



Doing Business in Romania 2023

Audit/Tax/Advisory/Contabilitate/Salarizare

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Our services are provided by consultants with proven experience in Accounting, Payroll, Tax & Advisory, Audit, Tax & Corporate.

Crowe Romania provides its clients with a realistic overview of issues and risks, so that they can make the right business decisions.

This brochure was drawn up in accordance with the legislation in force on 22nd of February 2023. The information presented is not exhaustive and is subject to numerous legislative changes.

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I. Romania - Short description

Surface: 238,397 sqm

Density: 84.4/sqm

Population: 19 million inhabitants

Capital: Bucharest (1,883,425 inhabitants)

Cities: Iasi (318,000 inhabitants); Cluj-Napoca (316,000 inhabitants); Timisoara (315,000 inhabitants)

National currency: Leu (RON);

Exchange rate (05.01.2023): € 1 = RON 4,9243

GDP Q3 2022: RON 357.1 billion

Active population/total population (est. 2022): 8,185,049

Unemployment rate Q3 2022: 5.4%

Budget deficit 2021: RON 80 billion, at 6.7% of GDP

Inflation: 2017: 3.3%; **2018:** 4.1%; **2019:** 3.8%; **2020:** 2.6%; **2021:** 5.1%

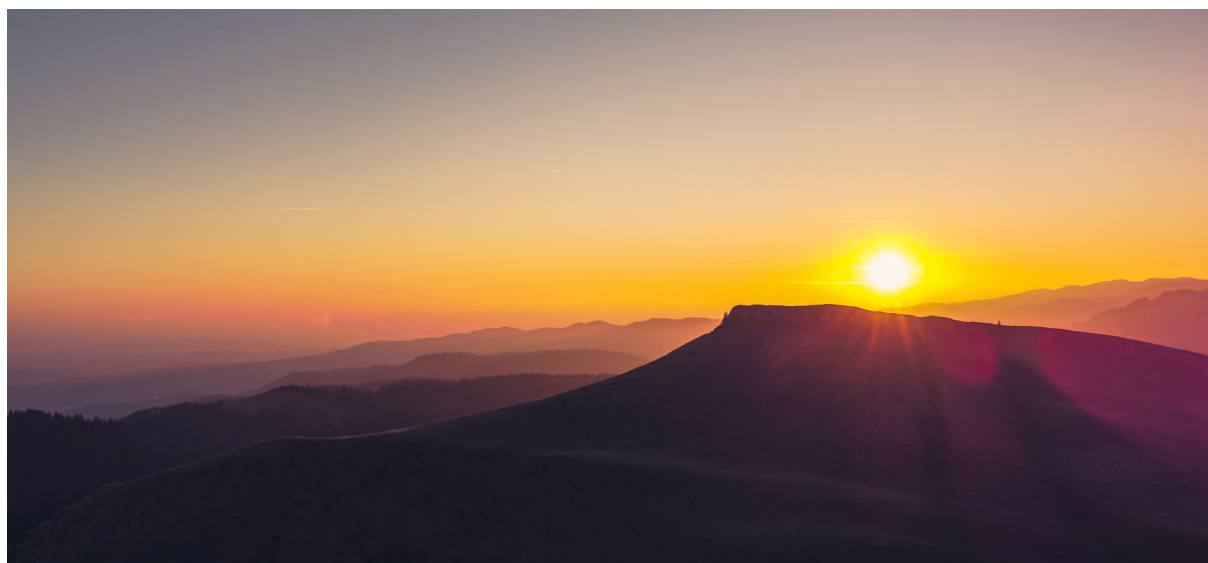
Fiscal year: calendar year;

Form of organization: “joint-stock company”, “partnership limited by shares”, “limited liability company”, “general partnership”, “limited partnership”; other possible forms for the presence of a non-resident company: branch and representative office (without legal personality);

Minimum wage: RON 3000, of which RON 200 non-taxable under certain conditions; RON 4000 for the construction sector, in order to benefit from certain tax facilities;

Dividend distribution: quarterly;

EU Member State since January 2007.



II. Direct taxes for legal entities

Tax residence

Any Romanian legal entity, any foreign legal entity having its place of effective management in Romania, any legal entity with registered office in Romania, established according to European legislation, is considered as Romanian tax resident. The Romanian tax resident has full tax liability in Romania, being a taxpayer subject to taxation in Romania for worldwide income obtained from any source, both in Romania and outside Romania, according to the provisions of the Tax Code and the treaties in force concluded by Romania.

Romanian legal entities owe:

- Corporate income tax;
- Income tax on microenterprises – optional tax, due under certain conditions.

The specific tax applicable to some activities in the hospitality industry has been repealed from 1 January 2023.

Income tax on microenterprises

A microenterprise is a Romanian legal entity that meets the following cumulative conditions, as of 31 December of the previous fiscal year:

- has made income not exceeding the equivalent in RON of EUR 500,000;
- its share capital is held by persons other than the State and administrative-territorial units;
- is not in dissolution, followed by liquidation, registered in the commercial register or with the courts, according to the law;
- has made income other than from consultancy and/or management, except for income from tax consultancy, corresponding to the CAEN code: 6920 – “Accounting and financial auditing activities; tax consultancy”, for more than 80% of total revenue;
- has at least one employee;
- has shareholders who hold more than 25% of the value/number of shares or voting rights in no more than three Romanian legal entities that qualify for the income tax system for microenterprises, including the person who verifies the fulfilment of the conditions.

The following Romanian legal entities are not covered by this title:

- Deposit Guarantee Fund in the banking system, established by law;
- Investor compensation fund, established by law;
- Private Pension Guarantee Fund, established by law;
- The Guarantee Fund for Insured Persons, established by law;
- a fiscally transparent entity with legal personality;
- a Romanian legal person engaged in banking activities;
- a Romanian legal person that carries out activities in the fields of insurance and reinsurance, capital market, including the one that carries out intermediation activities in these fields;
- a Romanian legal entity that carries out activities in the field of gambling;

a Romanian legal entity engaged in exploration, development, exploitation of oil and gas fields.

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| Rate | 1%; |
| Tax base | <p>Income from any source</p> <p>–Certain income categories</p> <p>+ items such as trade discounts received after invoicing</p> <p>= Taxable income</p> |
| Tax credit | <p>For sponsorship/scholarships/expenses related to goods, financial means and services granted to the United Nations Children's Fund – UNICEF, as well as to other international organizations operating according to the provisions of special agreements to which Romania is a party, up to the amount representing 20% of the income tax on microenterprises due for the quarter in which they booked the respective expenses;</p> <p>It is given the possibility that the difference between the above amount calculated for the entire fiscal year and the amounts representing sponsorship / scholarships granted in that year and the amounts carried forward may be redirected to make sponsorships / grant scholarships / to the United Nations Children's Fund – UNICEF and other international organizations operating under the provisions of special agreements to which Romania is a party, within a maximum of 6 months from the legal deadline for filing the income tax return for microenterprises for Q4.</p> <p>For the purchase cost of electronic fiscal cash registers.</p> |
| Computation, payment and declaration | <p>Quarterly, by the 25th of the month following the quarter in which the tax is due; Q4 25 June for the years 2022-2025;</p> <p>Informative statement for the beneficiaries of the sponsorship by 25 January of the following year.</p> |
| Other | <p>Romanian legal entities may opt to apply the income tax on microenterprises, starting with the tax year following the one in which they meet the microenterprise conditions and if they have not been paying income tax on microenterprises after 1 January 2023.</p> <p>Starting from 1 January 2023, Romanian legal entities performing activities corresponding to CAEN codes: 5510 - "hotels and similar accommodation facilities", 5520 - "holiday and short-stay accommodation facilities", 5530 - "trailer parks, camping sites and campsites", 5590 - "other accommodation services", 5610 - "restaurants", 5621 - "catering activities for events", 5629 - "other food services n.c.a.", 5630 - "bars and other beverage serving activities" may opt for the payment of income tax on microenterprises even if they don't fulfil the above-mentioned conditions. If Romanian legal entities obtain during the year income from activities other than those corresponding to these CAEN codes, for income from other activities, the system of declaration and payment of corporate income tax applies, if they meet any of the following conditions: they make income from consulting and/or management in a proportion of more than 20% inclusive of the total income; they carry out activities that do not fall under the income tax on microenterprises; income from other activities exceeded the equivalent in RON of EUR 500,000.</p> |

Corporate income tax

The following are taxable persons: Romanian legal entities, permanent establishments of foreign entities for the activity they carry out in Romania; foreign legal entities resident in Romania according to the place of effective management, foreign legal entities that obtain income from the transfer of real estate property located in Romania or any rights related to such property, including the lease or transfer of use of real estate property located in Romania, income from the exploitation of natural resources located in Romania, as well as income from the sale-assignment of shares held in a resident; legal entities with registered office in Romania, established according to European legislation.

The following are not subject to corporate income tax:

- State Treasury;
- a public institution, established by law, except for economic activities carried out by it;
- The Romanian Academy, as well as the foundations established by the Romanian Academy as sole founder, with the exception of the economic activities carried out by them;
- National Bank of Romania;
- Deposit Guarantee Fund in the banking system, established by law;
- Investor compensation fund, established by law;
- Private Pension Guarantee Fund, established by law;
- The Guarantee Fund for Insured Persons, established by law;
- Romanian legal person paying income tax on microenterprises;
- the foundation established as a result of a legacy;
- a fiscally transparent entity with legal personality in situations other than those involving the existence of non-uniform treatments of the reverse hybrid elements;
- landlords' associations constituted as legal persons and tenants' associations recognized as landlords' associations, except for those who obtain income from the exploitation of common property, according to the law.
- the local unit of worship, to the extent that the income obtained is used, in the current year and/or in the following years, for the maintenance and functioning of the unit of worship, for construction, repair and consolidation works of places of worship and ecclesiastical buildings, for education, for the provision, in its own name and/or in partnership, of social services, accredited under the law, for specific actions and other non-profit activities of religious cults.

As regards non-profit organizations, trade unions and employers' organizations, income such as: membership fees and subscription fees, sponsorships, donations, resources obtained from public funds or grants, income from events, conferences, etc. are not taxable. Also, other income up to the equivalent in RON of EUR 15,000 in a fiscal year is not taxable, but not more than 10% of the total non-taxable income.

Since February 2017, a corporate income tax exemption has been introduced for the first 10 years of activity for taxpayers carrying out innovative, research and development or related activities.

| | |
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| Rate | 16% |
| Tax base | Total income – Total expenditure = Accounting result - Non-taxable income + Non-deductible expenses – Tax deductions = Tax result – Tax losses = Profit/loss |
| Tax losses | Reported in the last 7 years |

| | |
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| Tax credit | <p>Sponsorship/ patronage/ private grants/ expenses related to goods, financial means and services granted to the United Nations Children’s Fund – UNICEF, as well as to other international organizations operating according to the provisions of special agreements to which Romania is a party, within the limits established by law (minimum between 0.75 turnover and 20% corporate income tax due)</p> <p>The difference between the above amount and the amounts representing sponsorship granted to the beneficiary entities may be redirected to carry out sponsorships and/ or acts of patronage or granting of private grants/United Nations Children’s Fund – UNICEF, as well as other international organizations operating under the provisions of special agreements to which Romania is a party, in the year for which the annual income tax return was filed, within a maximum period of 6 months from the legal deadline for filing the annual return.</p> <p>The cost of purchasing electronic fiscal cash registers.</p> |
| Computation, payment and declaration | <p>Quarters I-III - quarterly, until the 25th of the month following the quarter for which the tax is due;</p> <p>Annually – until 25 March of the year following the year in which the tax is due; 25 June for years 2021-2025;</p> <p>Information statement for beneficiaries of sponsorship by the date of submission of the annual return;</p> <p>Corporate income taxpayers can opt for annual corporate income tax computation, declaration and payment, with quarterly advance payments.</p> <p>Exceptions to the above deadlines are religious cults, pre-university education establishments and higher education institutions, private, accredited, as well as authorized, non-profit organizations, trade unions, employers’ organizations; taxpayers who obtain a majority of their income from the cultivation of cereals, technical plants and potatoes, fruit and wine growing, who declare and pay the annual income tax, up to and including 25 February of the year following the year for which the tax is computed.</p> |
| Other | <p>Payers of corporate income tax can choose to apply the corporate income tax consolidation system.</p> |

Examples of corporate income tax computation elements

To determine the tax result, expenses incurred for the purpose of carrying out the economic activity, including those regulated by normative acts in force, as well as registration fees, dues and contributions due to chambers of commerce and industry, employers’ organizations and trade unions, and expenses with salaries and those assimilated to salaries are considered deductible expenses.

Examples of non-taxable income:

- income from cancellation, recovery, including re-invoicing of expenses,
- income from the reduction or cancellation of provisions,
- income from the repayment or cancellation of interest and/or penalties,

If no deduction has been granted for these.

Examples of limited deductible expenses:

- protocol expenses;
- social expenses;
- provision expenses, adjustments for depreciation and reserves;
- interest and other costs equivalent to interest from an economic point of view;
- depreciation;
- expenses for the operation, maintenance and repair of the company accommodation;

- operating, maintenance and repair costs relating to a headquarter located in a dwelling owned by an individual and used also for personal purposes;
- expenses relating to motorized road vehicles not used exclusively for business purposes, with a maximum permissible total mass not exceeding 3,500 kg and not having more than 9 passenger seats, including the driver's seat, owned or used by the taxpayer.

