or indirectly on an European Union staff member by reason of the fact that they are in receipt of remuneration paid by the European Union, even if the tax in question is not

calculated by reference to the amount of that remuneration. Taking into account the staff member's income for the calculation of the tax rate applicable to other income of that person or to the income of the spouse in the case of joint taxation is also prohibited. However, staff members are not exempt from charges and dues that are paid as a fee for services rendered by a public authority. Such charges and dues are not taxes within the meaning of Article 12 of the Protocol, even if they are calculated on the basis of the staff member's salary. The fact that the member of staff does not pay taxes to the national treasury does not, however, justify any kind of discrimination. It also merits attention that the scope of Article 12, second paragraph, is limited to taxes that are levied periodically and does not exclude the imposition of one-off taxes such as inheritance tax.

Recently, the question was raised whether the import of cars by ECB staff from their country of origin to Germany is subject to VAT. Article 12(d) of the Protocol provides that European Union staff may, under certain conditions, been titled to import free of duty their furniture and effects at the time of first taking up their posts. The Protocol was adopted before the concept of turnover tax was introduced into the Community framework, so under a wide interpretation this provision also includes the import of vehicles free of VAT. The term 'effects' includes, inter alia, a vehicle personally owned by an ECB staff member. Article 12(d) of the Protocol is implemented by Article 12 of Headquarters Agreement. In 2006 the German Federal Finance Court (Bundesfinanzhof) decided on the case of a former EMI staff member who had purchased a new car from a car dealer in her EU home state and had brought it to Germany when taking up her position. The supply of the car by the Danish dealer was treated as an intra-Community supply and was accordingly exempt from Danish VAT. Subsequently, the German tax authorities sent the plaintiff a VAT assessment for personal vehicle taxation and determined the VAT due on the intra-Community acquisition of the car. Unlike the court of first instance, the Federal Finance Court ruled in favor of an exemption from VAT. Article 12(d) reads: 'In the territory of each Member State … officials and other servants of the Community shall … enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned … subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised'. The existence of Article 12(e) of the Protocol, which also refers to the import of a vehicle free of duty, does not contradict such an interpretation, as it does not deal with the specific case of a member of staff taking up their post, but applies without a time limit. Article 12(e) reads: '… officials and other servants of the Community shall … have the right to import free of duty a motor car for their person use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country …' The provision reads as follows: 'At the time of first taking up their post in the Federal Republic of Germany, employees of the EMI and family members forming part of their households shall be exempt from customs and excise duties in respect of the import of their furniture and personal effects which are in their ownership or possession. Vehicles shall likewise be exempt, though where a vehicle is imported from a third country only if it is has been used there by the employee for a period of at least six months prior to being imported ….

Furthermore, the Federal Finance Court stated that the import of the car must ensue within 12 months of the date of first entry, without it being decisive in that regard on what date the post was taken up. The Federal Finance Court considered this interpretation of Article 10 of

the EMI Headquarters Agreement to be free from doubt in Community law, so that it refrained from making a reference for a preliminary ruling under Article 234 EC. Furthermore, it did not decide on the application of Article 12 of the Protocol to this case.

On 8 December 2005 the ECJ issued its final ruling in a case between the ECB and the Federal Republic of Germany. The case concerned the European Union's claim for reimbursement of the VAT included in the rent for its premises and in the ancillary costs and investment costs related to this rent. The background to the case is the following: The inclusion of VAT in the rent and the ancillary costs paid by the ECB arose from the specific provisions of German tax law. Under normal circumstances, a company can offset the VAT it pays to its suppliers (input tax) against the VAT it charges to its clients (output tax), and as a result it only pays the difference between these two amounts to the tax authorities. For normal commercial undertakings, therefore, VAT should be a neutral tax. Charges for the supply of rented property (rent and ancillary services) are not in principle subject to VAT under German law. However, a landlord has the possibility of opting for the VAT regime (to 'opt to tax') and, if it does so, it can offset the VAT it receives against the VAT it has paid. The right to opt to tax is only available, however, if the tenant is carrying on commercial activities. Since the ECB is a public institution, it cannot be considered a commercial company for tax purposes. This means that the ECB's landlords cannot opt to tax. To avoid a financial loss resulting from the inability to offset input tax against output tax, landlords therefore compensate by including the input tax in the rent. The ECB's landlords did indeed increase the monthly rent charged correspondingly, once they were aware that the ECB could not be considered a commercial undertaking. The ECB considered that it suffered a de facto VAT charge, although de iure it is exempt from VAT. The German tax authorities had rejected the ECB's claim with the argument that the invoices of the ECB's suppliers did not show the tax separately. The ECB had argued that the Headquarters Agreement, construed in the light of the Protocol, supported its claim. In particular, the ECB argued that the obligation of Member States laid down in Article 3 of the Protocol to refund, 'wherever possible', turnover tax which is 'included in the price of movable or immovable property' does not require the tax to be 'invoiced separately'. By insisting on the tax being invoiced separately, Germany obtained a fiscal advantage which is exactly what the Protocol and the Headquarters Agreement are aimed at avoiding. The Court decided that Article 8.1 of the Headquarters Agreement expressly makes the refund of turnover tax subject to the condition that the tax is invoiced separately. It continued that, although some other interpretation of the Headquarters Agreement might be possible in the light of its legal context, in the opinion of the Court, this was not possible in this case because of the clear wording of the relevant clause. The Court ruled that this wording was not contrary to the aims of the provision of the Protocol which regulates the refund of turnover tax. The Court considered that refusing the refund of a tax which is not invoiced to the ECB, but which is paid as input tax by the other parties, does not go beyond the margin of discretion granted to the Member States and EU institutions concerning the implementation of Article 3 of the Protocol.

CONCLUSION

Romania has and will continue to enter into agreements with other countries or international organizations that may have impact on the taxability of certain types of income

derived from certain activities. These agreements, as bilateral or multilateral agreements of the government of Romania, will prevail over the Romanian Tax Code, according to Romanian constitutional provisions. Although these provision cause a lot of work for the Romanian Tax System and for the Revenue Services it is very important for the Romanian foreign policy and for Romania's positions in a growing economy to engage in such treaties and create exemptions for taxation.

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