



Doing Business Romania

2019



Audit / Tax / Advisory

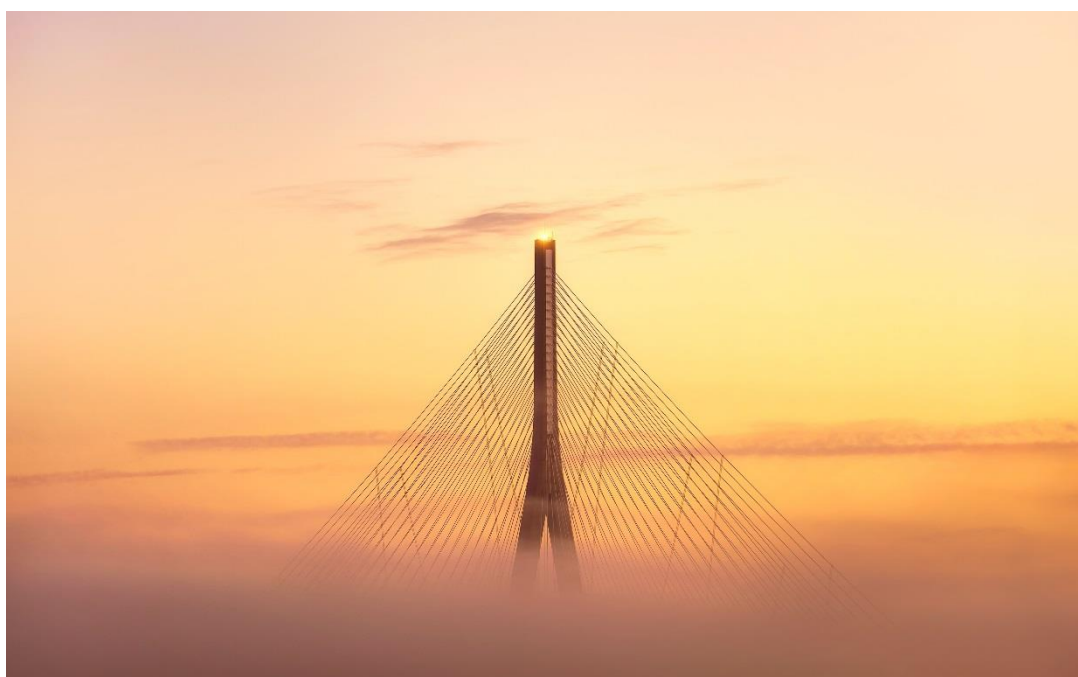
Smart decisions. Lasting value.

About This Booklet

This booklet has been produced by Crowe Romania for the benefit of its clients and associate offices worldwide who are interested in doing business in Romania.

Its main purpose is to provide a broad overview of the various things that should be considered by organisations considering setting-up business in Romania.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in Romania or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.



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Country Profile

Population

Population: 19,607,488 (settled population) as March 2018, putting Romania in ninth place in Europe.

Density: 85 inhabitants/km².

Distribution by age range: Ages 0–14, 16.2%; 15–64, 69.4%; ≥65, 14%.

Urban population: 60.2%.

Ethnic groups: 89.5% Romanians; 6.6% Hungarians; 0.3% Germans; 3.6% Roma and others.

Languages: 91% of the population indicate Romanian as their mother tongue; 6.7% Magyar; 1.1% Romani (gypsy dialect); 0.3 Ukrainian; 0.2% German.

Religion: 86.7% Orthodox; 5.6% Roman Catholic; 5.2% Reformed; 2.5% other religions.

Time zone: GMT +2.

Culture: Latin. Romanian is a Romance language, related to Italian.

Geography

Area: 238,391 km² (total); 230,340 km² (excluding inland water bodies).

Position: Southeastern Europe, on the Black Sea.

Bordering countries: Hungary (to the west and north-west), Ukraine (to the east and north), Republic of Moldova (to the east and north-east), Bulgaria (to the south) and Serbia (to the south-west and west). Also borders the Black Sea (to the south-east).

Border: Approx. 3,175 km, around one-third of which is on land and two-thirds formed by rivers (the Tisa, the Prut and the Danube) and the Black Sea.

Climate: Moderate – continental.

Capital: Bucharest, with a population of over 2,281,122. Together, the cities of Romania are home to more than half of the country's population, with 25 cities having in excess of 100,000 inhabitants, representing 57.6% of the urban population. The cities of Timișoara, Constanța, Brașov, Craiova, Cluj-Napoca and Iași have more than 300,000 inhabitants. The average population of a province is 500,000.

Country Profile

Structure

Status: Semi-presidential republic.

Head of state: President Klaus Werner Iohannis, in office since 2014 for 5 years.

Head of government: Prime Minister Viorica Dancila, in office since 17th of January.

Administrative divisions: 41 counties (Judets), 1 municipality (Bucharest), 313 cities and 2,618 communes with 13,090 villages.

International organisations: Member state of the UN (since 1955); member of UNESCO (since 1956), the Council of Europe (since 1993), NATO (since 2004) and the European Union (since 2007).

Transport

Rail network: 11,382 km, of which around 4,000 km is electrified.

Road network: Romania has approximately 200,000 km of public roadway, of which 313 km is motorway, 14,700 km is A-roads and 36,000 km main roads, with the remainder being made up of local roads. Many of the A-roads used by international traffic have been modernised or are undergoing modernisation.

Airports: There are 17 altogether; the main airport is Bucharest Otopeni, which handles 75% of international traffic.

Main ports: Ships with up to a maximum depth of 7 m can navigate downriver of the Port of Braila (to the east), while the Danube can accommodate ships with a maximum depth of 2.5 m. Transportation by ship between the seaport of Constanța, (in the south-west) and Rotterdam follows the Danube–Black Sea canal and the Rhine–**Main–Danube Canal**. Romania has 35 ports: three seaports, six sea-river ports and 26 river ports. The main port is Constanța, which handles around 60% of foreign commercial traffic.

It should be pointed out that Romania sits at the junction of three European transport corridors of the future:

- Berlin – Prague – Budapest – Arad – Bucharest – Constanța – Istanbul/Thessaloniki (corridor 4) (road traffic and rail)
- Constanța – Basarabi – Danube – Rhine (corridor 7) (river corridor)
- Helsinki – Moscow/Kiev – Odessa – Bucharest/Constanța – Alessandria (corridor 9 at the planning phase; road traffic and rail).

Country Profile

Demographics

Average life expectancy at birth: Men 71.9; women 79.

Births: 8.9 per 1,000 inhabitants.

Deaths: 12 per 1,000 inhabitants.

Natural growth: -0.33%.

Infant mortality rate: 9.4 per 1,000 live births.

Education

Compulsory education: Age 7–14 years.

Literacy: 99%.

Graduates: 15.1% from total persons between ages 15-64 years old.



Romanian Company Law

The most important piece of legislation concerning enterprises is Law No. 31 of 1990, which was amended as early as 1st December 2006 (by Law No. 442/2006) in view of Romania's forthcoming membership of the EU. Other important amendments have subsequently been introduced by Law No.515/2006 and 187/2012, Emergency Orders No. 52/2007, No. 82/2008 and No. 54/2010.

The various types of companies and partnerships are the following:

- general partnership;
- limited partnership;
- limited partnership with share capital;
- limited liability company;
- joint stock company limited by shares.

Where general partnerships are concerned, all partners are jointly liable on an unlimited basis, while in the case of limited partnerships, only the general partners are so liable (with the limited partners having limited liability to the extent of their contribution).

Liability in a limited partnership with share capital follows the same rules as those for a limited partnership, on the basis of the shares held by each individual shareholder.

As far as limited liability companies and joint stock companies limited by shares are concerned, shareholders are liable to the extent of the value of their shares or capital shares held respectively.

As limited liability companies and joint stock companies limited by shares are the most common forms of companies used by foreign investors as a means of investing in Romania, the following is limited to a consideration of these two only.

Romanian Company Law

1. *The joint stock company limited by shares*

Formation

A joint stock company limited by shares is formed by all shareholders signing a memorandum of association, unless a public floatation is involved, in which case the constituent members are to sign.