Examples of non-deductible expenses:

- Income tax due;
- Interest/ late payments, fines, seizures and penalties due to the Romanian authorities;
- Expenses made in favor of shareholders;
- Expenses related to non-taxable income;
- Losses recorded on derecognition of receivables, for the part not covered by the provision;
- Sponsorship/patronage/private grants expenses;
- Expenditure recorded in the accounting records, based on a document issued by a taxpayer declared inactive;
- The cost of purchasing electronic fiscal cash registers.

Examples of tax deductions:

- Legal reserve;
- Research and development expenditure;
- Tax depreciation.

Example of tax credit:

- Sponsorship/patronage/private grants expenses (tax credit minimum 0.75% of turnover; 20% of corporate income tax due);
- Expenditure representing the cost of purchase of the electronic fiscal cash registers at the date of commissioning, according to the law;
- External tax credit.

Tax depreciation

Fixed assets with a unit value exceeding a value set periodically by decision (currently RON 2,500) and with a useful life of more than 1 year must be depreciated by one of the following methods:

- linear: characterized by the application of a constant rate, chosen within a minimum/maximum range set for each type of asset;
- degressive: characterized by applying a multiplier to the constant rate;
- accelerated: which provides for the possibility to deduct up to 50% of the value of the asset in the first year of use. This method of depreciation cannot be applied to buildings of any kind, costs for patents, copyrights, licenses, trademarks and other similar values, and land improvements, for which the straight-line method of depreciation is mandatory.

The following are not assets subject to depreciation by explicit regulatory provisions:

- land;
- goodwill;
- art objects;
- any other asset that does not depreciate over time.

Leasing

Romanian legislation divides leasing into two distinct categories: financial leasing and operational leasing. In the case of financial leasing, the user is treated for tax purposes as the owner of the asset

and can therefore deduct depreciation together with interest charges; in the case of operating leasing, on the other hand, the lessee is entitled to deduct the full lease instalment.

Tax exemption of reinvested profits

The profit invested in the following is tax exempt:

- technological equipment, assets used in production and processing activities, assets representing refurbishment, electronic computers and peripheral equipment, household, control and billing machines and appliances, computer software, as well as for the right to use computer software, produced and/or purchased, including under financial leasing contracts, and put into operation, used for the purpose of carrying out economic activity, is exempt from tax;
- supporting dual vocational education by ensuring the practical training and quality training of students.

The facility applies under the following conditions:

- The assets in question shall be kept in the company's pool of assets for at least half of their economic useful life, determined in accordance with the applicable accounting regulations, but not more than 5 years;
- The accelerated depreciation method is not chosen for these assets;
- The amount of the profit for which the income tax exemption was granted, less the part relating to the legal reserve, shall be allocated at the end of the financial year or during the following year, with priority for the Set up of reserves, up to the amount of the accounting profit recorded at the end of the financial year. Reserves are taxed when used in any form.

Deductions for research and development expenses in the calculation of taxable income

In calculating the tax result for R&D activities, the following tax incentives are granted:

- additional deduction in the computation of the tax result of 50% of eligible expenses for these activities;
- application of the accelerated depreciation method also for apparatus and equipment intended for research and development activities.

The facilities are granted according to the law. In order to qualify projects and activities to benefit from the tax incentives provided in the Tax Code, the taxpayer may request the certification of the activity by an expert registered in National Register of Experts. By exception, large taxpayers are obliged to request this certification. This certification is not required in the case of research and development projects and activities financed from national and international public funds.

Provisions on tax avoidance practices

Provisions on tax avoidance practices have been transposed in 2018 on limiting interest deductibility, exit taxation, the general anti-abuse rule, the controlled foreign company rule and in 2020 on neutralizing arrangements based on the non-uniform treatment of hybrid elements.

The concept of the place of effective management in Romania

In 2021, a questionnaire has been developed to determine the tax residence of foreign legal entities that have their effective place of management in Romania.

In order for a company to be considered as having its place of effective management in Romania, it must take important decisions related to the management of the company and the conduct of its business activities and meet at least one of the following conditions:

- making decisions in Romania of an economic-strategic nature necessary for the management of the foreign company's activity by the executive committee/board of directors:

- tax residence in Romania of at least 50% of the executive committee/board of directors of the foreign company.

The questionnaire, accompanied by a set of supporting documents, is submitted to the tax authorities or sent electronically. Within 30 days, the tax authorities check the documentation and compliance with the conditions regarding the place of effective management and issue a notification to this effect.

Within 30 days from the notification communication, the foreign company is obliged to submit form 016 "Tax Registration Statement/Statement of Amendments/Statement of cancellation for foreign legal persons having their place of effective management in Romania".

Tax credit

The tax paid abroad, either directly or indirectly, by withholding and transfer by another person, is deducted from the corporate income tax paid in Romania and cannot exceed the corporate income tax rate in Romania, 16%.

The tax credit is granted only from the corporate income tax computed for the year in which the tax was paid abroad.

The tax paid to a foreign state is deducted if the provisions of the convention for the avoidance of double taxation concluded between Romania and the foreign state are applied and if the Romanian legal entity presents the related documentation.

Dividend tax

A Romanian legal person paying dividends to a Romanian legal person is required to withhold, declare and pay the dividend tax withheld to the State budget.

Dividend tax is determined by applying a tax rate of 8% on the gross dividend paid to a Romanian legal entity. Dividend tax shall be declared and paid to the State budget, up to and including the 25th of the month following the month in which the dividend is paid.

If the dividends distributed, according to the law, have not been paid by the end of the year in which their distribution was approved, the related dividend tax shall be paid, as the case may be, by 25 January of the following year, respectively by the 25th of the first month of the amended tax year following the year in which the distribution of dividends was approved.

The provisions of this Article shall not apply in the case of dividends paid by a Romanian legal person to another Romanian legal person, if, at the date of payment of the dividends, each of these persons cumulatively meets the following conditions:

a) the legal person receiving the dividends:

- holds at least 10% of the equity of the Romanian legal entity paying the dividends, for a period of one year up to and including the date of their payment;
- is constituted as a "joint-stock company", "partnership limited by shares", "limited liability company", "general partnership", "limited partnership" or has the form of organization of another legal person under Romanian law;
- pays, without the possibility of an option or exemption, corporate income tax or any other tax that replaces corporate income tax;

b) the legal person paying the dividends:

- is constituted as a "joint-stock company", "partnership limited by shares", "limited liability company", "general partnership", "limited partnership" or has the form of organization of another legal person under Romanian law;

- pays, without the possibility of an option or exemption, corporate income tax or any other tax that replaces corporate income tax.

The above provisions also apply to dividends distributed/paid to privately managed pension funds and/or voluntary pension funds.

Special scheme for taxpayers who carry out activities such as night bars, night clubs, discos, casinos

Taxpayers who carry out activities such as night bars, night clubs, discotheques or casinos, including legal persons who earn such income under a contract of association, and in the case of which the 16% corporate income tax due for these activities is less than 5% of the respective income, are required to pay tax at the rate of 5% applied to this recorded income.

Permanent establishment

A permanent establishment is a place where all or part of the business of a non-resident is carried on, either directly or through a dependent agent.

The permanent establishment is not a legal person but is subject to taxation in Romania and is defined as the place where all or part of the activity of a non-resident company is carried out, directly or through a dependent agent.

The taxable profit of the permanent establishment is determined in accordance with the general rules used to compute taxable profit.

A foreign legal person that carries out its activity through several permanent offices in Romania is required to establish one of these offices as a designated permanent establishment for the fulfilment of its obligations. The income and expenses of the permanent establishments belonging to the same foreign legal entity are aggregated at the level of the designated permanent establishment.

The tax result at the level of the permanent establishment is determined on the basis of the income and expenses recorded by each permanent establishment belonging to the same foreign legal person and by using transfer pricing rules to determine the market value of a transfer between a foreign legal person and its permanent establishment. For expenses allocated by headquarters, other supporting documentation must include evidence of actual costs incurred and reasonable allocation of those costs to the permanent establishment, using transfer pricing rules.

Tax on representative offices

The representative office of a foreign legal person, authorized to operate in Romania, according to the law, is required to pay an annual tax of RON 18,000. This tax is declared and paid to the State budget until the last day of February of the tax year.

Transfer prices

According to the legislation in force, the need to prepare the transfer pricing file takes into account two aspects, the **type of taxpayer** (large, medium, small) and the **materiality thresholds** regarding the value of intra-group transactions carried out with affiliated entities in a year.

According to Order No. 442/2016, there are two situations regarding the preparation of the transfer pricing file, as follows:

Mandatory preparation of the transfer pricing file

Taxpayers in the large taxpayer category who carry out transactions with related persons with a total annual value greater than or equal to any of the following materiality thresholds are required to prepare an annual transfer pricing file:

- EUR 350,000 for transactions relating to the acquisition/sale of tangible or intangible assets;
- EUR 250,000 for transactions relating to services received/provided;
- EUR 200,000 for interest received/paid for financial services.

Taxpayers who are required to prepare the file will analyze all transactions with related parties, regardless of their value.

The deadline for the preparation of the transfer pricing file is the legal deadline for the submission of annual corporate income tax returns.

The deadline for making available the transfer pricing file at the request of the tax authorities is a maximum of 10 calendar days from the date of the request. There is no obligation to submit the file to the tax authorities prior to the request.

Preparation of the transfer pricing file on request

The following persons are required to prepare and submit the transfer pricing file at the specific request of the tax inspection authorities:

- Taxpayers in the large taxpayer category who do not meet the thresholds outlined above;
- Taxpayers in the small and medium taxpayer categories who carry out transactions with related persons with a total annual value greater than or equal to any of the following materiality thresholds:
 - EUR 100,000 for transactions relating to the purchase/sale of tangible or intangible assets;
 - EUR 50,000 for transactions relating to services received/provided;
 - EUR 50,000 for interest received/paid for financial services.

The deadline for submitting the transfer pricing file is set by the tax audit body during a tax audit and is between 30 and 60 calendar days, with the possibility of a single extension of up to 30 calendar days at the written request of the taxpayer.

No need to prepare the file

Taxpayers who carry out transactions with related persons with a total annual value below any of the above thresholds will document compliance with the arm's length principle in a tax audit, in accordance with the general rules laid down by the financial accounting and tax regulations in force.

Reductions in adjusted annual capital for the period 2022-2025

Corporate income tax/microenterprise income taxpayers benefit from the following tax reductions:

- 2%, if the booked equity in the year for which the tax is due is positive + the booked equity is at least ½ of the subscribed share capital

AND

- A reduction that is applied according to the increase in adjusted equity for the year for which the tax is due (e.g. 2023) compared to adjusted equity in the previous year (e.g. 2022), as follows:

| Percentage tax reduction | Adjusted equity growth intervals |
|--------------------------|--------------------------------------|
| 5% | Up to and including 5% |
| 6% | Over 5% and up to and including 10% |
| 7% | Over 10% and up to and including 15% |
| 8% | Over 15% and up to and including 20% |
| 9% | Over 20% and up to and including 25% |
| 10% | More than 25%. |

- 3%, if it reports a growth above the below mentioned level of adjusted annual capital compared to the adjusted annual capital registered in 2020/founding year:

| Year for which the tax is due | Percentage increase in adjusted equity |
|-------------------------------|--|
| 2022 | 5% |
| 2023 | 10% |
| 2024 | 15% |
| 2025 | 20% |



III. Income tax and social contributions

Tax residence

An individual is a tax resident in Romania if he/she meets at least one of the following conditions:

- is domiciled in Romania, evidenced by a valid identity card;
- the centre of an individual's vital interests (the place where the individual's personal and economic relationships are closest) is in Romania;
- the individual is present in Romania for a period or periods exceeding in total 183 days during any period of 12 consecutive months ending in the calendar year in question.

If the individual is considered tax resident in both countries, according to the domestic legislation, the provisions of the Tax Convention for the Avoidance of Double Taxation, concluded between Romania and the respective country, apply.

In Romania, the tax resident status is established by the tax authorities, following the submission by individuals of the "Questionnaire for establishing tax residence upon arrival in Romania" and the "Questionnaire for establishing tax residence upon departure from Romania".

Submission of the "Questionnaire for establishing tax residence on arrival in Romania" is mandatory for individuals who arrive in Romania and are here for a period or periods exceeding a total of 183 days during a period of 12 consecutive months ending in the calendar year in question. Individuals must submit the questionnaire within 30 days of the expiry of the 183-day period of presence in Romania. The answer from the tax authorities will be received within 30 days of submission of the Questionnaire.

The submission of the 'Questionnaire for establishing the tax residence upon departure from Romania' is mandatory for the Romanian tax resident individual, as well as for the non-resident individual who had the obligation to fill in the first mentioned Questionnaire, who leaves Romania for a period or periods exceeding 183 days, within a period of 12 consecutive months. Individuals must submit the Questionnaire 30 days before leaving Romania. The answer from the Romanian tax authorities will be received within 15 days after the submission of the Questionnaire.

Questionnaires must be submitted together with a set of relevant documents, e.g. copy of passport, documents proving the existence of a rented or owned dwelling available for the individual and/or his/her family, tax residence certificate from another country.

Income tax

A non-resident individual who meets the conditions to become a Romanian tax resident in terms of centre of vital interests and presence in Romania is subject to income tax on income obtained from any source (i.e. both in Romania and outside Romania), starting from the first day of arrival in Romania.

Personal income (e.g. interest, dividends earned abroad) must be declared annually by the taxpayer through a single tax return by 25 May of the year for the previous year. Income tax and social security contributions (if applicable) must also be paid within this period.

The income tax rate in Romania for individuals is 10% (with certain exceptions such as for income from dividends, gambling, transfer of real estate, capital gains, as mentioned in the table at page 27).

Individuals, both Romanian tax residents and non-residents, are liable to pay income tax in Romania for their employed activity in Romania, as well as for their self-employed activity through a permanent establishment in Romania.

Social contributions

The following international legislation applies:

- In the case of EU Member States, Iceland, Liechtenstein, Norway, Switzerland - EU Regulation 883/2004.
- Countries other than those mentioned above - social security agreements concluded by Romania. So far, Romania has concluded social security agreements with the following countries: Albania; Algeria; Macedonia; Republic of Korea; Korea; Soviet Union; Quebec; Israel; Libya; Canada; Republic of Moldova; Republic of Serbia; Turkey; Chile.

In respect to Great Britain, it is applied the Protocol in respect to coordinating the social security systems.

Income from salaries

If the individual is employed by a Romanian employer, the employer computes, declares and pays the income tax.

The taxable basis for income tax is gross income, from which the following are deducted: pension contribution, payable by the employee; health contribution, payable by the employee; personal deduction, where applicable, contributions to private pension funds up to EUR 400 per year; contributions to private health insurance up to EUR 400 per year. From February 2023 income, the cost of the sports facility subscriptions can be deducted up to a maximum of EUR 400 per year.

As regards the list of persons exempted from the payment of the 10% income tax in respect to salary income, the following categories of employees benefit from this exemption, according to the law:

- severely or highly disabled individuals;
- people who create computer software,
- persons engaged in research, development and innovation,
- persons who earn between RON 4,000 and RON 10,000 from employers in the construction sector until 31 December 2028,
- persons who earn between RON 3,000 and RON 10,000 in wages until 31 December 2028 from employers working in the agricultural sector and the food industry.

Starting with the income related to January 2023, the following monthly cumulated incomes are not taxable in the sense of income tax and are not included in the computation base of social contributions, within the limit of the monthly threshold of maximum 33% of the basic salary, under the conditions provided by law:

- additional amounts received by employees under the mobility clause, other than those received by mobile workers provided for in Government Decision No. 38/2008 on the organization of the working time of persons performing mobile road transport activities;
- the employer's meal allowance for its own employees if they do not receive meal vouchers;
- accommodation and rent for accommodation/living quarters made available by the employer to employees;
- the cost of tourist and/or treatment services, including transport;
- the contribution to the third pension pillar;
- voluntary health insurance premiums and medical services provided under subscription;
- the amounts granted to employees who work remotely (telework);

- the cost of the subscriptions for the use of sports facilities.

For each of the income categories mentioned above, there is also a separate threshold to benefit from the preferential treatment, as mentioned in the table mentioned below.

In terms of income from salaries, the employee and the employer owe the following social security contributions:

- Pension contribution due by the employee - 25%;
- Health contribution due by the employee - 10%;
- Labour insurance contribution due by the employer - 2.25%.

If the individual is employed by a Romanian employer, the employer calculates, declares and pays the social security contributions due by both the employer and the employees.

In addition to the income tax exemption, for the above-mentioned wage incomes in the construction, agricultural and food industry sectors, no contribution to the Pillar II and health contribution is due, and the labour insurance contribution rate is reduced to the rate that is paid to the Guarantee Fund for the payment of wage claims.

The following benefits in kind may be granted under the law.

| Advantage in kind | In terms of income tax and social contributions | From a corporate income tax point of view | Cap |
|---|--|---|---|
| The following monthly accumulated incomes are not taxable and are not included in the computation of social contributions, up to 33% of the basic salary corresponding to the job held or of the monthly salary granted according to the law: | | | |
| 1 Additional amounts received by employees under the mobility clause according to the law, other than additional amounts received by mobile workers provided for in Government Decision No. 38/2008 on the organization of working time of persons performing mobile road transport activities | Not taxable and not included in the computation of social security contributions within the two caps mentioned | Deductible expenses | 2.5 x the level set for public sector employees |
| 2 The cost of food provided by the employer for its employees | Not taxable and not included in the computation of social security contributions within the two caps mentioned | Deductible expenses | The maximum amount, according to the law, of a meal voucher/person/day, provided at the date of granting, in accordance with the legislation in force (i.e. RON 30) |
| 3 Accommodation and rent for accommodation provided by employers to their employees | Not taxable and not included in the computation of social security contributions within the two caps mentioned | Deductible expenses | 20% of the guaranteed gross minimum basic wage per country/month/person (i.e. RON 600), |

| | | | | |
|---|---|---|--|---|
| 4 | The cost of tourist and/or treatment services, including transport, during the holiday period, for own employees and their family members, provided by the employer | Not taxable and not included in the computation of social security contributions within the two caps mentioned | Social expenses, deductible up to 5% of salary expenses. | average gross salary (e.g. RON 6.789 per year) |
| 5 | Contributions to a voluntary pension fund (Pillar III) according to Law No. 204/2006, and those representing contributions to voluntary pension schemes, borne by the employer for its own employees. | Not taxable and not included in the calculation of social security contributions within the two caps mentioned | Deductible expenses | The equivalent in RON of the sum of EUR 400 per year, per person |
| 6 | Voluntary health insurance premiums, as well as medical services provided in the form of a subscription, paid by the employer for its own employees | Not taxable and not included in the computation of social security contributions within the two caps mentioned | Deductible expenses | The equivalent in RON of the sum of EUR 400 per year, per person |
| 7 | Amounts granted to employees who perform teleworking activities | Not taxable and not included in the computation of social security contributions within the two caps mentioned | Deductible expenses | RON 400 per month corresponding to the number of days in the month in which the individual carries out telework |
| 8 | Starting with the income for February 2023, the cost of subscriptions for the use of sports facilities for the practice of sport and physical education for maintenance, prophylactic or therapeutic purposes offered by providers whose activities fall under CAEN codes 9311, 9312 or 9313, as well as the cost of subscriptions, offered by the same provider acting in its own name or as an intermediary, which include both medical services and the right to use sports facilities for the practice of sport and physical education for maintenance, prophylactic or therapeutic purposes, paid for by the employer for its own employees. | Not taxable and not included in the computation base of social security contributions within the two caps mentioned | Deductible expenses | EUR 400 per year per person |

Other benefits in kind

| | | | | |
|---|---|--|--|---|
| 1 | Aid for funerals, severe and incurable diseases, aid for medical devices, aid for childbirth, aid for losses caused to households following natural disasters | Not taxable and not included in the computation base of social contributions | Social expenses, deductible up to 5% of salary expenses. | |
| 2 | Gifts in cash and/or in kind, including gift vouchers to employees and/or minor children | Not taxable and no social contributions are due | Social expenses, deductible up to 5% of salary expenses. | RON 300 / person for each occasion mentioned by the Tax Code |
| 3 | Meal voucher | 10% income tax No social contributions are due | Deductible expenses | RON 30 per day |
| 4 | Holiday vouchers | 10% income tax No social contributions are due | Deductible expenses | 6 gross minimum wages per country (6 x RON 3,000 = RON 18,000) per year |
| 5 | Nursery vouchers | 10% income tax No social contributions are due | Social expenses, deductible up to 5% of salary expenses. | RON 570 / month/child |
| 6 | Cultural vouchers | Not taxable and not included in the computation base of social contributions | Social expenses, deductible up to 5% of salary expenses. | RON 190/month or RON 380/event |
| 7 | Settlement of the public transport subscriptions (work-home route) for employees whose activity involves frequent travel within the locality. | Not taxable and not included in the computation base of social contributions | Deductible expenses | |
| 8 | Expenditure by employers for employee training | Not taxable and not included in the computation base of social contributions | Deductible expenses | |
| 9 | Entitlement to the stock option plan at the time of grant and exercise | Not taxable and not included in the computation base of social contributions | Not deductible. Similar items of expense at the time of grant, regardless of tax treatment at the employee level | |

| | | | | |
|----|---|--|-------------------------|--|
| 10 | Delegation allowance, secondment allowance, including the specific allowance for transnational secondment, additional benefits received by mobile workers provided for in Government Decision No. 38/2008 on the organization of working time of persons performing mobile road transport activities, as amended. | Not taxable and not included in the computation base of social contributions | Deductible expenses | Travel in Romania 2,5 x RON 20, up to 3 basic salaries Travel abroad 2.5 x the level set for each country, up to 3 basic salaries |
| 11 | Accommodation and transport costs during delegation/ departure | Not taxable and not included in the calculation of social contributions | Deductible expenses | |
| 12 | Expenditure on transport to and from the employee's workplace | Not taxable and not included in the computation base of social contributions | Deductible expenses | |
| 13 | Expenditure on transport between the city of residence of the employee and the city of the workplace, if accommodation costs are not covered | Not taxable and not included in the computation base of social contributions | Deductible expenses | |
| 14 | Business relocation expenses | Not taxable and not included in the computation base of social contributions | Deductible expenses | |
| 15 | The advantage of using the company car for personal purposes if the expenses are 50% deductible in the computation of corporate income tax | Not taxable and not included in the computation base of social contributions | 50% deductible expenses | |
| 16 | Expenditure on epidemiological testing and/or vaccination of employees | Not taxable and not included in the computation base of social contributions | Deductible expenses | |

Income from self-employed activities

For an activity to be considered independent, at least four of the following seven criteria must be met:

- freedom of choice of location, way of performing activity and working hours;
- freedom to do business for multiple clients;
- risks inherent in the activity assumed by the person carrying out the activity;
- activity carried out using the assets of the person that carries it out;
- activity performed by the person using his/her intellectual capacity and/or physical performance, depending on the specific activity;
- membership of a professional body/organization with the role of representing, regulating and supervising the profession practiced, and

- freedom to carry out the activity directly, with employed staff or through collaboration with third parties, in accordance with the law.

The annual net income from self-employed activities is established on the basis of the accounting data, as the difference between the gross income and the deductible expenses incurred for the purpose of obtaining the income. By exception, taxpayers who earn income from self-employment, for activities other than liberal professions, and whose income is less than EUR 25,000, determine their annual net income on the basis of annual income norms.

The income tax is declared by means of a single tax return and paid annually by the taxpayer. The deadline for declaring and paying the income tax (i.e. 25 May of the current year or of the following year, as the case may be) depends on how the tax on net annual income is determined.

Social contributions

- Pension contribution - 25%;

Individuals who earn self-employment income from one or more sources and/or categories of income are liable for pension contributions if they estimate their net income for the current year to be at least equal to 12 gross minimum wages. The minimum gross wage in Romania is RON 3,000 per month.

Individuals who do not meet this threshold may opt to pay pension contributions.

As regards the annual basis of assessment, starting with the income for the year 2023, two thresholds have been set for the social security contribution, that is: 12 and 24 gross minimum wages per country, depending on income i.e. between 12 and 24 gross minimum wages and above 24 gross minimum wages.

The pension contribution is declared through a single tax return and is paid annually, until 25 May of the current year.

- Health contribution - 10%;

Individuals who earn income from self-employment; royalties; association with legal persons; rental income; income from agricultural, forestry and fish farming activities; investments and other sources owe the health contribution, if they estimate for the current year a cumulative income of more than 6 gross minimum wages.

The health contribution is declared through a single tax return and is paid annually, until 25 May of the current year in which the income was earned.

Three thresholds have been set for the health insurance contribution: 6, 12 and 24 gross minimum wages per country, depending on income - between 6 and 12 gross minimum wages per country, between 12 and 24 gross minimum wages per country and over 24 gross minimum wages per country.

Determination of annual net income based on income rules

Applies to self-employment income other than liberal professions < EUR 25,000.

The income norm for each activity carried out by the taxpayer \geq the minimum gross basic wage per country guaranteed in payment, in force at the time of its determination * 12.

The income norm is published annually during the fourth quarter of the year preceding the one in which it is to be applied, as well as the correction coefficients established in consultation with the county councils / General Council of the Municipality of Bucharest, as appropriate.