*The **minimum share capital** for these companies must be of **90,000 RON** (around 20,000 euros) and there must be at least **2 shareholders**.*

The company must be ratified by the Director of the Trade Register.

The decision of the Director that the company should be enrolled in the Register is immediately enforceable and must be appealed within 15 days.

If, within this time limit, no appeal is lodged and no further request for an amendment is presented and no opposition to the company being constituted is expressed, the decision is treated as being final and is filed with the Trade Register and the Finance Department. The decision and the memorandum of association are also published in the Official Gazette.

Shares and company bodies

Shares may be **personal shares** or **bearer shares**, depending on the provisions of the memorandum of articles. Shares and capital shares cannot be issued having a value below par, and bearer shares must be fully paid up. Capital cannot be increased until shares previously issued are fully paid up. The nominal value of shares cannot be less than 0.1 RON, and in addition they must all be of the same value.

Ownership in personal shares is transferred by way of declaration recorded in the share register signed by the transferor and the transferee or by their respective legal representatives and with the share being marked accordingly. Rights of ownership in bearer shares can be transferred simply by delivery.

Each share carries the right to one vote in general meetings, but a limit on the number of votes held by a shareholder holding more than one share can be established in advance by contract or by the articles. Exercise of the right to vote by shareholders who have failed to make any payments due can in any event be suspended. Shares are indivisible but, where a share belongs to more than one person, such persons are jointly liable to make the payments due. **Preference shares** can be issued that do not carry the right to vote at general meetings. General meetings may take two forms: ordinary and extraordinary. First and subsequent calls are subject to a variable quorum and variable majority requirements for the purposes of valid constitution and validity of the shareholder resolutions respectively, depending on the type of meeting. The difference between the two types of meeting is related to the subject matter of the resolutions being discussed.

Romanian Company Law

Management of a joint stock company limited by shares

The section dealing with this particular aspect without doubt introduced what were the most radical of all the amendments brought in by the 2006 law. Two 'management systems' were introduced, meaning a wider range of options where the choice of governance of a joint stock company limited by shares is concerned.

A. The 'unitary' system

This system requires the obligatory presence of an odd number of directors which, in the case of a company subject to compulsory auditing, must be at least three. The Board of Directors can delegate its duties (in practice, all operational duties) to one or more **managers**, who may be selected from those on the Board itself. In the case of companies subject to auditing by law, delegation of this type is compulsory.

B. The 'dual' system

A joint stock company limited by shares can establish by way of its articles that it be managed and administered by a Directorate and by a Supervisory Body.

Directorate

Within this system, management is dealt with on an exclusive basis by the Directorate and subject to the control of the Supervisory Body. The Directorate also represents the company.

It is appointed by the Supervisory Body and must be made up of one or more members (again, there must be an odd number). Where the company is subject to auditing by law, the Directorate must have at least three members.

The Supervisory Body can revoke the appointment of one or members of the Directorate at any time. However, where revocation is for no good cause, those whose appointments have been revoked may claim compensation.

Supervisory Body

The Supervisory Body is elected by a general meeting. It must have between three and eleven members, and the appointment of members can only be revoked with the votes of at least 2/3 of the shareholders present. The Supervisory Body cannot have any operational role, although the articles can provide that the Directorate has to obtain authorization from the Supervisory Body before carrying out certain steps.

The members of the Board of Directors, the Directorate and the Supervisory Body appointed at the time that the company is constituted may hold office for a maximum of two years and may be re-elected for subsequent periods of four years. Legal entities may only be members of the Board of Directors and the Supervisory Body.

Romanian Company Law

Auditing and auditors

Companies **not subject** to audit requirements: these companies can decide to appoint **three auditors** and an alternate auditor, or alternatively can elect not to have a board of auditors and instead decide to appoint an **external auditing company** to carry out the auditing work;

Companies **subject to** audit requirements: companies that have **elected** to have an external audit and companies working under the '**dual system**'. These companies are required to appoint an **auditing company** and to arrange for an **internal audit** to be done.

General meetings

In the case of **ordinary** general meetings, save where the articles provide otherwise, the required quorum has been reduced to the presence of a number of shareholders representing at least $\frac{1}{4}$ of the **total number of votes** (previously being $\frac{1}{2}$ of the **share capital**), while resolutions are carried with the **majority** of votes cast. In second call, however, the meeting can pass resolutions on a **majority** basis, irrespective of the quorum present. The company's memorandum of association cannot establish a quorum or majorities in excess of those established by law.

Where **extraordinary general meetings** are concerned, in first call the required quorum has been reduced to the presence of a number of shareholders representing at least $\frac{1}{4}$ of the **total number of votes** (previously it was $\frac{3}{4}$ of the **share capital**). In second call, the meeting is validly constituted where the number of shareholders present represents $\frac{1}{5}$ of total voting rights.

In both cases, resolutions are valid where adopted by a **majority** of votes cast, or by at least $\frac{2}{3}$ of voting rights present in the case of: amendment to corporate purpose, increase or reduction in share capital, mergers, spin offs, liquidation or transformation. The articles can establish a greater quorum as well as a larger majority.

A general meeting may be held no sooner than 30 days after publication of the notice in the Official Gazette or, in the case of personal shares, 30 days following dispatch by recorded delivery of notice of the meeting having been called or, if the articles so provide, 30 days after notice of the meeting having been called was sent by e-mail bearing an electronic signature.

Notice that the meeting has been called must also be published on the company's internet site.

A legal entity may be appointed as director of another legal entity, but in such circumstances a 'director's contract', which is required to identify a permanent representative, has to be entered into.

One person cannot be a director on more than three boards of directors at the same time unless he or she is a director of and owner of at least one quarter of the total shares of the company of which he or she is director or is director of a company holding the said quarter.

Romanian Company Law

The company books and financial statements

A joint stock company limited by shares is required to keep a shareholders register, a register of resolutions passed at general meetings, a register of Board of Directors' resolutions and an auditors register, together with a bonds register if appropriate.

At least one month prior to the date fixed for the general meeting, the directors are required to present the auditors with the financial statements for the financial year comprising the balance sheet in order of liquidity, the profit and loss statement on a sub-divided basis, the accompanying notes, the directors' report and supporting documentation.

Each year at least 5% of profit for the financial year has to be put aside for a legal reserve until the reserve is at 20% of share capital. The directors are required to lodge the financial statements, the directors' report, the report submitted by the auditors and the minutes of the general meeting with the Trade Register within 15 days of the date of resolution. The financial statements are then published in the Official Gazette.

The financial statements are required to be lodged within the following timescales: legal entities applying the accounting standards harmonized with the EU Directives and with the International Accounting Standards or who apply the simplified accounting standards: within 150 days of financial year end; legal entities which, since being constituted, have been dormant: declaration to be lodged within 60 days of financial year end.

Law 31/1990 now requires that **dividends** be paid within the timeframe established by the shareholders' general meeting, but no later than **six months** following approval of the financial statements in relation to the financial year ended.

Romanian Company Law

2. The limited liability company

The law relating to limited liability companies makes certain specific references to that applicable to joint stock companies limited by shares. It has in fact become established practice (accepted by case law) to apply certain provisions of Law No. 31/90 dealing specifically with the latter to limited liability companies. The provisions that apply to both are not dealt with below, with reference instead being made from time to time back to the legislation governing joint stock companies limited by shares.

Formation

A limited liability company is formed by the shareholders signing a memorandum of association. The memorandum of association has the same content as that for a joint stock company limited by shares, but must in addition state the division of the capital into capital shares, which cannot be represented by marketable securities. The maximum number of shareholders is 50, and a limited liability company can be formed with just **one sole shareholder** (who can be a foreigner). Attention should be drawn to a particular restriction: an individual or a legal entity can be a sole shareholder **only** in a limited liability company in Romania (Article 14 paragraph 1). In addition, a limited liability company having a sole shareholder **cannot** in turn be a sole shareholder of a Romanian limited liability company. Share capital must be at least 200 RON, divided into equal shares having a minimum value of 10 RON.

Limited liability company general meetings

There is only type of general meeting for limited liability companies, which has the task of considering and passing resolutions on all matters. Each capital share has one vote.