Taxpayers who carry out activities for which the net income is determined on the basis of income norms are required to fill in only the income part of the Tax Register and have no bookkeeping obligations.

| Tax Liabilities | Tax base | Quote | Payment | Tax Returns | Other |
|------------------------|--|--------------|---------------------|---|---|
| Income Tax | Adjusted annual income norm = Annual income norm x correction coefficient x (no. of days worked / 365) | 10% | 25 May current year | Single tax return, by 25 May of the year for which the contribution is due or within 30 days from the date of starting/ending the activity during the year. | Disposition of the destination of an amount of the tax due on the annual income, up to and including 25 May of the year following the year of income, as follows: 2% for the support of non-profit entities and religious units, as well as for granting of private grants, according to the law; or 3.5% for the support of non-profit entities and religious units, which are accredited social service providers with at least one licensed social service, according to the law. |
| Pension contribution | 12 or 24 gross minimum wages per country | 25% | 25 May current year | Single tax return, by 25 May of the year for which the contribution is due or within 30 days from the date of starting/ending the activity during the year. | Starting with the income for 2023, two thresholds for the social insurance contribution have been established, that is: 12 and 24 gross minimum wages per country, depending on income i.e. between 12 and 24 gross minimum wages and above 24 gross minimum wages. It is not due if the person also earns income from wages and salaries. |
| Health contribution | 6, 12 or 24 guaranteed gross minimum wages per country | 10% | 25 May current year | Single tax return, by 25 May of the year for which the contribution is due or within 30 days from the date of starting/ending the activity during the year. | starting with the income for the year 2023, three thresholds have been set for the health insurance contribution: 6, 12 and 24 gross minimum wages per country, depending on income - between 6 and 12 gross minimum wages per country, between 12 and 24 gross minimum wages per country and over 24 gross minimum wages per country. For establishing the cap for the health contribution, income from self-employment; royalties; association with legal entities; income from agricultural, forestry and fish farming activities; rental income; investments and other sources are taken into account. |

Determination of the annual net income from self-employed activities, based on accounting data

| Tax Liabilities | Tax base | Quote | Payment | Tax Returns | Other |
|-----------------------------|--|-------|------------------------------|--|--|
| Income Tax | <p>Gross income</p> <p>- Deductible expenses</p> <p>= Net income for the year</p> <p>- Tax losses carried forward from the last 7 consecutive years</p> <p>= Recalculated annual net income</p> <p>- Pension contribution</p> <p>= Annual net taxable income</p> | 10% | 25 May of the following year | <p>Single tax return, by 25 May of the year for which the contribution is due or within 30 days from the date of beginning/ ending of activity during the year; 25 May of the following year for adjustments</p> | <p>Deduction, within the limit of the tax due, of the purchase cost of the electronic fiscal cash registers put into operation in the year in question.</p> <p>Provision on the allocation of an amount representing up to 3.5% of the annual tax due determined according to the law for the support of non-profit entities and religious units, as well as for the granting of private scholarships, according to the law.</p> |
| Pension contribution | 12 or 24 gross minimum wages per country | 25% | 25 May of the following year | <p>Single tax return, by 25 May of the year for which the contribution is due or within 30 days from the date of beginning / ending of activity during the year, 25 May of the following year for adjustments.</p> | <p>Starting with the income for 2023, two thresholds for the pension contribution have been established, that is: 12 and 24 gross minimum wages per country, depending on income i.e. between 12 and 24 gross minimum wages and above 24 gross minimum wages.</p> <p>It is not due if the person also earns income from wages and salaries.</p> |
| Health contribution | 6, 12 or 24 guaranteed gross minimum wages per country | 10% | 25 May of the following year | <p>Single tax return, by 25 May of the year for which the contribution is due or within 30 days from the date of beginning/ ending of activity during the year, 25 May of the following year for adjustments.</p> | <p>starting with the income for the year 2023, three thresholds have been set for the health insurance contribution: 6, 12 and 24 gross minimum wages per country, depending on income - between 6 and 12 gross minimum wages per country, between 12 and 24 gross minimum wages per country and over 24 gross minimum wages per country.</p> <p>For the health insurance contribution, for setting the cap, income from self-employment; royalties; association with legal entities; income from agricultural, forestry and fish farming activities; rental income; investments and other sources are taken into account.</p> |

Examples of income and expenses for self-employed activities

Gross income examples

- amounts received and the equivalent in RON of the income in kind from the activity;
- interest on trade or other receivables used in connection with a self-employed activity;
- gains from the transfer of assets from the business assets, used in the self-employed activity;
- income from an undertaking not to engage in self-employment or compete with another person;
- income from the cancellation or relief of debts arising in connection with self-employment.

Examples of deductible expenses for income generation purposes

- be carried out in the framework of independent activities, justified by documents;
- be included in the expenditure of the financial year in which they were paid;
- comply with depreciation rules;
- represent expenditure on insurance premiums incurred in certain situations;
- be carried out during travel for the purpose of carrying out the activity.

Examples of limited deductible expenses

- sponsorship, patronage, as well as private grants;
- protocol;
- operating, maintenance and repair costs relating to cars used by the taxpayer;
- interest rates in certain situations;
- rent - lease rate;
- the cost of subscriptions for the use of sports facilities for the practice of sport and physical education for maintenance, prophylactic or therapeutic purposes offered by providers whose activities fall under CAEN codes 9311, 9312 or 9313, paid for the personal use of the taxpayer, whether the activity is carried out individually or in a form of association, and the cost of subscriptions, offered by the same supplier acting in its own name or as an intermediary, which include both medical services and the right to use sports facilities for the practice of sport and physical education for maintenance, prophylactic or therapeutic purposes, paid for the personal use of the taxpayer, whether the activity is carried out individually or in a form of association.

Examples of non-deductible expenses

- amounts or goods used by the taxpayer for personal or family use;
- expenses corresponding to non-taxable income;
- income tax due, including tax on income earned abroad;
- donations of any kind;
- interests/late charges, fines, amounts or value of confiscated goods and penalties owed to Romanian/foreign authorities;
- instalments on loans taken out;
- depreciation of personal assets assigned to the activity, according to the law;
- expenditure on the purchase cost of electronic fiscal cash registers put into operation during the year in question, in accordance with the law.

Other income

| Type of income | Tax treatment |
|--|---|
| Pensions | 10% income tax for pensions > RON 2,000 |
| Dividend | <p>Rate - 8%, starting with dividend income distributed after 1 January 2023; taxable income = gross income</p> <p>The health contribution of 10% is payable under the three thresholds: 6, 12 and 24 gross minimum wages per country, depending on income - between 6 and 12 gross minimum wages per country, between 12 and 24 gross minimum wages per country and over 24 gross minimum wages per country. The income taken into account for setting the thresholds are the following: income from self-employment; income from intellectual property rights; income from association with a legal person; income from the transfer of the use of goods; income from agricultural, forestry and fish farming activities; income from investments; income from other sources.</p> |
| Rental income* | <p>10% income tax; taxable base is gross income</p> <p>The health insurance contribution is due under the conditions mentioned above.</p> |
| Income from intellectual property rights | <p>10% income tax applied to net income (gross income - flat rate of 40%) or the determination of the net income in real system can be chosen .</p> <p>The social insurance contribution and the health insurance contribution are due under the conditions laid down for self-employment income.</p> |
| Interests | <p>Income tax 10%; taxable income = gross income</p> <p>The health contribution is due in the conditions mentioned above</p> |
| Gains from the transfer of securities | <p>Income tax 10%.</p> <p>Taxable income = the price obtained on the sale minus the cost of acquisition, plus transaction costs.</p> <p>If these gains are obtained through Romanian tax resident intermediaries or non-residents who have a permanent establishment in Romania that has the quality of intermediary: 1% on each gain from the transfer of securities which have been acquired and alienated within a period of more than 365 days, inclusive, from the date of acquisition; 3% on each gain from the transfer of securities which have been acquired and alienated within a period of less than 365 days from the date of acquisition. The health contribution is due in the conditions mentioned above.</p> |

| | |
|--|--|
| Income from the liquidation of a legal person | 10% income tax; taxable income = the excess of distributions in cash or in kind over the contribution to the share capital of the beneficiary individual. The health contribution is due under the above conditions. |
| Prize | 10% x (value of the prize - non-taxable amount of RON 600) |
| Gambling | Gross income tranche -up to and including 10,000 - 3% -over 10,000 - 66,750, including 300 + 20% for what exceeds 10,000 -over 66,750 - 11,650 + 40% for what exceeds 66,750 Specific provisions for gambling characteristic of casinos, poker clubs, slot machines and lotteries. |
| Transfer of real estate | From 1 January 2023, on the transfer of ownership and its dismemberments, by inter vivos legal acts on buildings of any kind and land related to them, as well as on land of any kind without buildings, taxpayers owe a tax which is computed on the value of the transaction by applying the following rates: - 3% on buildings of any kind and land related to them, as well as on land of any kind without buildings, held for up to 3 years inclusive; - 1% for buildings described above held for more than 3 years. |
| Income from agricultural, forestry and fish farming activities | Taxable income is determined under the actual system or on the basis of annual income norms, as appropriate; Similar tax treatment of self-employment income or income from other sources, as appropriate. |
| Income from other sources** | 10% income tax The health insurance contribution is due in the conditions mentioned above |

* If the number of contracts/rooms exceeds 5, the income is classified as self-employment income and the taxable income is determined under the real system (gross income - deductible expenses).

From 1 January 2023, the obligation to register the contract concluded between the parties, as well as any subsequent changes, within 30 days of the conclusion/production of the change, with the competent tax authority is introduced.

**In the case of income obtained from the transfer of virtual currency, the taxable amount is determined as the positive difference between the sale price and the purchase price, including direct transaction costs. Earnings below RON 200 per transaction are not taxed provided that the total earnings in a tax year do not exceed RON 600.

IV. INTERNATIONAL TAX MATTERS

Withholding tax

The following income is subject to withholding tax.

| No. | Taxable income earned in Romania, regardless of whether the income is received in Romania or abroad | Tax rate | Comments |
|-----|---|----------------------|---|
| 1 | Dividends from a resident; | 8% | exempted under the Parent-Subsidiary Directive, if the conditions apply***; double taxation convention should be examined |
| 2 | Interest from a resident or non-resident who has a permanent establishment in Romania, if the interest is an expense of the permanent establishment/ designated permanent establishment | 16% 50%* 10%** | exempted under the Interest and Royalties Directive, if the conditions apply****; the double taxation convention should be examined |
| 3 | Royalties from a resident or non-resident who has a permanent establishment in Romania, if the royalty is an expense of the permanent establishment/ designated permanent establishment | 16% 50%* 10%** | exempted under the Interest and Royalties Directive, if the conditions apply****; the double taxation convention should be examined |
| 4 | Commissions from a resident or non-resident who has a permanent establishment in Romania, if the commission is an expense of the permanent establishment/ designated permanent establishment | 16% 50%* 10%** | Not all double tax treaties include specific provisions for commissions; the double tax treaty should be examined |
| 5 | Income from sports and entertainment activities carried out in Romania , regardless of whether the income is received by persons who actually participate in such activities or by other persons; | 16% 10%** | the double taxation convention should be examined |
| 6 | Income from the provision of management or consultancy services in any field , if such income is obtained from a resident or if such income is expenditure of a permanent establishment in Romania | 16% 50%* 10%** | the double taxation convention should be examined |

| | | | |
|----|---|----------------------|---|
| 7 | Income representing remuneration received by foreign legal persons acting as a director, founder or member of the board of directors of a resident | 16% | the double taxation convention should be examined |
| 8 | Income from services rendered in Romania , excluding international transport and services incidental to such transport | 16% 50%* 10%** | the double taxation convention should be examined |
| 9 | Income from self-employed professions carried on in Romania - doctors, lawyers, engineers, dentists, architects, auditors and other similar professions - if earned otherwise than through a permanent establishment or in a period or periods not exceeding a total of 183 days in any period of 12 consecutive months ending in the calendar year in question. | 16% 50%* 10%** | the double taxation convention should be examined |
| 10 | Income from prizes awarded in competitions organized in Romania; | 16% 10%** | the double taxation convention should be examined |
| 11 | Income realized by non-residents from the liquidation of a resident | 16% 50%* 10%** | the double taxation convention should be examined |
| 12 | Income from the transfer of trust assets from the trustee to the non-resident beneficiary in the trust transaction | 16% 10%** | the double taxation convention should be examined |

* if the income is paid into an account in a country with which Romania does not have a legal instrument in place for the exchange of information and if it is paid as a result of transactions qualified as artificial;

** if the income is obtained by individuals resident in a member state of the European Union or in a state with which Romania has concluded a double taxation agreement;

*** tax residency certificate and standard statement; conditions fulfilled regarding legal form, tax residency, type of tax paid; minimum shareholding (10%), minimum period (1 year); beneficial owner must be observed;

**** tax residency certificate and standard statement; conditions fulfilled regarding legal form, tax residency, type of tax paid; minimum shareholding (25%), minimum period (2 years); beneficial owner must be observed.

| No. | Exempt income in Romania | Comments |
|-----|---|--|
| 1 | Interest related to public debt instruments in RON and foreign currency, income obtained from transactions with derivative financial instruments used for risk management operations associated with government public debt obligations and income obtained from trading in government securities and bonds issued by administrative-territorial units, in RON and in foreign currency, on the domestic market and/or on the international financial markets, as well as the interest on instruments issued by the National Bank of Romania for the purpose of achieving monetary policy objectives and the income obtained from the trading of securities issued by the National Bank of Romania; | |
| 2 | Interest on debt instruments/securities issued by Romanian companies, incorporated under Law No. 31/1990, republished, as amended and supplemented, if the debt instruments/securities are issued on the basis of a prospectus approved by the competent regulatory authority and the interest is paid to a person who is not an affiliated person of the issuer of such debt instruments/securities; | |
| 3 | Dividends paid by a resident to a legal person resident in another Member State of the European Union or to a permanent establishment of a foreign legal person of a Member State of the European Union, located in another Member State of the European Union, if the conditions mentioned in the Tax Code are met. | exempted under the Parent-Subsidiary Directive, if the conditions apply* |
| 4 | Dividends paid by a Romanian resident to a legal entity resident in a Member State of the European Economic Area , other than the Member States of the European Union, namely Iceland, the Principality of Liechtenstein, the Kingdom of Norway, if the foreign legal entity receiving the dividends meets the conditions provided for by the Tax Code, regarding the Romanian resident receiving the dividends; | exempted under the Parent-Subsidiary Directive, if the conditions apply* |
| 5 | Prizes to a non-resident individual obtained from Romania as a result of participation in national and international artistic, cultural and sports festivals financed from public funds | |
| 6 | Prizes awarded to non-resident pupils and students in publicly funded competitions | |
| 7 | Income of foreign legal entities that carry out consultancy activities in Romania within the framework of free financing agreements concluded by the Romanian Government/public authorities with other governments/public authorities or international governmental or non-governmental organizations; | |

| | | |
|----|---|--|
| 8 | Interest and royalty income , if the conditions of the Tax Code are met | exempted under the Interest and Royalties Directive, if the conditions apply |
| 9 | Interest and/or dividends paid to pension funds , as defined in the legislation of the Member State of the European Union or in one of the countries of the European Economic Area , provided that a legal instrument exists on the basis of which the exchange of information takes place; | |
| 10 | Income obtained by non-resident individuals as a result of participating in gambling in another country , whose winning funds also originate in Romania . | |

Compliance

The tax due by non-residents on taxable income obtained in Romania is computed, withheld, declared and paid to the State budget by the income payers, up to and including the 25th of the month following the month in which the income was paid. In the case of dividends distributed, according to the law, but which have not been paid to shareholders by the end of the year in which their distribution was approved, the tax on dividends shall be declared and paid by 25 January of the following year, that is by the 25th of the first month of the amended fiscal year following the year in which the distribution of dividends was approved, as the case may be.

Payers of income subject to withholding tax, with the exception of payers of income from salaries, in accordance with this title, are obliged to submit a tax return on the computation and withholding of tax for each recipient of income to the competent tax body, by the last day of February inclusive of the current year for the expired year.

There is an obligation to submit the 017 Tax Return of registration of contracts/documents justifying the actual provision of services on the territory of Romania, initial/additional (related), concluded with foreign legal entities or non-resident individuals, within 30 days from the date of conclusion of the contract.

Multilateral Convention

The Multilateral Convention entered into force for Romania 3 months after the submission of the instrument of ratification to the OECD, i.e. 1 June 2022 (Romania deposited the instrument of ratification with the OECD on 28 February 2022).

The Multilateral Convention will take effect once Romania simultaneously notifies the OECD and the other Contracting Jurisdictions of the confirmation of completion of its domestic procedures. The Convention has effect in Romania in respect of a double taxation convention covered by the Convention as follows:

- **With respect to withholding taxes and amounts paid or credited to non-residents**, if the event giving rise to such taxes occurs on or after the first day of the following calendar year beginning on or after 30 days after the date of receipt by the OECD of the last of the notifications made by each Contracting Jurisdiction which has made the reservation provided for in paragraph 7 of Article 35 (Effectiveness) concerning the fulfilment of its domestic procedures for the effectiveness of the provisions of this Convention in respect of that specific tax agreement concerned.
- **With regard to other taxes levied by Romania**, for taxes levied in respect of taxable periods beginning on or after the first day of the following year that begins on or after the expiry of the period of 6 calendar months beginning 30 days after the date of receipt by the OECD of the last of the notifications made by each Contracting Jurisdiction which has made the reservation provided for in paragraph 7 of Article 35 (Effectiveness) concerning the fulfilment of its domestic procedures for the effectiveness of the provisions of this Convention in respect of that specific tax agreement concerned.

The provisions of the multilateral convention apply to double taxation conventions concluded by Romania with other countries. Certain conditions must be met.

- Both Contracting States have signed the multilateral convention;
- Both Contracting States have included the other Contracting State in their own list of treaties intended to be amended and
- Both States have the same position on the articles of the multilateral convention (with certain exceptions for which reciprocity is not necessary).

The Multilateral Convention makes the following changes:

- Dividend income – Romania has chosen to apply the more favorable provisions of the Convention if the holding period is longer than 365 days.
- Other income (e.g. interest, royalties, services, capital gains) – For all income, the provisions of the multilateral convention and double tax treaties should be analyzed, with regard to transparent entities, dual resident entities, treaty abuse, appropriate adjustments of corporate income tax between associated companies, by case.

Other issues mentioned in the multilateral convention are:

- Mutual agreement procedure – Where a person considers that measures taken by one or both States result or will result for that person in taxation not in accordance with the provisions of the double taxation convention, that person may, irrespective of the remedies available under the domestic laws of those States, submit the case to the competent authority of either State.
- Tax credit – Romania has chosen the tax credit as a method to avoid double taxation. The tax credit will apply in lieu of the provisions of a double taxation convention which, for the elimination of double taxation, requires a state to exempt from tax in that state income derived or capital held by a resident of that state which, under the provisions of the double taxation convention, may be taxed in the other state.

List of countries with which Romania has concluded double taxation agreements

| | Country | Dividends (%) | Interest rates (%) | Commissions (%) | Royalties (%) |
|---|--------------|---------------|--------------------|-----------------|---------------|
| 1 | Albania | 10-15 | 10 | 15 | 15 |
| 2 | Algeria | 15 | 15 | . | 15 |
| 3 | Saudi Arabia | 5 | 5 | . | 10 |
| 4 | Armenia | 5-10 | 10 | 15 | 10 |
| 5 | Australia | 5-15 | 10 | . | 10 |
| 6 | Austria | 0-5 | 3 | . | 3 |
| 7 | Azerbaijan | 5-10 | 8 | . | 10 |

| | | | | | |
|-----------|------------------------|---------|-------|----|----------|
| 8 | Bangladesh | 10-15 | 10 | . | 10 |
| 9 | Belgium | 5-15 | 10 | 5 | 5 |
| 10 | Belarus | 10 | 10 | . | 15 |
| 11 | Bosnia and Herzegovina | 5-10 | 7 | | 5 |
| 12 | Bulgaria | 5 | 5 | . | 5 |
| 13 | Canada | 5-15 | 10 | . | 5-10 |
| 14 | China | 3 | 3 | . | 3 |
| 15 | Cyprus | 10 | 10 | 5 | 5 |
| 16 | North Korea | 10 | 10 | . | 10 |
| 17 | South Korea | 7-10 | 10 | 10 | 7-10 |
| 18 | Croatia | 5 | 10 | . | 10 |
| 19 | Denmark | 10-15 | 10 | 4 | 10 |
| 20 | Ecuador | 15 | 10 | 10 | 10 |
| 21 | Egypt | 10 | 15 | 15 | 15 |
| 22 | United Arab Emirates | 3 | 3 | . | 3 |
| 23 | Estonia | 10 | 10 | 2 | 10 |
| 24 | Ethiopia | 10 | 15 | . | 15 |
| 25 | Russian Federation | 15 | 15 | . | 10 |
| 26 | Philippines | 10-15 | 10-15 | . | 10-15-25 |
| 27 | Finland | 5 | 5 | . | 2.5-5 |
| 28 | France | 10 | 10 | . | 10 |
| 29 | Georgia | 8 | 10 | 5 | 5 |
| 30 | Germany | 5-15 | 0-3 | . | 3 |
| 31 | Japan | 10 | 10 | . | 10-15 |
| 32 | Jordan | 15 | 12.5 | 15 | 15 |
| 33 | Greece | 25-45 | 10 | 5 | 5-7 |
| 34 | Hong Kong | 3-5 | 3 | . | 3 |
| 35 | India | 10 | 10 | . | 10 |
| 36 | Indonesia | 12.5-15 | 12.5 | 10 | 12.5-15 |
| 37 | Iran | 10 | 8 | . | 10 |
| 38 | Ireland | 3 | 3 | . | 3 |
| 39 | Iceland | 5-10 | 3 | . | 5 |
| 40 | Israel | 15 | 5-10 | . | 10 |
| 41 | Italy | 0-5 | 0-5 | . | 5 |
| 42 | Kazakhstan | 10 | 10 | 10 | 10 |
| 43 | Kuwait | 1 | 1 | . | 20 |

| | | | | | |
|-----------|----------------|--------|----------|------|-------|
| 44 | Latvia | 10 | 10 | 2 | 10 |
| 44 | Lebanon | 5 | 5 | . | 5 |
| 46 | Lithuania | 10 | 10 | 2 | 10 |
| 47 | Luxemburg | 5-15 | 10 | 5 | 10 |
| 48 | Macedonia | 5 | 10 | . | 10 |
| 49 | Malaysia | 10 | 15 | . | 12 |
| 50 | Malta | 5-30 | 5 | 10 | 5 |
| 51 | Morocco | 10 | 10 | 10 | 10 |
| 52 | Mexico | 10 | 15 | . | 15 |
| 53 | Moldova | 10 | 10 | . | 10-15 |
| 54 | Montenegro | 10 | 10 | 10 | 10 |
| 55 | Namibia | 15 | 15 | . | 15 |
| 56 | Nigeria | 12.5 | 12.5 | . | 12.5 |
| 57 | Norway | 5-10 | 5 | . | 5 |
| 58 | Netherlands | 0-5-15 | 3 | . | 3 |
| 59 | Pakistan | 10 | 10 | 10 | 12.5 |
| 60 | Poland | 5-15 | 10 | 10 | 10 |
| 61 | Portugal | 10-15 | 10 | . | 10 |
| 62 | Qatar | 3 | 3 | 3 | 5 |
| 63 | United Kingdom | 10-15 | 10 | 12.5 | 10-15 |
| 64 | Czech Republic | 10 | 7 | . | 10 |
| 65 | San Marino | 0-5-10 | 3 | . | 3 |
| 66 | Serbia | 10 | 10 | 10 | 10 |
| 67 | Singapore | 5 | 5 | . | 5 |
| 68 | Syria | 5-15 | 10 | . | 12 |
| 69 | Slovakia | 10 | 10 | . | 10-15 |
| 70 | Slovenia | 5 | 5 | . | 5 |
| 71 | Spain | 0-5 | 3 | - | 3 |
| 72 | Sri Lanka | 12.5 | 10 | 10 | 10 |
| 73 | United States | 10 | 10 | . | 10-15 |
| 74 | South Africa | 15 | 15 | . | 15 |
| 75 | Sudan | 5-10 | 5 | . | 5 |
| 76 | Sweden | 10 | 10 | 10 | 10 |
| 77 | Switzerland | 15 | 5 | . | 10 |
| 78 | Tajikistan | 5-10 | 10 | . | 10 |
| 79 | Thailand | 15-20 | 10-20-25 | 10 | 15 |

| | | | | | |
|-----------|--------------|-------|----|---|-------|
| 80 | Tunisia | 12 | 10 | 4 | 12 |
| 81 | Turkey | 15 | 10 | . | 10 |
| 82 | Turkmenistan | 10 | 10 | . | 15 |
| 83 | Ukraine | 10-15 | 10 | . | 10-15 |
| 84 | Hungary | 5-15 | 15 | 5 | 10 |
| 85 | Uruguay | 5-10 | 10 | . | 10 |
| 86 | Uzbekistan | 10 | 10 | . | 10 |
| 87 | Vietnam | 15 | 10 | . | 15 |
| 88 | Zambia | 10 | 10 | . | 15 |

Income of a foreign legal person obtained from the transfer of real estate properties located in Romania or any rights related to these properties, income from the exploitation of natural resources located in Romania and income from the sale-assignment of shares held in a Romanian legal person

Foreign legal entities are required to pay corporate income tax on the taxable income from the following activities/operations:

- the transfer of real estate located in Romania, including from the rental or transfer of the use of the property or any rights related to this real-estate;
- the sale-assignment of the shares held in a Romanian legal entity, if they are not held for an uninterrupted period of one year, in a percentage of at least 10%, in the following cases:
 1. no proof of residence in a country with which Romania has concluded a double taxation convention is made;
 2. there is no double taxation convention between Romania and the state of residence of the foreign legal entity that is alienating the shares;
 3. the right of taxation is vested in Romania, subject to the application of the provisions of double taxation conventions;
- exploitation of natural resources located in Romania, including the sale-assignment of any rights related to these natural resources.

Associations/Entities operating/receiving income in/from Romania

A fiscally transparent association/entity without legal personality may be formed between non-resident persons or between one or more non-resident persons and one or more resident persons.

Any fiscally transparent association/entity without legal personality operating in Romania must designate one of the associates/participants, as the case may be, to fulfil the obligations incumbent on each associate/participant, as follows:

- the registration of each associate/participant if he/she does not have a tax identification code assigned by the Romanian tax authority;
- managing the accounting records of the association/entity and keeping/archiving the supporting documents related to the association's activity, according to the law;

- providing information in writing, on the basis of a statement of association, to each partner/participant, legal or natural person, on the part of the income and/or expenditure realized/executed which is allocated to him/her on the basis of the contract of association; the statement of association on the basis of which the income/expenditure is allocated is the supporting document at partner/participant level;
- possession and presentation to the competent authority in Romania of the contract of association containing data on the contracting parties, the object of activity of the association/entity, the share of participation in the association/entity of each partner/participant, proof of registration with the competent tax authority in Romania of the permanent establishment of the non-resident partner/participant and the tax residence certificate of each non-resident associate/participant. The contract of association shall be registered with the competent tax authority in whose district the partner designated to fulfil the tax obligations of the association is registered;
- the calculation, withholding, payment to the State budget and declaration of withholding tax due by each non-resident partner/participant in accordance with the double taxation convention or this code, as the case may be;
- fulfilment of the obligations concerning the submission of the annual statement for the income withholding tax.

The tax is computed and withheld when the income is paid and declared and paid to the State budget by the 25th of the month following the month in which the income was paid.

The non-resident partner/participant, legal person or individual, who carries out activity in Romania through a permanent establishment/designated permanent establishment, respectively obtains income for which Romania has the right of taxation, as well as the associate/participant, legal person, resident in Romania is obliged to calculate, pay and declare the income tax for the taxable profit/taxable net income, as the case may be, based on the income and expenses determined by the operations of the association.

The non-resident association/entity that is not treated as resident for tax purposes in the foreign State in which it is registered is considered a transparent association/entity without legal personality for tax purposes in Romania. The above provisions are applicable if at least one of the non-resident partners/participants carries out activities in Romania through a permanent establishment, i.e. obtains income for which Romania is entitled to tax.