A validly constituted general meeting in first call that does not succeed in passing resolutions as the required majority is lacking, passes resolutions in second call, on a majority of those present, on the same order of business, regardless of the number of shareholders present and the extent of capital represented.

Capital shares can only be transferred to third parties with the approval of $\frac{3}{4}$ of the share capital (Article 202 paragraph 2). Transfer of a capital share has to be registered with the Trade Register once the 30 day period for raising objections following publication in the Official Gazette has expired.

Voting at a general meeting

The new Article 192, paragraph 1, states that: *'The shareholders' meeting shall decide by way of absolute majority vote of the shareholders and the capital shares, save where the memorandum of association provides otherwise'*. It follows that where the memorandum of association has such a provision, the previous double majority principle (numbers present and capital shares) falls away.

Romanian Company Law

Management of a limited liability company

The company is managed by one or more directors who can be shareholders or not, and are elected at a general meeting. The memorandum of association can also provide for the election of one or more auditors; where there are more than fifteen shareholders, appointment of auditors is in any event obligatory on the basis of the provisions governing joint stock companies limited by shares.

The company's financial statements are drawn up in accordance with the provisions applicable to joint stock companies limited by shares, with the provisions for those companies also applying to limited liability companies where the legal reserve and reduction in share capital are concerned. The provisions governing formation of the company apply where an increase in share capital is concerned.

The new Article 15, in providing that 'Contracts between a limited liability company and an individual or legal entity being the sole shareholder of the said limited liability company must be in writing and shall otherwise be entirely null and void', in fact extends the requirement that all relationships of any type between the parties mentioned must be drawn up in writing.

3. Other possible forms that a non-resident company can take

BRANCHES

Foreign companies can operate in Romania through one or more branches. Branches have to be registered with the Trade Register and are subject to the same tax requirements as companies. **They do not acquire their own legal status**, and in practice remain an offshoot of the parent company.

RERESENTATIVE OFFICES

Representative offices can operate on condition that authorization is issued by the relevant Ministry and an annual tax of 4,000 € is paid. Foreign companies having a presence of this type in Romania are limited in the way that they can operate, as they cannot trade on a direct basis at all.

Employment Law

THE LABOR CODE

The **Labor Code** (“Codul Muncii”, Law no. 53 of 24.01.2003), in force from 2003, consists of no less than 281 articles, 13 titles (from the general dispositions to the transitory and final ones, including the collective labor agreements and the individual employment contracts, safety and hygiene, strike and many others yet), but it has the merit of having replaced a jumble of regulations which were not always clear, unifying the instruments that the operator needs to use in the labor law field.

From January 1st, 2017 the Romanian labor legislation was partially adapted to the European regulations, in particular with respect to the secondment of personnel.

From an objective standpoint, the Romanian Labor Code “*regulates ... the totality of individual and collective employment relationships, the way in which the application of the labor regulations is controlled as well as the labor jurisdiction*” (art. 1); while, from a subjective standpoint, it examines the work performed by anyone in Romania (be them Romanian citizens, foreigners or stateless people), in addition to, to a certain extent, the work performed abroad by Romanians.

It is worth underlining that the Labor Code dedicates an ample space, in its first title, to a series of **general principles**, article 3 guarantees the liberty to work (or not to work), to choose a certain job over another, to carry out union activities, and also endorses the prohibition of forced labor and of discrimination, equality of treatment, occupational health and privacy protection and so on.

Employees may not renounce their rights which are recognized by the law.

Besides other laws, Law No. 40/2011 brought important changes, both for the need of adaptation to the European legislation and in order to try to satisfy the requirements of a more flexible work market.

Starting from 2011 the National Collective Labor Agreement no longer exists. Pursuant to article 128 of Law 62/2011 - Social Dialogue Law - the collective labor agreements may be negotiated on a unit, group and/or sector level and not on a national level.

Thus, in any labor agreement (individual or collective on a unit level), the rights sanctioned by the agreements concluded on a higher level (groups and/or sectors) must be observed, regardless of the provisions of the Labor Code and lesser rights as compared to the higher level contractual rights may not be provided.

Employment Law

The Individual Employment Contract

The Labor Code reiterates (art. 10 and the following) that an employee is hired by means of an **individual employment contract** (the so called “CIM”), drafted in writing, whose provisions may not waive the provisions achieved by collective bargaining (at national, industry and/or company level). The duration of “CIM” may be either **temporary** (not longer than 36 months) or **permanent**, but this latter solution is established mandatorily except where otherwise provided.

The obligation to draft the individual employment contract is falls on the employer, before the actual commencement of the work relationship.

The minimum working age was set at 16, subject to exceptions. The employment contract must indicate the date of the employer and of the employee (whose activity may not be illegal or immoral), the salary amount and more; but, above all, it must enumerate the specific tasks that the employee will have to carry out.

The legislator provided, in art. 27, the absolute prohibition for the employer to ask for a pregnancy test. In addition, pursuant to art. 36, **foreign citizens** may be hired by Romanian businesses, based on an individual employment contract and subject to obtaining the work permit issued by the competent authorities (if such permit is required).

Besides the work permit, foreign citizens must also obtain, before the conclusion of the individual employment contract, a tax identification number on Romanian territory (“**NIF**”).

Termination of the Individual Employment Contract

Article 55 and the following of Law No. 53/2003 indicate the hypotheses where the “CIM” ceases its effects.

Such termination may occur:

by law (for instance, in case of death of the employee, declaration of bankruptcy of the company, etc.),

on the initiative of the employer (which is called layoff),

on request of the employee (resignation),

by agreement of the parties.

An important modification brought by OUG 65/2005 concerns the termination of the agreement by the employer for professional unsuitability reasons. Previously it had to be made by following a long bureaucratic procedure, i.e.: issuing in such case a “layoff decision” (within 30 days from the events that would have caused it), to be motivated in fact and in law, and performing an unclearly outlined “*internal disciplinary investigation*”. In case of layoff, the obligation of a **notice** (of 20 working days in case of individual layoff) is still in force.

Employment Law

Other work-related regulations

Articles 88 and the following, 103 and the following, 108 and the following provide for institutions which have been significantly developing: **temporary work**, the so-called **part time**, **homeworking**, while the definition of “**nighttime work**” i.e. performed between 22:00 PM and 6:00 AM.

With respect to the “*working hours*”: the work day is, unless otherwise provided, of 8 hours a day and 40 hours a week; Saturday and Sunday, except for the usual variations on the theme, are days of **rest**; an employee is entitled to have a “*lunch break*” every day and at least 20 working days' holidays every year. In addition, the first and the second day of January, Easter and Christmas (different days in accordance with the religious creed, that the employer must carefully observe) and the immediately following days, besides May 1st, Pentecost (Whitsunday), August 15th, November 30th (Saint Andrew's Day) and December 1st (which in Romania is the National Day) are not working days. Other family events (of joy or of mourning) are considered separately. Particular provisions are reserved, obviously, to employees who perform particular work services.

Employment Law

LABOR COST

The tables below show the 2016/2017 comparison between the average value of the gross salary both in RON and in Euro.

Source: National Institute of Statistics, National Bank of Romania

Activity sector	Average gross monthly income (2017) in EURO	Average gross monthly income (2017) in RON	Average gross monthly income (2016) in EURO	Average gross monthly income (2016) in RON
Average value	713	3.314	651	2.931
Agriculture and associated services	520	2.416	510	2.296
Industry (in general)	672	3.123	621	2.796
Textile Industry	568	2.642	508	2.287
Metallurgical Industry	822	3.824	771	3.468
Metal construction and metal product Industry	644	2.994	595	2.679
Chemical Industry	745	3.466	704	3.166
Construction	511	2.374	479	2.156
Hotels and restaurants	414	1.923	376	1.697
Health and social care	808	3.758	638	2.873
Public Administration	1123	5.224	923	4.154
Urban Sanitation and hygiene	487	2.263	464	2.088
Financial Intermediation	1353	6.293	1.326	5.969
Land Transport	606	2.818	552	2.484

Employment Law

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To determine the **company-cost**, including taxes and social contributions, please refer to some examples given in the table below. The calculation was made on the basis of the new contribution and tax rates provided for 2018 (for an employee without dependants and who performs an ordinary / non-special activity), as provided by the important **regulatory intervention from the Emergency Ordinance No. 79/2017, already known as the “Fiscal Revolution”**; as detailed in chapter IV (to which reference is made) substantial amendments were brought starting from January 1st, 2018 both to the income tax of natural persons (reduced from 16% to 10%) and to the social contributions (total transfer of the ordinary social contributions to the employee and simultaneous amendment of the tax rates).

Minimum gross salary for 2019:

Category	Net paid €	Gross paid €	Cost for company €
All industries except construction domain, except upper studies	274	452	462
All industries except construction domain, for upper studies	307	511	522
Construction domain (by specific CAEN), without 80% turnover	386	652	667
Construction domain (by specific CAEN), with 80% turnover	Changes are currently in place	652	Changes are currently in place

Employment Law

Detail of the contributions to be borne by the company (except construction domain, by specific CAEN, with 80% turnover)	2017	From 01.01.2018
Pension contributions (CAS)	15.8 %	0% (except for special contribution)
Health Insurance costs (CASS)	5.2%	0%
Unemployment Fund	0.5%	<u>Replaced by a single LABOR SOCIAL SECURITY CONTRIBUTION equal to 2.25%</u>
Risk and Accident Fund	0.15 % – 0.85 %	
Sickness Contributions	0.85 %	
(remain in salary guarantee Fund)	0.25 %	
Disability Fund	4% (number of empl.)	4% (number of empl.)
Taxes and contributions to be borne by the employee		
Pension contributions (CAS)	10.5 %	25.0 %
Unemployment Fund	0.5 %	0%
Health Insurance costs (CASS)	5.5 %	10.0%
Income tax	16%	10%
Other data		<i>*In case of layoff or corporate restructuring, the employee gets compensation, in accordance with the terms set out in the applicable collective agreement or in the individual employment contract.</i>
Daily working hours	8	
Minimum annual holiday period	20 days	
Thirteenth salary	Not provided	
Severance pay	Not provided*	

Employment Law

Starting from January 1st, 2019 the base-rate minimum wage was increased to - 2080 RON/month (any industry except construction, except upper studies), 2350 RON/month (any industry except construction, for upper studies), 3000 RON/month (for construction, by specific CAEN). Please see also the detailed table presented above.

With respect to the minimum value, two essential aspects are highlighted:

1. The statutory gross minimum wage may be higher than above, if there are different regulations in the collective agreements of the sector.
2. When calculating the minimum wage it is mandatory to **take into account** the wage category rates established by the collective labor agreements.

The rights provided in the sector collective agreements are to be considered "minimum rights" for the subsequent "negotiation" of the company collective agreements (mandatory for companies that have more than 20 employees).

Law 448/18.12.2006 provides for the legal entities having more than 50 (previously it was 75) employees the obligation to hire disabled people within the **limit of 4% of the total number of employees**.

The companies that do not intend to fulfill the aforementioned obligation must make a monthly payment towards the state of 100% the base-rate gross minimum wage, multiplied by the number of work places reserved to disabled people who are not hired by said companies;

Employment Law

SECONDMENT IN ROMANIA FOR EU RESIDENTS

In the premises of the subject matter and without going into details of the regulation, it must be said that **the secondment within the EU is a definition which includes several particular legal cases** of regulation of employment relationships, includes in fact both the secondment and the business travel. However, secondment regulates temporarily-limited and well-defined situations and the EU regulation that imposes its application should not be mistaken for the single regulations on labor law and direct hiring.

Secondment is performed when the employer "deploys" one of his employees to a third party, in favor of whom the employer performs work.

Initial fulfillments

The secondment procedure in Romania establishes that the non-resident subject must follow a **predefined bureaucratic process**, by submitting the following documents to the competent Labor Office:

written agreement between the home and host company (translated and notarized);

foreign employee employment contract (translated and notarized);

secondment contract / letter.

In addition, a specific secondment form must be filled out and submitted to the Labor Inspectorate, at least 5 days before starting the activity. Any potential variation of the initially notified information must also be communicated within the same term.

The home company has the obligation to appoint a representative chosen among its own employees transferred in Romania, as contact person for the competent labor offices in case of inspection and as holder of the documents relating to all the non-resident transferred employees.

Employment Law

Fiscal fulfillments

The income tax also applies to non-residents who perform subordinate employment activities in Romania, in accordance with the terms specified in Chapter V.

For the regularization of its own fiscal position, the non-resident subject must ask the Public Finance Administration (competent in the area where the host company is based) for the Fiscal Identification Number (NIF), required to perform all the related fiscal procedures.

Non-residents must declare, calculate and pay the taxes **monthly** (directly or by the agency of a fiscal representative), within the 25th day of the month following the reference month based on the gross wage and any potential benefits in nature; at the same time, the related declaratory obligation must be fulfilled (Statement 224).

Particular attention must be paid, when determining the taxable income, to the fringe benefits (payments in nature) which complete the wages of transferred personnel.

At the end of the year, the taxpayer will be able to ask for the issuance of a certificate attesting the amount of the tax paid in Romania during the year, so as the taxes may be recalculated in the country of residence (see **tax credit**).

Community Regulation / EC Regulations No. 83/2004 No. 988/2009 and Regulation No. 987/2009; secondment duration.

Starting from May 1st, 2010, the coordination regulations of the national systems of social security of the 27 member states of the European Union, made up of the EEC regulations No. 1408 of June 14th, 1971 and 574 of March 21st, 1972, are replaced by the coordination regulations of the (EC) regulation No. 883 of April 29th 2004, published in the Official Journal of the European Union L 200 of June 7th, 2004, as amended by the (EC) regulation No. 988 of September 16th, 2009 and by the (EC) Application Regulation No. 987 of September 16th, 2009, published in the Official Journal of the European Union L 284 of October 30th, 2009.

Employment Law

The new community dispositions on the legislation applicable to subordinate or autonomous employees who are temporarily employed abroad (this is the definition used, which highlights indeed an ample concept of employment in a different country, ampler than the traditional secondment / command concept, which is obviously included) extended **the maximum secondment duration from twelve to twenty-four months**. The dispositions concerning the secondment extension set out in article 14 of Regulation No. 1408/71 were in fact abrogated (Mod. A1 in substitution of the previous E101 and E102) and this entails a simplification of the procedures and formalities related to secondment. Nevertheless, the exceptions provided by the new dispositions may also concern the ordinary duration of secondment. In fact, in the hypotheses where the initially established secondment **duration** of twenty-four months should **for particular requirements be extended**, article 16 of Regulation No. 883/2004 (which replaces article 17 of Regulation No. 1408/71) allows to the competent bodies of the interested member states to stipulate, for certain people or categories of people, agreements in derogation of the aforementioned regulations and, therefore, to authorize a secondment period which exceeds the ordinary limit of twenty-four months (up to 5 years, at least in force of the past Regulation).