For taxable income obtained in Romania by the non-resident association/entity that is not treated as resident for tax purposes in the foreign State in which it is registered, the Romanian income payer computes, withholds, pays to the State budget and declares the withholding income tax due by each non-resident partner/participant according to the double taxation convention and the Tax Code.

The non-resident association/entity treated as resident for tax purposes in the foreign State in which it is registered, a State with which Romania has concluded a double taxation convention, is not considered a transparent association/entity without legal personality for tax purposes in Romania, and is taxed for the taxable profit/gross income, as the case may be, which is due to this association/entity according to the double taxation convention or the Tax Code, respectively.

The provisions relating to the foreign legal person carrying on business through a permanent establishment in Romania also apply to the non-resident association/entity treated as resident for tax purposes in the foreign State with which Romania has a double taxation convention if the association/entity carries on business in Romania through a permanent establishment.

In order to benefit from the provisions of the double taxation convention concluded by Romania with the foreign State, the non-resident association/entity treated as resident for tax purposes in the foreign State in which it is registered must present the tax residence certificate issued by the competent authority of the foreign State.

V. VAT and other indirect taxes

VAT

VAT registration

For taxable persons established in Romania through the seat of economic activity, VAT registration is:

- Mandatory if the annual turnover, defined for VAT purposes, of EUR 88,500 (RON 300,000) is exceeded;
- Optional before the threshold is exceeded - strict criteria to be met.

Taxable persons, having their seat of economic activity in Romania, which are not liable for normal VAT registration in Romania are obliged to obtain a special VAT code in the following situations:

- Purchase of services from persons established outside Romania, but within the EU, having the place of supply in Romania;
- Provision of services with place of supply in another EU Member State;
- Intra-Community acquisitions of goods which cumulatively exceed the annual threshold of EUR 10,000.

Taxable persons not established in Romania need to register for direct tax purposes before performing the following:

- Intra-Community acquisitions or intra-Community supplies (deemed or actual);
- Operations which give deduction right, for which the client is not liable for taxation through reverse-charge;
- Optional: for imports, rental or sale of immovable goods.

Registration before start of activity is also required for taxable persons not having their seat of economic activity in Romania but which are established in Romania through a fixed establishment.

Fiscal representative

An entity not established in the EU that carries out taxable transactions in Romania and is required to register for VAT purposes must appoint a tax representative. A taxable person established in the European Union can appoint a tax representative or register directly.

VAT code cancellation

In certain cases (e.g. inactivity), the VAT code can be cancelled by the tax authorities. The taxpayer still needs to collect VAT but will not be able to deduct input VAT until it re-registers for VAT purposes.

Single tax group

Under Romanian law, a group of companies, which are in close organizational, financial and economic relations with each other, may be considered to form a tax group.

At least two taxable persons may form a single tax group for a period of at least 2 years if the members meet the following conditions:

- They are established in Romania;
- They do not belong to another tax group;
- They use the same tax period;
- The capital of taxable persons is held directly or indirectly in a percentage greater than 50% by the same partners.

Rate

The standard rate is 19%.

There are two reduced rates, 5% and 9%. They should be considered exceptions to the general rule and are limited to specific categories of goods or transactions; they are usually based on social grounds and tend to facilitate certain transactions of primary importance.

The reduced 9% rate is applied for the following supplies of services and/or goods:

- delivery of prostheses and their accessories;
- delivery of orthopedic products;
- delivery of medicines for human and veterinary use;
- the supply of the following goods: foods, including beverages, with the exception of alcoholic and non-alcoholic beverages falling within CN codes 2202 10 00 and 2202 99, intended for human and animal consumption, live animals and poultry of domestic species, seeds, plants and ingredients used in the preparation of food, products used to supplement or replace food;
- water supply for irrigation in agriculture;
- the supply of fertilizers and pesticides of the kind normally used in agricultural production, seeds and other agricultural products intended for sowing or planting, and the supply of services of the kind normally used in agricultural production;
- water supply and sewerage services;
- accommodation within the hotel sector or sectors with similar function, including the rental of land set aside for camping;
- restaurant and catering services, excluding alcoholic and non-alcoholic beverages falling within CN codes 2202 10 00 and 2202 99;
- delivery of chemical fertilizers and chemical pesticides of the type normally used in agricultural production.

The reduced rate of 5% is applied to the following supplies of goods and services:

- the supply of school textbooks, books, newspapers and magazines, on a physical medium and/or electronically, with the exception of those having wholly or predominantly video or audio musical content and those intended exclusively or mainly for advertising;
- services consisting in allowing access to castles, museums, memorial houses, historical monuments, architectural and archaeological monuments, zoological and botanical gardens, fairs, amusement parks and recreational parks whose activities fall under CAEN codes 9321 and 9329, fairs, exhibitions and cultural events, sports events, cinemas;
- delivery of housing as part of social policy, including the land on which it is built;
- the right to use sports facilities whose activities fall under CAEN codes 9311 and 9313;
- passenger transport by trains or historic steam traction vehicles on narrow gauge lines for tourist or leisure purposes;
- passenger transport using cable transport facilities - cable car, cable car, chairlift, ski lift - for tourism or leisure purposes;

- transport of persons by animal-drawn vehicles used for tourism or leisure purposes;
- transport of persons in boats used for tourism or leisure purposes;
- delivery of high quality food, i.e. mountain, organic, traditional products, authorized by the Ministry of Agriculture and Rural Development;
- supply of firewood to individuals in the form of logs, billets, twigs, branches or similar forms falling within CN codes 4401 11 00 and 4401 12 00;
- supplies of firewood, in the form of logs, billets, twigs, branches or similar forms, falling within CN codes 4401 11 00 and 4401 12 00, to legal persons or other entities, regardless of their legal form of organization, including schools, hospitals, medical dispensaries and social welfare institutions;
- supply of heat energy in the cold season, intended for certain categories of consumers;
- delivery and installation of photovoltaic panels, solar thermal panels, high-efficiency low-emission heating systems, for living spaces or public authorities, in certain conditions;

Deductions

Any taxable person is entitled to deduct the tax on purchases if these purchases are intended to be used for the benefit of taxable transactions or transactions resulting from economic activities. VAT paid and due on transactions such as domestic purchases of goods or services, intra-Community purchases of goods or imports, can be deducted.

The right to deduct VAT on the purchase of road vehicles used for passenger transport and vehicles meeting certain criteria, as well as the purchase of fuel and all related services used for those vehicles is limited to 50%, except in specific cases (e.g. vehicles used by sales agents, taxis, transport services).

Separately, no VAT is deductible on purchases of alcohol and tobacco products or tax on amounts paid in the name and on behalf of the customer and tax on amounts collected in the name and on behalf of another person, not included in the taxable amount of the supplies.

Exemptions

Exemptions can be without deduction right or with deduction right. Most exempt supplies are examples of “exemptions without right to deduct”, i.e. supplies for which no input VAT can be deducted, which was incurred in the previous production and distribution processes leading up to the supply.

Examples of exemptions without right of deduction: medical and dental services, postal services, education, cultural activities, financial and insurance services, gambling, transactions involving immovable property (with option to tax under certain conditions), etc.

Examples of exemptions with the right to deduct: intra-Community supplies, exports, international public transport.

Transfer of a Going Concern

The transfer of all or part of the assets, regardless of whether this transfer is carried out as a result of a sale, merger or contribution in kind to the share capital, does not fall within the scope of VAT, provided that the assets transferred constitute an independent line of business capable of carrying out economic activities and that the receiver is a taxable persons established for VAT purposes in Romania.

The VAT upon collection system

Taxable persons with an annual turnover under the RON 4,500,000 threshold may choose to apply the “VAT upon collection” system. The right to deduct/collect VAT on purchases/supplies of goods/ services from companies applying this system/their suppliers is postponed until payment is made.

Compliance

As a general rule, the tax period is the calendar month. For taxable persons registered for VAT whose turnover at the end of the previous year did not exceed EUR 100,000 and do not perform intra-Community acquisitions, the tax period is the calendar quarter.

VAT returns must be submitted to the tax authorities by the 25th day of the month following the end of the tax period; VAT payment must be made by the same date. The VAT return must be submitted electronically.

Taxable persons having the seat of economic activity in Romania which are not registered for VAT in Romania and which are not required to register are obliged to pay VAT and file a special VAT return in relation to services provided by non-resident suppliers. These obligations must be fulfilled by the 25th day of the month following the month in which the services were rendered.

All taxable persons who are registered for VAT purposes in Romania must also file an informative return with the Romanian tax authorities. In principle, this return must include all local supplies and purchases between taxable/non-taxable persons made during the reporting period. The deadline for this return is the 30th day of the month following the end of the period.

VIES statement is also to be filed by the 25th of the month following the tax period, if intra-Community operations were performed.

Special VAT regimes

In the legislation, there are special arrangements, inter-alia, for:

- small businesses,
- travel agencies,
- second-hand goods, works of art, collectors' items and antiques,
- investment gold,
- for electronic, telecommunications, broadcasting and television services provided by taxable persons not established in the European Union, respectively by taxable persons established in the European Union but in a Member State other than the Member State of consumption,
- for farmers,
- for distance selling of goods imported from third territories or third countries and
- a special mechanism for declaring and paying VAT upon importation.

VAT refund

VAT refunds can be claimed, if applicable, or deferred until the expiry of the limitation period (5 years).

Refund can be made with a previous or subsequent tax audit. If a previous tax audit is carried out, the refund process can take even 1 year.

SAF-T

SAF-T (Standard Audit File for Tax) is an XML-based file type used internationally for the electronic exchange of tax information.

From 1 January 2022, SAF-T becomes mandatory only for large taxpayers, with medium-sized taxpayers joining from 2023, and in 2025 it becomes mandatory for all other taxpayers (including non-residents registered for VAT purposes in Romania). Taxpayers will be able to submit the return on a monthly or quarterly basis, depending on the applicable tax period for VAT. Persons not registered for VAT purposes will have to file quarterly SAF-T returns.

Through the SAF-T file, taxpayers transmit to the tax authorities detailed information on transactions carried out during the reporting period, such as: accounting records at transaction level (journal), sales and purchase invoices, payments made, detailed information on stocks and their movements, detailed information on assets and transactions.

There is a grace period for filing the first report, subdivided according to the size of the taxpayer:

- 6 months for the first filing, 5 months for the second filing, 4 months for the third filing, 3 months for the fourth filing and 2 months for the fifth filing, for taxpayers who are obliged to file monthly SAF-T;
- 3 months for the first filing for taxpayers who are required to file quarterly SAF-T.

However, the standard filing deadlines (those applicable after the grace period has expired) are as follows:

- the last calendar day of the month following the reporting period, i.e. the calendar month/quarter, as applicable, for information other than that relating to the “Stocks” and “Assets” sections;
- at the deadline for submission of the financial statements for the financial year, in the case of the “Assets” section;
- within the time limit set by the central tax authority, which may not be less than 30 calendar days from the date of the request, in the case of the “Stocks” section.

Failure to submit the SAF-T file is sanctioned as follows:

- Fine between RON 1,000 and RON 5,000 for not submitting the SAF-T within the deadline;
- Fine between RON 500 and RON 1,500 for incorrect or incomplete filing.

RO E-factura (E-invoice)

The national RO e-Factura system is a set of principles, rules and IT applications introduced by GEO 120/2021. The system aims at transmitting electronic invoices from the supplier to the customer, in compliance with specific technical requirements regarding the structure of electronic invoices, their storage and transmission by electronic means.

From 1 July 2022, companies could opt to use the RO e-Factura system, and from this date, its use became mandatory for certain categories of transactions, as follows:

- B2G transactions - the relationship between an economic operator and a contracting authority (B2G - Business to Government) is defined as the transaction between an economic operator that is a contractor or subcontractor under Law No. 98/2016 (on public procurement), Law no. 99/2016 (on sectoral procurement), Law No. 100/2016 (on works and services concessions) or GEO no. 114/2011 (on public procurement in the fields of defence and security), as amended and supplemented. The list of public entities has also been posted on the official website of the Ministry of Public Finance.
- transactions carried out in B2B (Business to Business) relations with goods with high tax risk; the obligation is for all types of transactions: domestic transactions, EU transactions, including the transfer of own goods from Romania to another Member State, extra-EU transactions.

The list of goods with high fiscal risk subject to monitoring by the RO e-Factura system was established by Order No. 12/2022, as follows (CN codes can be correlated with those used for Intrastat statements):

- edible vegetables, plants, roots and tubers - CN codes 0701 to 0714 inclusive and 0801 to 0814 inclusive;
- alcoholic beverages - CN codes 2203 to 2208 inclusive;
- new buildings;
- mineral products (natural mineral water, sand and gravel) - CN codes 2201, 2202, 2505 and 2517;

- clothing and accessories, footwear - CN codes 6101 to 6117 inclusive, 6201 to 6212 inclusive, 6214 to 6217 inclusive, 6401 to 6405 inclusive;

For economic operators who carry out B2G or B2B transactions with goods with high fiscal risk, registration in the RO e-Factura system is not required. Economic operators who are obliged to implement the RO e-Factura system can issue electronic invoices directly and send them to the system. However, because the system involves IT technology, users must have access to the Virtual Private Space (SPV) platform. After registration in the SPV, the electronic invoice is sent to the system by generating an XML file that will be uploaded to the SPV.