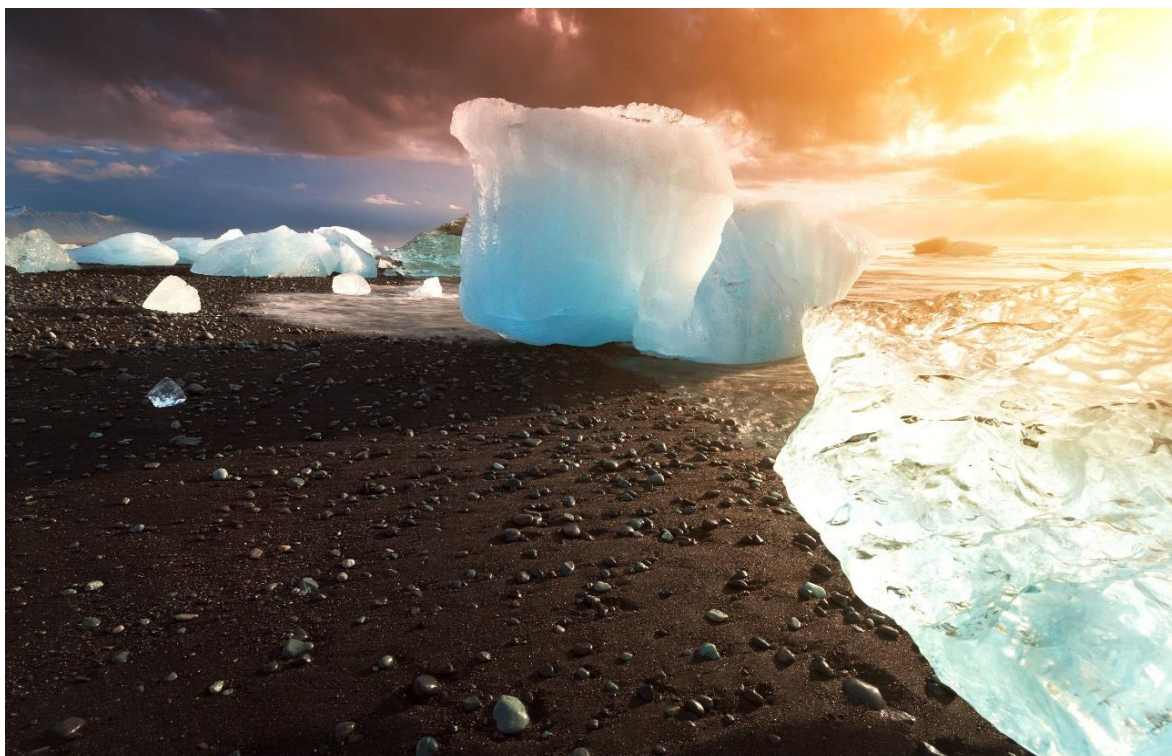


Taxation of Legal Entities

The New Romanian Fiscal Code (Law 227/2015), in force since 1 January 2016 governs the following taxes: corporate income tax, withholding tax, personal income tax, social security contributions, VAT, excise duties and local taxes. Since 1 January 2017, companies carrying out hospitality activities (e.g. hotels, restaurants, catering companies) have been subject to a “specific tax”, determined based on the size and location of their activities, in accordance with Law no. 170/2016.

Additionally, starting with 2018, the revenue threshold under which a company is considered a microenterprise has been increased from EUR 500,000 to EUR 1,000,000.

A significant step regarding the BEPS actions was made in 2018 by the transposition of the Anti-Tax Avoidance Directive (ATAD) provisions into the national legislation. More specific, a new set of provisions regarding the interest deductibility limitation, exit taxation, anti-abuse, and controlled foreign company (CFC) rules, were introduced in the Fiscal Code.



Taxation of Legal Entities

Taxation Overview

Table 1 gives an overview of the provisions of the Romanian Tax Code.

Table 1 - Tax regulations

Corporate taxation	
-corporate income tax	16%
-micro-enterprises	1% - 3%

Withholding taxes		
Dividends	0%	Under EU Parent-Subsidiary directive, dividends paid to companies resident in one of the EU member states are exempt from taxation if the beneficiary of the dividend has held, at the time of distribution, a minimum of 10% of the shares of the Romanian company for an uninterrupted period of at least one year.
	5%	In all the other situations.
Royalties and interest	0%	Under EU Interest and Royalties Directive, royalties paid to companies resident in one of the EU member states are exempt from taxation if the beneficiary of the interest has held, prior to payment time, at least 25% of the Romanian company's share capital for an uninterrupted period of at least two years
	16%	In all the other situations.
Branch remittance tax	0%	N/A
Management and consultancy services	16%	Payments made for management and consultancy services are subject to standard withholding tax rate, irrespective of where the services are supplied, unless otherwise provided under a tax treaty.
Other services	16%	Services paid to a non-resident for services performed in Romania, except for international transport and related services, are subject to standard withholding tax rate, unless otherwise provided under a tax treaty.
Special WHT tax	50%	If the income is paid in a jurisdiction with which Romania has not concluded a treaty for the exchange of information and the payment is deemed to be related to an artificial transaction

Taxation of Legal Entities

Corporate Income Tax

Parties Liable for Tax

Romanian businesses are subject to tax on profits derived from business carried on in Romania, as well as business conducted abroad; so are permanent establishments set up by foreign subjects for the purposes of business conducted in Romania.

Public institutions, the National Bank of Romania, legal entities constituted under Romanian law that are classed as micro-enterprises and charitable foundations/religious organizations are exempt from income tax. Non-profit organizations, trade union organizations and charities are exempt from tax on income derived from contributions and enrolment fees, sponsoring, donations, resources obtained from public funds or financing by way of grants, income earned through events and conferences, etc.

Such organizations are also exempt from tax on profits resulting from any trade or business activity carried on up to a maximum of EUR 15,000 p.a. revenue and in any event subject to a limit of 10% of the total exempted income.

Determining Taxable Income and the Applicable Tax Rate

The standard rate is 16% applied to the corporate income tax base, calculated as difference between the gross income and expenses booked in accounting, reduced by nontaxable income and increased by non-deductible expenses. The items similar to income and expenses are also taken into account.

The profit tax due for nightclubs and gambling operations is either 5% of the revenue obtained from such activities or 16% of the taxable profit, depending on which is higher.

Deductible Costs

As a general rule, expenses are deductible only if they are incurred for the purpose of carrying out economic activity.

Certain types of expenses are specifically provided under the Fiscal Code as being non-deductible or having limited deductibility. Certain deductible expenses are mentioned by the Romanian Fiscal Code, such as detailed in table 2.

Taxation of Legal Entities

Table 2 - Deductible costs.

Deductible costs
Marketing and advertising expenses
Travel and accommodation expenses related to business
Research and development (R&D) expenses that are not recognized as intangible assets for accounting purposes
Expenses incurred for environmental protection and resource conservation
Expenses incurred for management improvement; updating information technology (IT) systems; introducing, maintaining, and developing quality management systems; and obtaining quality compliance confirmation
Expenses incurred in connection to work safety, prevention of work accidents and occupational diseases, the related insurance contributions, and professional risk insurance premiums
Expenses incurred in connection to the acquisition of packaging materials during the useful life set by the taxpayer
Fines, interest, penalties, and other increased payments due under commercial contracts
Expenses incurred for publishing publications that are booked as returns during the period of determining the taxable profit based on the justifying documents and within the limits provided in the distribution contracts
Expenses incurred in relation to VAT in special conditions
Expenses incurred in relation to the efficiency, optimization, operational restructuring and / or financial activity of the taxpayer
Expenses incurred for the depreciation of the participation titles, in certain conditions
Expenses incurred for the further valuation and execution of derivative financial instruments
Expenses incurred for the registration fees, subscriptions and contributions owed to the chambers of commerce and industry, to the employers' organisations and trade union organisations
The expenses on salaries and those assimilated to salaries
Bad debt provisions are fully deductible if all the following conditions are met: <ol style="list-style-type: none"> 1. The debtor is a company declared bankrupt by a court ruling or an individual for whom insolvency procedure has been declared based on: <ul style="list-style-type: none"> o Reimbursement plan. o Asset liquidation. o Simplified procedure. 1. Receivables are not guaranteed by another person. 2. The debtor is not a related party.