Currently, there is the possibility to issue electronic invoices free of charge via the application on the tax authorities' website, at the address "fill in invoice", which generates the XML file that will be uploaded later in the SPV. In the future, economic operators can opt to generate the XML file and send it to the SPV directly from their own invoicing software. For commercial purposes, the supplier will continue to send the customer the usual invoice issued as before, through the usual communication channels.

RO E-transport

The RO e-Transport national system is a set of principles, rules and IT applications, introduced by GEO 41/2022, with the purpose of monitoring the road transport of goods with high fiscal risk carried out on the Romanian territory. Shipments will be monitored based on a unique code generated by the system (called "ITU code") following the information declared by the economic operator. This code must be obtained no later than 3 calendar days before the date declared for the start of transport on the national territory and must be mentioned on the transport documents.

Currently, the categories of road vehicles subject to monitoring in the RO e-Transport system are those with a maximum technically permissible mass of at least 2.5 tons, loaded with goods with a high fiscal risk, with a total gross mass of more than 500 kg or with a total value of more than RON 10,000, related to at least one transport of goods being made.

Thus, from 1 July 2022, the following economic operators are required to declare information on the transport of goods with high fiscal risk in the e-Transport RO system:

- the importer, in the customs import Declaration and the exporter, in the customs export Declaration, in the case of imports or exports;
- the beneficiary in Romania, in the case of intra-Community acquisitions of goods and similar transactions;
- the supplier in Romania, in the case of local purchases or intra-Community supplies of goods and similar transactions;
- the warehousekeeper in Romania, in the case of goods subject to intra-Community transactions in transit;
- the economic operator owning the goods, in the case of transport of goods between two locations in Romania;
- the service provider in Romania, in the case of commercial operations which represent a non-transfer of goods between two Member States of the European Union, both for goods unloaded on the territory of Romania for the provision of services and for the resulting goods reshipped in the State of the trading partner;
- the beneficiary in Romania, in the case of commercial operations representing a non-transfer of goods between two EU Member States, both for goods dispatched from Romania for the provision of services in another EU Member State and for the resulting goods re-dispatched to Romania;
- the customer in Romania, in the case of commercial operations subscribing to the call-off stock regime, for goods shipped or transported in Romania;

- the supplier in Romania, in the case of commercial operations adhering to the recall stock regime, for goods shipped or transported from Romania.

The list of goods with high fiscal risk transported by road that are subject to monitoring through the e-Transport RO system was established by Order No. 802/2022, as follows (CN codes can be correlated with those used for Intrastat statements):

- edible vegetables, plants, roots and tubers - CN codes 0701 to 0714 inclusive;
- edible fruit and nuts; peel of citrus fruit or melons - CN codes 0801 to 0814 inclusive;
- beverages, spirits and vinegar - CN codes 2201 to 2208 inclusive;
- salt; sulphur; earth and stone; plaster, lime and cement - CN codes 2505 and 2517;
- Clothing and accessories; footwear - CN codes 6101 to 6117 inclusive, CN codes 6201 to 6212 inclusive, CN codes 6214 to 6217 inclusive and CN codes 6401 to 6405 inclusive;
- iron and steel - CN codes 7213 and 7214.

In order to implement the RO national e-transport system, it is necessary to register in the SPV (Virtual Private Space) platform, the same procedure as for the implementation of the RO e-Factura.

Unlike the RO e-Factura system, as of 1 January 2023, failure to comply with the RO e-Transport system could lead to fines of up to RON 100,000 (EUR 20,000), plus confiscation of the value of undeclared goods.

Local taxes and duties

This category includes all those taxes for which the liability and collection takes place at local level.

Building tax

The method of calculating the building tax is based on the use of the building:

- Residential buildings - Tax rate between 0.08% and 0.2% applicable to the taxable value according to the specific table provided by law for individuals or, for legal entities: the value resulting from acquisition/construction, the valuation report, etc..
- Non-residential buildings - Tax rate between 0.2% and 1.3%. In the case of a building used for agricultural purposes, the applicable tax rate is 0.4%.
- Mixed use - the amount of tax computed based on the above specific rules for the area that is used for residential purposes is added to the tax computed based on the above specific rules for the area used for non-residential buildings.

Buildings used by legal persons for non-residential purposes should be revalued with arecurrence of 5 years in order to avoid an increase of the tax rate to 5%.

Building tax is payable annually in two equal instalments, by 31 March and 30 September.

Land tax

Landowners are subject to land tax set at a fixed amount per square meter, depending on the rank of the area in which the land is located and the area or category of use of the land, according to the classification made by the local council.

Like the building tax, the land tax is paid annually, in two equal instalments, by 31 March and 30 September.

Other local taxes are the following: tax on means of transport (cars, trucks, buses, tractors, motorcycles, boats, etc.); taxes for the issuance of certificates, permits and authorizations; taxes for the use of advertising and publicity means; tax on shows; special taxes.

Excise duties

The following products are subject to excise duties:

- alcohol and alcoholic beverages,
- manufactured tobacco products, and
- energy products and electricity.

Customs duties

Goods imported from non-EU countries are subject to import customs clearance.



VI. Tax Procedure

Registration in the Virtual Private Space (SPV)

Taxpayers/payers who are legal entities, associations and other entities without legal personality, as well as individuals who carry out a liberal profession or exercise an economic activity independently, communicate with the tax authorities by electronic means of remote transmission, respectively by enrolling in the electronic communication system developed by the Ministry of Finance/A.N.A.F.

Settlement of Claims

The legal deadline for the tax authorities to solve the claims submitted by taxpayers is 45 days from registration, with the possibility of extension up to 6 months.

It is also possible to obtain advance individual tax solutions or advance pricing agreements.

Limitation period

The right of the tax authority to establish tax claims is time-barred within 5 years. The limitation period starts to run from 1 July of the year following the year for which the tax liability is due.

The right to establish tax claims shall be time-barred within 10 years if they result from the commission of an offence under criminal law. This term runs from the date of the commission of the act constituting an offence sanctioned as such by a final court decision.

Interest and late payment penalties

- Interest on arrears – 0.02% for each day of delay, starting from the day immediately following the due date and up to and including the date of settlement of the amount due;
- Late payment penalty – 0.01% for each day of delay, starting from the day immediately following the due date and up to and including the date of settlement of the amount due;
- Non-declaration penalty – non-declaration penalty of 0.08% per day, starting from the day immediately following the due date and up to the date of extinction of the amount due, inclusive, from the main tax liabilities not declared or declared incorrectly by the taxpayer/payer and established by the tax authority through tax decisions.
- For non-payment by the debtor on the due date of the main tax obligations due to the local budgets, late payment surcharges are due after this deadline. The level of the late payment surcharge is 1% of the amount of the principal tax liability not paid on time, computed for each month or fraction of a month, starting from the day immediately following the due date and up to and including the date of settlement of the amount due.

Classification of taxpayers in risk classes

Taxpayers fall into 3 main risk classes, as follows:

- low tax risk taxpayers;
- medium tax risk taxpayers;
- high tax risk taxpayers.

The general criteria according to which the tax risk class/subclass is established are the following:

- criteria regarding the tax registration;
- criteria regarding the filing of tax returns;
- criteria regarding the level of declaration;
- criteria regarding the fulfilment of payment obligations to the general consolidated budget and to other creditors.

Exchange of Information

In Romanian legislation, there are specific provisions on:

- Exchange of information on financial accounts;
- Agreement between Romania and the United States of America to improve international tax compliance and to implement FATCA
- Exchange of information with the competent authority of any other Member State on residents of that Member State who earn the following specific categories of income and capital:
 - » wage income;
 - » remuneration paid to directors and other persons assimilated to them;
 - » life insurance products not covered by other European Union legal instruments on exchange of information and similar measures;
 - » pensions;
 - » ownership of real-estate and income from real-estate;
 - » royalties.
- Mandatory automatic exchange of information reported by Platform Operators;
- CbCR (Country by Country Report) obligations, concerning the automatic exchange of information for large multinational groups.
- Obligations regarding the notification of certain cross-border tax instruments, by transposing the EU Directive 2018/822 into domestic legislation.

Certification Procedure

Taxpayers may opt to have their tax returns certified by an authorized tax consultant prior to submission to the central tax office.

In this regard, the following documents are required: the contract between the tax consultant and the taxpayer; the taxpayer's file, work file and certification report; the tax return prepared by the taxpayer for certification purposes; the taxpayer's standard affidavit assuming responsibility for the accuracy of the data, records, internal working procedures and accounting policies; the taxpayer's tax record.

The result of the certification is recorded in writing in a certification report. On the basis of the certification report, a certification note is drawn up and submitted to the tax authority. The certification note mentions whether the certification is made with or without reservations.

The certification of the tax return by a tax consultant is an evaluation criterion in the risk analysis carried out by the central tax body for the purpose of selecting taxpayers/payers for tax audit.

Simplified Payment Deferral Procedure

Applies to main and accessory tax liabilities, outstanding for a maximum of 12 months prior to submission of the application and not paid by the date of issue of the tax certificate.

Payment deferral is granted by the tax authority, for a maximum period of 12 months, by issuing a notice of deferral of payment of tax obligations, to which a payment schedule is attached, that includes the monthly installments, depending on the number of months approved.

ROMANIAN COMPANY LAW

Fundamental reference legislation on companies is Law no. 31 of 1990. In view of Romania's accession to the European Union, the law was amended as of 1 December 2006 (Law No. 441/2006). Other important changes were subsequently made with Law no. 515/2006 and no. 76/2012, with Emergency Orders no. 52/2007, no. 82/2008, no. 54/2010, no. 2/2012, with the rules of application of the New Criminal Code and the New Code of Criminal Procedure, respectively Law no. 187/2012 and no. 255/2013, Laws 102 and 223 of 2020, as well as with Law 265/2022.

Pursuant to art. 1, paragraph 1, of Law no. 31/1990, to carry out activities for profit-making purposes, natural individuals and legal entities may set up companies with legal personality, in compliance with the provisions of the law.

Companies having their registered office in Romania are considered to be Romanian legal entities by law.

Pursuant to art. 2, unless otherwise provided by law, companies shall be formed in one of the following forms; The corporate forms are substantially those provided for by Italian law:

- general partnership (s.n.c.)
- limited partnership (s.a.s.)
- joint-stock companies (S.A.)
- joint-stock limited partnership (S.C.A.)
- limited liability company (L.L.C.)

For S.n.c. and S.a.s. the same rules apply regarding liability for social obligations provided for in Italian law: joint and several liability for all shareholders for S.n.c. and only for general partners for S.a.s., and liability limited to the value of the contribution for limited partners.

The liability in S.C.A. follows the same rules as for S.a.s. with reference to the shares owned by each individual shareholder.

As far as S.A. and L.L.C. are concerned, the shareholders are liable up to the value of the shares, or respectively, of the shares held.

With regard to the formation of companies, in general, it seems appropriate to underline some aspects:

1) Art. 5, paragraph 6, of Law 31/1990, as replaced by the reform law, provides that *“The deed of incorporation is drawn up in the form of a private deed and signed by all the members, or by public subscription by the founding members. The authentic form of the articles of association is mandatory in the following cases: a) when among the assets contributed as a contribution to share capital there is a property; (b) a general partnership or limited partnership is set up; (c) a public limited-liability company shall be constituted by public subscription”*.

The rule makes it unnecessary for notaries and lawyers to intervene at the time of signing the deeds, except in cases where the law expressly provides otherwise.

However, it is believed that for reasons of obvious opportunity, it is always preferable to resort to a lawyer for the so-called “certain date” of the deed, or to a notary (in this case we will speak of “public deed”).

2) According to paragraph 7 of the same article, moreover, *“the deed of incorporation acquires a certain date from the moment of registration with the Register of Companies”*. This rule is coupled with the previous one thanks to which it is stated that the “certain date” is also the one attributed to the act through the material filed with the Register of Companies.

However, recourse to the lawyer constitutes an element of undoubted guarantee, not excluded a priori – among other things – by the legislator (“also”).

In the following, only L.L.C. and S.A. will be examined in detail as they represent the corporate forms most used by foreign investors in carrying out an investment transaction in Romania.

THE JOINT-STOCK COMPANY

The Set up of S.A.

The Set up of an S.A. must take place through the signing of a memorandum of association by all shareholders unless it is a public subscription, in which case the signature of the founders will be required.

By signing the deed of incorporation, the founders assume the responsibility of fulfilling the conditions provided for by Law 31/1990 through a specific clause in the statute and provided for by Law 265/2022.

*The **minimum share capital** required for these companies cannot be less than 90,000 RON (approximately 25,000 euros).*

The number of members in a public limited-liability company may **not be less than two**. In the event that the company has less than two partners, for a period exceeding 9 months, any interested person may request the dissolution of the company. However, the latter will not be dissolved if within the final judgment of dissolution, the number of members required by law will be reconstituted.

The articles of association are concluded and must contain a series of elements (for a complete list see Article 8 of Law no. 31/1990) including:

- the value of the share capital, which must be paid into any bank authorized by the National Bank of Romania;
- the value of the goods transferred and the way in which they were valued;
- the unit value of the shares;
- the identification data of the beneficial owners and the ways in which control over the company is exercised.

It is also necessary an appraisal of the contributions in kind by an authorized expert.