Taxation of Legal Entities

Non-Deductible and partially-deductible Costs

Table 3 - Partially tax-deductible costs

Description of costs	Partially deductible
Protocol expenses	Up to 2% of the gross accounting profit to which protocol expenses are added
Social expenses	Up to 5% of salary expenses
Vehicles expenses	50% for expenses related to acquisition, functioning, maintenance and repairs of vehicles (including leasing and rental and except depreciation), if the vehicles are not used exclusively for business purposes. Tax depreciation is limited to a maximum of RON 1,500 per month for each vehicle
Technological losses	Within the internal consumption norm required for the production of a good or provision of a service
Expenses incurred for functioning, maintenance, and repairs corresponding to an establishment represented by an individual's personal property, used as well for individual purposes	In the limit of the surfaces at the disposal of the company based on the contractual agreements.
Perishable goods and losses resulted from transport/storage	Within the limit provided by the specific legislation
Expenses incurred with lunch vouchers and holiday vouchers given by employers	Within the limit provided by the specific legislation
Interest expenses and foreign exchange losses	Under the provisions below
Taxes and fees paid to non-government organizations or professional associations related to the taxpayer's activity	Up to the limit of EUR 4,000 per year
Provisions for depreciation of receivables	Up to 30% if the related receivables meet the following conditions simultaneously: <ul style="list-style-type: none"> ○ Not collected for a period exceeding 270 days from the due date. ○ Not guaranteed by another person. ○ Due by a person not affiliated with the taxpayer.
Provision for legal reserves	Subject to a limit of 5% of the gross profit and up to 20% of the value of the share capital

Taxation of Legal Entities

Table 4 - Non-deductible costs

Description of costs	Non-deductible
Corporate income tax, including differences from previous years or from the current year, and profit tax paid in foreign countries, deferred tax registered according to accounting standards	In full
Expenses with tax not withheld at source in the name of non-resident individuals and legal entities	In full
Interest, fines, and penalties due to Romanian or foreign authorities	In full, with the exception of the ones pertaining to agreements concluded with these authorities
Expenses related to missing or damaged non-imputable inventories or tangible assets, as well as related VAT, if the case	In full, with the exception of the assets for which certain conditions are applicable (if the conditions are met, the expenses are deductible): <ul style="list-style-type: none"> o they were destroyed following natural disasters or major force situations; o insurance contracts have been concluded in respect of these; o they were degraded from a qualitative perspective, and the proof of destruction is available; o They have a validity/expiry term that has passed; o Animal and agri-food products not destined for human consumption if their disposal is carried out in accordance with the legal provisions on the reduction of food waste.
Expenses in favor of shareholders, other than those related to goods or services provided by the shareholders at market value	In full
Expenses related to non-taxable revenues	In full
Expenses incurred for management, consultancy, assistance, or other supply of services performed by a non-resident	If the non-resident is located in a state that has no exchange of information agreement concluded with Romania.
Expenses incurred with insurance premiums unrelated to the risks and assets of the taxpayer's business	With the exception of those related to goods representing a banking guarantee for the loans used for business purposes
Losses incurred when writing off client receivables, for the amount not covered by a provision	For the amount not covered by a provision in any situations other than the following: <ul style="list-style-type: none"> o a reorganization plan was applied through a court decision o the bankruptcy procedure of the debtor was closed due to a court ruling; o the debtor is deceased and the receivable cannot be recovered from the heirs; o the debtor is dissolved or liquidated; o the debtor has major financial difficulties affecting its entire patrimony.
Sponsorship expenses	Subject to a fiscal credit of up to 0.5% of turnover and 20% of the profit tax due, whichever is lower. Taxpayers that do not benefit from fiscal credit in the year when they grant sponsorship according to the law may carry forward the fiscal credit for the next seven consecutive years.
Expenses registered in the accounting records, based on a document issued by a taxpayer declared inactive	With the exception of those representing acquisitions of goods performed during foreclosure procedures or from legal entities in bankruptcy procedure
Expenses with the revaluation of intangible fixed assets/ fixed means	In case that, as a consequence of a revaluation carried out according to the applicable accounting regulations, there is a decrease in their value
Expenses representing the accounting depreciation/ amortization of the fixed assets	In full. The fiscal depreciation is deductible.
Other expenses	Irrespective of their nature, if later is proven to be related to acts of corruption

Taxation of Legal Entities

Interest deductibility

Starting with 1 January 2018, the interest deductibility calculation rules were radically modified. In this context, the deductibility limitation will take into account the exceeding borrowing costs, meaning the amount with which the interest expenses and foreign exchange differences exceed the interest income.

Thus, in the case of a taxpayer which is member of a consolidate group, the exceeding borrowing costs (calculated as the difference between any debt-related costs – including foreign exchange expenses and capitalized interest - and income from interest and other economically equivalent income) incurred in a fiscal period which exceed the deductible threshold of EUR 1,000,000 will be deductible for corporate income tax purposes up to the limit of 30% of the calculation base (established according to the EBITDA calculation formula).

If the calculation base is negative or equal to zero, the exceeding borrowing costs are treated as non-deductible for corporate income tax purposes during the current tax period, but can be carried forward indefinitely.

By way of exception, if the taxpayer is an independent entity (not part of a consolidated group for financial accounting purposes and without related parties and permanent establishments), the exceeding borrowing costs are fully deductible in the fiscal period when they are incurred.

Interest and foreign exchange net losses carried forward according to the provisions in force until 31 December 2017 will be subject to deductibility as per the new interest deductibility rules starting with 1 January 2018.

Fiscal losses

Companies are allowed to carry forward fiscal losses declared in the annual profit tax returns for a period of up to seven years, based on the FIFO method. On a separate note, carryback of losses is not available in Romania.

Taxpayers which have been subject to the micro-enterprises tax, having previously been corporate tax payers and recorded tax losses, and which subsequently become corporate tax payers once again, may carry forward their losses from the previous period as corporate tax payers starting from the date at which they have begun again to be subject to corporate tax. This loss may be carried forward for up to 7 years.

Taxation of Legal Entities

Research & Development (R&D) incentives

In the calculation of the tax result, the companies can benefit from an additional deduction of 50% of the eligible expenses for these activities; the additional deduction shall be calculated on a quarterly/annual basis. Accelerated depreciation may be applied.

The research and development activities eligible for being granted the additional deduction in determining the tax result should be included in the categories of applied research and/or technological development, relevant to the industrial or commercial activity performed by the taxpayers.

The additional deduction for R&D activities is not available if the R&D project's objectives are not met.

Tax exemption for reinvested profits

The profit invested in technological equipment, electronic computers and peripheral equipment, cash registers and machinery, control and invoicing machinery and devices, as well as in software, produced and/or acquired, including on the basis of the financial leasing contracts, and commissioned/used for the purpose of pursuing the economic activity, is tax exempt. The equipment subject to this incentive cannot be depreciated by using the accelerated method.

In order to benefit from this incentive, the technological equipment should be used by the company for the purpose of carrying on the business activity for a period equal to half of its useful life, but for no longer than five years.

Taxation of Dividends

A Romanian legal person which pays dividends to another Romanian legal person shall have an obligation to withhold, declare and pay the withheld tax on dividends to the state budget.

The dividend tax rate is 5% on the gross dividend paid to a Romanian legal person.

The tax is eliminated if there is a shareholding percentage of a minimum of 10% for an uninterrupted period of at least one year.

The tax on dividends shall be declared and paid to the state budget, by the 25th inclusively of the month following the one when the dividend is paid.

The Companies may opt to distribute dividends quarterly or annually.

Tax Credits and Losses Abroad

Tax credits for taxes paid to a foreign state may be obtained in Romania only if the DTT concluded between Romania and the foreign state applies and only if proper documentation confirming the tax was paid is available.

Taxation of Legal Entities

Tax Compliance

As a general rule, the companies subject to corporate income tax have the obligation to calculate, pay and submit the tax return on a quarterly basis, by the 25th day of the month following the last month of the quarter. For the fourth quarter, taxes are calculated and paid until 25 March of the following year if the fiscal year equals the calendar year; for the cases where the fiscal year is different than the calendar year, the annual profit tax return is due by 25th day of the third month after the end of the company's fiscal year; at the same date, the annual tax return must be submitted.

By way of exception, the non-profit organizations, companies that obtain revenues mainly from agricultural activities, educational units, religious cults and other taxpayers specifically mentioned by law have to declare and pay the annual corporate income tax by February 25th of the following year.

Taxpayers (except those specifically mentioned by law) may opt to declare and pay the annual profit tax by making quarterly advance payments. The decision to take this option has to be communicated in 30 days from the beginning of the fiscal year in which the taxpayer wants to apply the option and it has to be maintained for at least two consecutive years.

The anticipated quarterly advance payments are computed as $\frac{1}{4}$ of the previous annual corporate income tax updated by the consumer price index and are due by the 25th of the month following the end of the quarter. By exception, the quarterly advance payments related to fourth quarter are due by December 25th, respectively until the 25th of the last month of the changed fiscal year.

Late payment penalties

- The late-payment interest rate is 0.02% for each day of delay. Subsequent late-payment penalties also apply.

The penalty is set at 0.01% per day of delay.

A non-declaration penalty is applicable, at 0.08% per day, starting from the day following the due date until the date of payment. This penalty applies to the main tax obligations declared incorrectly or not declared by the taxpayer and is established by a tax inspection authority decision.

Taxation of Legal Entities

Exit rule

The concept of exit tax is introduced, based on which the taxpayer is subject to 16% corporate income tax (applied to the difference between the market value of the transferred assets and their fiscal value) for the gains derived from the following operations for which Romania would lose the right to taxation:

Transfer of assets;

Transfer of tax residency and/ or economic activity carried out through a permanent establishment.

Controlled foreign company rules

The concept of controlled foreign company and new rules regarding the taxation of the income generated by it, are introduced.

Thus, under strictly conditions, certain income categories non-distributed by the controlled entity (i.e., interest, dividends, royalties etc.) are included in the taxable base of the controlling entity.

Anti-abuse general rule

For the purposes of calculating tax liabilities, the tax authorities may ignore arrangements which are, given the relevant facts and circumstances, not genuine and have been put into place with the main aim of, or having as one of their aims, obtaining tax advantages that contravene the object or purpose pursued by the applicable tax provisions.

Transfer Pricing

The current practice showed that many governments around the world are extending and tightening controls over cross-border transactions between companies within the same group, as they look for new sources of tax revenue. As a result, transfer pricing audits are becoming increasingly common, as many governments develop greater experience in analyzing transfer prices and seek to protect their respective tax bases. Romania makes no exception from the current trends. The increased focus of the Romanian tax authorities over transfer pricing audits is a reality which any Romanian company part of a multinational group has to deal with.

Given the changes that are taking place lately, in Romania and also at the level of the European Union and worldwide, it can be observed an increased interest of the fiscal tax authorities in regard to this domain, materialized in an exponential increase of the transfer pricing audits number in Romania.

Taxation of Legal Entities

The arm's length price is computed by reference to comparable uncontrolled transactions. A transaction is considered to be uncontrolled if it is carried out between unrelated parties. Transfer pricing regulations prevent Romanian companies from reducing their profits by selling goods or services to related parties at prices lower than the market price or by buying goods or services from related parties at prices higher than the market price.

According to the Romanian legislation in force, taxpayers that carry out transactions with related parties should prepare a transfer pricing file regarding transactions carried with related parties. Please note that the transfer pricing file should be prepared in Romanian language, as required by the Romanian legislation in force, respectively Order no.442/2016 of the president of the National Agency of Fiscal Administration, regarding the value of the transactions, the drafting deadlines, the contents and the conditions for the request of the transfer pricing file and the procedure of adjustment/estimation of transfer prices (hereinafter referred to as "The order"), applicable starting 1 January 2016. The failure to comply with the obligation to prepare or to present the transfer pricing file within the deadline established by the tax authorities, constitutes a contravention and triggers a fine and also it gives the Romanian tax authorities right to perform transfer pricing adjustments. It is very important to be aware that, if the company does not submit the transfer pricing file to the authorities within the deadline or if the file is incomplete, the tax authorities will establish by their own means the arm's length prices and adjust the taxable profits accordingly, for the audited period (16% tax will apply to the additional taxable profit).

Romania implemented in 2017 in domestic legislation the provisions of the UE Directive 2016/881 regarding the automatic exchange of information (these provisions follow Action 13 initiative of OECD Base Erosion and Profit Shifting (BEPS) Action Plan). In this context, Romanian legislation provides specific requirements on the submission of the **Country by Country report**.

Taxation of Legal Entities

Micro-Enterprises

As a general rule, a micro-enterprise is a Romanian legal person that fulfils all the following conditions, on 31 December of the previous fiscal year:

- a maximum revenue at the end of the previous year of 1 million euros (EUR) (the threshold was increased from EUR 500,000 as of 1 January 2018);
- its registered capital is held by persons, others than the State and territorial-administrative units;
- is not in dissolution, followed by liquidation, registered in the trade register or with the law courts, according to the law.

By way of exception, micro-enterprises that have a minimum share capital of RON 45,000 and at least 2 employees may choose to apply the corporate income tax system, starting from the quarter in which the mentioned conditions are cumulatively met, the option being a definitive one.

Micro-enterprises, who perform sponsorships for supporting non-profit entities that are social service providers accredited with at least one licensed social service, may deduct these amounts up to 20% of the income tax due. The amounts exceeding this threshold can be carried forward for the next 28 quarters. Micro-enterprises that perform sponsorships will have the obligation of submitting an informative statement with the beneficiaries of the sponsorships until 25 January.

The tax rates used for micro-enterprises income tax are:

- 1% for micro-enterprises with one or more employees;
- 3% for micro-enterprises with no employees.

Aspects of International Taxation

Permanent establishment

A company is considered tax resident in Romania if it was set-up under Romanian law or has its 'place of effective management' in Romania, meaning the place where strategic economic decisions necessary to ensure the management of the foreign company are taken and/or the place where the most senior person or group of persons who manage and control the activity of the foreign entity operate.

Where countries with which Romania has entered into a double taxation agreement are concerned, the definition of resident person is that established by the agreement.

Taxation of Legal Entities

The Romanian Tax Code defines a non-resident company's **permanent establishment** ("PE") as being the place through which the activity of a non-resident company is conducted, fully or partially, directly or through a dependent agent (the Romanian legislation transposed the Article 5 - 'Permanent establishment' of the OECD Model Tax Convention).

Once a PE is created, Romania has the right to tax the profits of the non-resident parent company derived from the activities performed through the PE. The registration, reporting, and tax payment requirements for a PE are similar to those for a Romanian company.

Nonresident legal entities that carry out activities in Romania through multiple PE's must designate a PE to fulfill the corporate income tax obligations.

Withholding of non-residents

The taxable incomes obtained in Romania shall be the following, whether the incomes are received in Romania or abroad:

- Dividends,
- Interest,
- Royalties,
- Commissions,
- Income from services rendered in Romania,
- Income from independent activities,
- Income from consultancy or management services rendered both on Romanian territory and abroad,
- Income representing remuneration received by foreign legal entities acting as administrators or members of the board of a Romanian company,
- Income from services supplied in Romania, except for international transport and related services,
- Income earned from sports or entertainment activities carried out in Romania,
- Prizes granted as a result of competitions organized in Romania,
- Income from liquidation proceeds etc.

Taxation of Legal Entities

The WHT tax shall be calculated by applying the following quotas on the gross incomes:

- 16% standard rate;
- 5% for dividends;
- 50% for the income paid in a state with which Romania has not concluded a treaty for the exchange of information and the payment is deemed to be related to an artificial transaction.

Dividends

In what concerns the WHT for dividends, the WHT standard rate is 5%. However, under the provisions of the Parent-Subsidiary EU Directives (2011/96/EU), dividends paid by Romanian companies to companies resident in one of the EU member states are exempt from taxation if the beneficiary owner of the dividend has held, at the time of distribution, a minimum of 10% of the shares of the Romanian company for an uninterrupted period of at least one year.

Interest and royalties

Similarly, for the interest and royalties paid to a non-resident, the WHT standard rate is 16%. However, the provisions of the Interest and Royalties EU Directive were transposed in the Romanian legislation. Therefore, the interest and royalties paid by Romanian companies to companies resident in one of the EU member states are exempt from taxation if the beneficiary owner of the interest has held, prior to payment time, at least 25% of the Romanian company's share capital for an uninterrupted period of at least two years.

Capital gains

Capital gains derived by a non-resident from the transfer/sale of shares or real estate properties located in Romania are taxable in Romania. However, the provisions of the participation exemption are applicable if certain conditions are met (i.e., the company receiving the income must have owned at least 10% of the share capital of the company in which a participation is held, for an uninterrupted period of 1 year).