The company is subject to approval by the registrars of the Commercial Register. To obtain such approval, the following documents must be submitted to the registrar within 15 days of the signing of the articles of association :

- the articles of association;
- documents proving ownership of contributions in kind;
- the lease of the headquarters or the deed of ownership by one of the partners and the registration documents of the contract at the tax office of the National Agency for Financial Administration in the event that the owner is a natural person;
- self-certification and signature specimen for the director of the newly established company

In addition, if the members are natural individuals:

- ▶ a copy of an identity document (passport or identity card);
- ▶ the self-certification of the natural person citizen in *straniera* if not registered for tax purposes in Romania;

If, on the other hand, the members are legal entities:

- ▶ authentic extract from the minutes of the shareholders' meeting or board of directors of the company authorising the director or another person to set up a company in Romania;
- ▶ Chamber of Commerce certificate of the company in paper format with apostille, in original or in digital format (without apostille);

- self-certification by the representative that the legal entity is not registered for tax purposes in Romania.

The decision of the registrar ordering the registration of the company is immediately enforceable and appealable within 15 days.

If no appeal or other request for modification or opposition to the incorporation of the company is filed within this period, the approval becomes final and is filed with the Register of Companies and the Tax Administration. The approval will also be published in the Official Journal.

Shares and corporate bodies

The shares can only be **registered** and not **bearer according to** the new Law no. 129/2019. It is forbidden to issue shares and units with value below par; The capital may not be increased until the shares previously issued have been fully paid. The nominal value of the shares may not be less than RON 0.1 and they must all have the same value.

The ownership of registered shares is transferred with the declaration made in the register of shares and signed by the transferor and the transferee or by the respective attorneys with the appropriate annotation on the share. The right of ownership over the shares is transferred by simple delivery.

Each share gives the right to vote at shareholders' meetings, but a limitation on the number of votes for the shareholder who owns several shares may be provided for by contract or by statute; the exercise of the right shall in any case be suspended by shareholders not in compliance with the payments due. The shares are indivisible but, where a share belongs to several people, they are jointly and severally liable for the execution of the payments due. It is possible to issue **preferred shares** that do not give the right to vote at the shareholders' meeting.

The general meeting can be of two types: ordinary or extraordinary. The first and subsequent calls are envisaged with quorum and majority constraints varying for the purposes, respectively, of the valid Set up and validity of the shareholders' resolution depending on the type of shareholders' meeting. The distinction between the two types of shareholders' meeting pertains to the object of resolution of the same.

Administration of S.A.

The part relating to the administration of the S.A. was undoubtedly the subject of the most radical reform of 2006. 2 "administration systems" have been introduced that will allow more options on the choice of governance of the S.A.:

1. The "unitary" system

In this system it is mandatory to have an odd number of directors which, in the companies subject to mandatory audit, must be at least equal to 3.

In addition, if the administrator is revoked without **just** cause, the administrator is entitled to compensation for damages (previously there was no reference to just cause in the event of revocation).

The Board of Directors may delegate part of its powers (in fact all operational ones) to one or more **directors**, also chosen within the Board of Directors. In the case of companies audited *by law*, this delegation is mandatory (!). In this circumstance, the Board of Directors must be made up of a majority of **non-executive** directors (who consequently cannot be appointed directors).

Also for the director(s), the rule of just cause in the event of revocation applies.

In the event of the appointment (compulsory or not) of one or more directors, the **power of representation** shall automatically vest in the Director-General.

The articles of association or the shareholders' meeting may provide that one or more **independent directors** are elected to the Board of Directors, i.e. directors who are not or have not been linked to the company by any professional relationship and/or similar.

2. The “dualist” system

An S.A. may provide for statutory management by a **Directorate** and a **Supervisory Board**.

Directorate

Within this system, the administration is managed exclusively by the Directorate, under the control of the Supervisory Board. The Board is also **responsible for representing** the company.

The Board is appointed by the Supervisory Board and must consist of one or more members (always odd); In the case of companies with an audit obligation, the Board must have at least 3 members.

The Board may revoke one or more members of the Directorate at any time but, in the absence of just cause, the revoked person may seek compensation.

Supervisory Board

The CdS is elected by the general assembly and the number of members must be recompressed between 3 and 11; For their revocation, the votes of at least 2/3 of the shareholders present are required.

The office of member of the CdS is incompatible with that of member of the Directorate and with that of employee of the company.

The CdS cannot have any operational assignment, although the statute may provide that the Directorate must seek the consent of the CdS before carrying out certain operations.

The members of the Board of Directors, the Board of Directors and the Board of Directors appointed at the time of incorporation of the company may remain in office for a maximum of 2 years and may be re-elected for successive periods of 4 years. If you hold one of the positions listed above, you must have **professional indemnity insurance**.

The members of the Board of Directors or of the CdS may not exercise this function in more than 5 companies under Romanian law (except in the cases provided for in art. 153¹⁶).

Only the members of the Board of Directors or the CdS can also be legal entities.

The incompatibility between the office of director and the status of employee of the company itself (for joint-stock companies) is also established: otherwise, the employment contract is suspended for the entire duration of the mandate.

Auditing and auditors

a) Non-auditing companies: they may choose to appoint **3 auditors** and an alternate auditor or may voluntarily renounce the board of statutory auditors and opt for the appointment of an **external auditing firm** to exercise accounting control activities;

b) Companies **with** an audit obligation, companies that have **opted** for external auditing and companies that apply the “**dualist system**”: They must appoint the audit **firm** and organize **the internal audit**.

Assemblies

For **ordinary** shareholders' meetings, unless otherwise provided for in the Articles of Association, the quorum of validity has been reduced to a number of shareholders representing at least 1/4 of the **total number of votes**, while resolutions are valid with the vote of the **majority** of the votes cast.

On second call, however, the shareholders' meeting deliberates validly **by majority**, regardless of the *quorum* present. With the deed of incorporation of the company, *quorums* and majorities higher than the legal ones cannot be agreed for the second call.

For **extraordinary** shareholders' meetings, on first call the quorum of validity was reduced to a number of shareholders representing at least 1/4 of the **total number of votes**.

On second call, the shareholders' meeting is validly constituted if there is a number of shareholders representing 1/5 of the total voting rights.

In both cases, the resolutions are valid if taken by a **majority** of the votes cast, or by at least 2/3 of the voting rights present in the event of: change of the corporate purpose, increase or reduction of the share capital, merger, demerger or liquidation, transformation. The statute may provide for both quorums and higher majorities.

The shareholders' meeting may meet no earlier than 30 days after the publication of the notice in the Official Gazette or, 30 days after the convocation was sent by registered mail or, if the articles of association so provide, 30 days after the convocation was sent by e-mail with digital signature.

The notice of call must also be published on the company's website.

A legal entity can be appointed administrator of another legal entity but, in this case, it is necessary to conclude an "administration contract" in which a permanent representative is identified.

For listed companies, the relevant provisions and specific capital market legislation apply.

The social books and the budget

The S.A. must keep a book of shareholders, a book for the resolutions of general meetings, a book for the resolutions of the board of directors, a book of auditors; and, where appropriate, a book of obligations.

The directors must submit to the statutory auditors, at least one month before the day set for the meeting of the shareholders' meeting, the financial statements for the year, consisting of the balance sheet ordered for increasing liquidity, the income statement in scalar form and the notes to the financial statements, their report and supporting documents.

At least 5% of the operating profits must be set aside each year for the establishment of a legal reserve up to the amount of the latter with 20% of the share capital.

The filing of financial statements must take place according to the following deadlines:

- a)** for legal entities applying accounting standards harmonized with European Directives, and

with International Accounting Standards or applying simplified accounting standards: within 150 days of the end of the financial year;

- b)** for legal entities which, since their establishment, have not carried out activities: filing of a declaration within 60 days of the end of the financial year.

Law no. 31/1990 now provides that **dividends** are paid

Dividends are distributed to shareholders in proportion to the shareholding, quarterly on an optional basis and on the basis of a provisional balance sheet, or annually after the approval of the annual financial statements.

THE LIMITED LIABILITY COMPANY

The discipline of the L.L.C. has some explicit references to that of the S.A.; in reality, the practice (accepted by the jurisprudence) of applying to L.L.C. some rules provided for by Law no. 31/1990 only for S.A. has been established. In the following exhibition, the repetition of common rules will be omitted, explicitly referring from time to time to the regulations in force for S.A..

The establishment of L.L.C.

The L.L.C. is constituted by means of a deed of incorporation signed by the shareholders. The articles of association have the same content as for the S.A.; In addition, the distribution of the capital into shares must be indicated, which cannot be represented by negotiable securities. The maximum number of shareholders is equal to 50 units, and the possibility of establishing more L.L.C. with sole shareholder (including foreign) is envisaged: in fact, with Law no. 102/2020 the constraint for a natural or legal person to be a sole shareholder *only* in a Romanian L.L.C. has been canceled.

General Assembly of L.L.C.

For the L.L.C. there is only one type of general meeting, responsible for examining and deliberating on each topic. Each membership fee gives the right to one vote.

The shareholders' meeting validly constituted on first call that fails to resolve due to the lack of the required majority, on second call deliberates by a majority of those present on the same agenda, whatever the number of members present and the part of the capital represented.

The membership fees can be transmitted between the members.

The transfer between people outside the company is possible only if approved by the shareholders representing at least three quarters of the share capital if the articles of association do not provide for a different majority.

Vote in the assembly

According to the new art. 192, paragraph 1, *"The shareholders' meeting decides with the favorable vote of the absolute majority of the shareholders and shares, unless otherwise provided in the articles of association"*. With adequate provision to be included in the articles of association, therefore, the previous principle of double majority (by heads and by quotas) falls.

Administration of L.L.C.

The company is managed by one or more directors who may or may not be shareholders and are elected by the general meeting. The articles of association may also establish the election of one or more statutory auditors; in any case, if there are more than fifteen shareholders, the appointment of statutory auditors becomes mandatory according to the rules laid down for the S.A.

The company's financial statements are prepared in accordance with the regulations envisaged for the S.A., the same applies to the legal reserve and to reductions in share capital; With regard to the increase in share capital, the provisions laid down for the incorporation of the company shall apply.

Art. 15, provides that *“The contracts between an L.L.C. and a natural or legal person, sole shareholder of the L.L.C. itself, must be stipulated in writing under penalty of absolute nullity”*, generalizes in fact the need to regularize in writing every relationship between the subjects indicated.

Social books

The L.L.C. is obliged to keep, compile and keep by the directors, a **shareholders’ book**, in which to write the identification data of the shareholders, the share of the share capital held, the transfer of shares and any other changes made on the shares themselves.

OTHER REGULATIONS FOR COMPANIES INCORPORATED UNDER ROMANIAN LAW

Changes in share capital

The reduction in share capital may not be achieved before two months have elapsed from the publication of the relevant decision in the Official Journal; Within this period, the social creditors will be able to oppose the decision.

The decision to increase the share capital must be published in the Official Journal, as at least one month is foreseen for the exercise of the right of pre-emption from the date of publication.

The capital increase takes place following the provisions established for the incorporation of the company; Cash paid for the capital increase may not be used until the transaction is completed.

Loss of equity

Art. Article 69 provides that *“If a loss of equity is ascertained, the share capital must be replenished or reduced before any disbursement or distribution of profits”*.

According to art. 153²⁴, paragraph 1, *“If the board of directors, and in particular the directorate, ascertains that following the losses, resulting from the approved financial statements, the shareholders’ equity, determined as the difference between the assets and liabilities of the total company, represents less than half of the value of the share capital, it must convene the extraordinary shareholders’ meeting to resolve on the dissolution of the company.”*

In the event that the shareholders’ meeting decides otherwise, the reintegration of the capital or its reduction to the remaining value becomes mandatory.

Deeds of disposal of assets owned by the company

With Emergency Ordinance no. 52/2008, a decisive aspect in terms of proxies was clarified, with important implications at a practical level: proxies for the signing of authentic deeds of disposal of assets owned by a company can be issued by the competent corporate bodies without the need for a special power of attorney **in authenticated form**, although the act of disposition must be signed authentically (art. 70¹ L.31/1990).

Distribution of dividends

During 2018, Law no. 163/2018 was approved, which allows the distribution of early dividends on a quarterly basis. The possibility of paying advances to shareholders on year-end dividends on the basis of a shareholders’ resolution and on the basis of a quarterly financial statement has therefore been introduced; These advances are then settled at the time of closure and approval of the annual financial

statements and, in the case of dividends paid in excess with respect to the net result achieved, the shareholders are obliged to return the excess portion within 60 days from the approval of the financial statements.

The Real Beneficiaries Register

All companies are obliged to declare and register in the specific register kept by the Romanian Trade Registry Office the “real beneficiary”, i.e. the natural person who owns at least 25% +1 of the company’s share capital, also through other companies. This new obligation was introduced by Law no. 129/2019.

OTHER POSSIBLE FORMS FOR THE PRESENCE OF A NON-RESIDENT COMPANY

BRANCHES

Pursuant to art. 44 of Law no. 31/1990 on companies, republished with subsequent amendments and additions, foreign companies may establish in Romania subsidiaries, branches, agencies, representations or any other secondary office, if this right is recognized by their company statutes.

It is possible for foreign companies to operate in the territory through one or more branches. Branches must be registered with the Commercial Register and are subject to the same tax obligations as companies.

They do not assume their own legal personality , remaining de facto linked to the parent company.

REPRESENTATIVE OFFICES

The representative office has no legal personality, cannot carry out commercial activities directly, cannot sign contracts of sale, cannot receive payments, issue invoices and repatriate profits.

The Representative Office is therefore a mere cost center (normally deductible for the parent company) that does not produce any income and that, not being qualified as a permanent establishment, is not subject to the obligations provided for the secondary offices.

The representative office is therefore not a taxable person for direct tax purposes but is required to pay a fixed annual tax of EUR 4,000 in Lei following an authorisation issued by the competent ministry.



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