Double Taxation Agreements

The Romanian legislation provides that if a taxpayer is a resident of a state with which Romania has concluded a convention on the avoidance of double taxation, then the taxation quota which applies to the taxable income derived by that taxpayer from Romania may not exceed the taxation quota provided in the convention applied on such income. In case there are provided different taxation quotas in the domestic legislation or in the conventions on the avoidance of double taxation, the more favorable taxation quotas shall apply.

Taxation of Legal Entities

In order to apply the provisions of the relevant Double Taxation Treaty (DTT), the non-resident recipient of the income should provide to the Romanian payer a tax residence certificate attesting its tax residency for the purpose of the DTT. For the purposes of Romanian law, the certificate is valid for the year in which it is issued and for the first 60 days of the following year.

Compliance

Non-resident legal entities have the obligation to register for tax purposes if they derive from Romania income subject to withholding tax. The obligation to register is also maintained if the income from dividends, interests or royalties is tax exempted according to the European law provisions (participation exemption). The obligation to register for tax purposes rests with the non-resident. However, the Romanian income payer it is allowed to request the tax authority, on behalf of the nonresident and based on its agreement, to grant the Fiscal Identification Code.

The Romanian legal entity paying the income has the obligation to declare annually the incomes obtained by the non-residents and the taxes withheld through an Informative statement. The statement will also contain all non-resident identification data, including the fiscal registration code in Romania.

Non-resident companies deriving income from the sale of real estate located in Romania or from the sale of shares held in a Romanian company (except if participation exemption applies) are subject to a 16% profit tax in Romania and are liable to declare and pay such tax. Non-residents may appoint a tax agent/representative to fulfill this requirement.

Taxation of Legal Entities

Double taxation agreements

Table 4 – Double tax treaties concluded by Romania

Country	Dividends (%)	Interest (%)	Royalties (%)	Commission (%)
Albania	10–15	10	15	15
Algeria	15	15	15	♦
Armenia	5–10	10	10	15
Australia	5–15	10	10	♦
Austria	0–5	0–3	3	♦
Azerbaijan	5–10	8	10	♦
Bangladesh	10–15	10	10	♦
Belarus	10	10	15	♦
Belgium	5–15	10	5	5
Bosnia and Herzegovina	5	7.5	10	10
Bulgaria	5	5	5	♦
Canada	5–15	10	5–10	♦
China	3	3	3	♦
Croatia	5	10	10	♦
Cyprus	10	10	5	5
Czech Republic	10	7	10	♦
Denmark	10–15	10	10	4
Ecuador	15	10	10	10
Egypt	10	15	15	15
Estonia	10	10	10	2
Ethiopia	10	15	15	♦
Finland	5	5	2.5–5	♦
France	10	10	10	♦
Georgia	8	10	5	5
Germany	5–15	0–3	3	♦
Greece	25–45	10	5–7	5
Hong Kong	3–5	3	3	♦
Hungary	5–15	15	10	5
Iceland	5–10	3	5	♦
India	10	10	10	♦
Indonesia	12.5–15	12.5	12.5–15	10
Iran	10	8	10	♦
Ireland	3	3	3	♦
Israel	15	5–10	10	♦

Taxation of Legal Entities

Double taxation agreements

Table 4 – Double tax treaties concluded by Romania

Italy	5	5	5	♦
Iugoslavia (applicable in Montenegro and Serbia)	10	10	10	10
Japan	10	10	10–15	♦
Jordan	15	12.5	15	15
Kazakhstan	10	10	10	10
Korea North	10	10	10	♦
Korea South	7–10	10	7–10	10
Kuwait	1	1	20	♦
Latvia	10	10	10	2
Lebanon	5	5	5	♦
Lithuania	10	10	10	2
Luxembourg	5–15	0/10	10	5
Macedonia	5	10	10	♦
Malaysia	10	15	12	♦
Malta	5	5	5	10
Mexico	10	15	15	♦
Moldova	10	10	10–15	♦
Morocco	10	10	10	10
Namibia	15	15	15	♦
Netherlands	0.5–15	0-3	0-3	♦
Nigeria	12.5	12.5	12.5	♦
Norway	5-10	5	5	♦
Pakistan	10	10	12.5	10
Philippines	10–15	10–15	10–15–25	♦
Poland	5–15	10	10	10
Portugal	15	10	10	♦
Qatar	3	3	5	3
Russian Federation	15	15	10	♦
San Marino	5-10	3	3	♦
Saudi Arabia	5	5	10	♦
Singapore	5	5	5	♦
Slovakia	10	10	10–15	♦
Slovenia	5	5	5	♦
South Africa	15	15	15	♦
Spain	10–15	10	10	5
Sri Lanka	12.5	10	10	10
Sudan	5-10	5	5	♦

Taxation of Legal Entities

Double taxation agreements

Table 4 – Double tax treaties concluded by Romania

Sweden	10	10	10	10
Switzerland	15	5	0–10	♦
Syria	5-15	10	12	♦
Tajikistan	5-10	10	10	♦
Thailand	15–20	10–20–25	15	10
Tunisia	12	10	12	4
Turkey	15	10	10	♦
Turkmenistan	10	10	15	♦
Ukraine	10–15	10	10–15	♦
United Arab Emirates	3	3	3	3
UK	10–15	10	10–15	12.5
United States	10	10	15–10	♦
Uruguay	5-10	10	10	♦
Uzbekistan	10	10	10	♦
Vietnam	15	10	15	♦
Zambia	10	10	15	♦

Taxation of Legal Entities

Indirect Taxation – VAT

Romania's EU membership has led to the country being increasingly involved in the policies of integration and tax harmonization within the EU itself, and it is on the basis of these principles that Chapter VII of the Romanian Tax Code, which deals with VAT (in Romania 'TVA'), was drawn up and subsequently amended.

Implementing EU Directive 2006/112 in full, Romania brought itself into line with the principles and guidelines established by European legislation.

Taxable operations

From the point of view of VAT, the following transactions are taxable in Romania:

- Supplies of goods or services made in Romania by a taxable person;
- The intra-Community acquisition of goods from another EU Member State;
- Import of goods in Romania.

A "taxable person" is any person who independently makes taxable supplies of goods or services in the course of a business, regardless of the purpose or results of that activity. With this status, they are responsible for charging, collecting and paying VAT to the tax authorities, and documenting all this in a VAT return.

Place of taxation

In respect of the applicable rules, the Romanian legislation transposed the provisions of the EU 2006/112/EC.

- **Supply of goods**

The place of taxation is deemed to be the place where the goods are located when the transport begins. This not only depends on the nature of the goods supplied, but also on how the supply is made.

Taxation of Legal Entities

Intra-Community acquisition of goods

The place of taxation is deemed to be the place where the transport of the goods ends (i.e. the Member State where the goods are finally located after transportation from another Member State).

Supply of services

The place of taxation is determined by where the services are supplied. The supply of services between businesses (B2B services) is in principle taxed at the customer's place of establishment, while services supplied to private individuals (B2C services) are taxed at the supplier's place of establishment.

Importation of goods

When goods are imported from non-EU countries or non-EU territories, the place of importation is deemed to be the place where the goods are at the point of entry into the EU.

Chargeable event and chargeability

The chargeable event is when the legal conditions for VAT to become chargeable are met. VAT becomes chargeable at the point at which the tax authorities acquire the legal right to claim payment. The EU 2006/112/EC Directive legislation on chargeable event and chargeability of VAT is applicable.

Reverse charge

The reverse charge applies to the following transactions, among others:

- Intra-Community acquisitions of goods and services;
- Domestic supplies of cereals and industrial plants, wood, transfer of green and CO₂ certificates, electrical energy. Additionally, the supply of mobile phones, laptops, tablets, game consoles or other devices with integrated circuits provided that the value of such goods, excluding VAT, mentioned on an invoice is equal to/higher than RON 22,500. The reverse charge for this point is applicable until 31 December 2018;
- Supply of buildings, parts of buildings, and plots of building land.

Under the VAT reverse-charge mechanism, VAT is not actually paid, but only shown in the VAT return as both input and output tax, provided that both the beneficiary and the supplier are registered for VAT purposes.

Taxation of Legal Entities

VAT exemption threshold for small enterprises

The VAT exemption threshold for small enterprises was increased from RON 220,000 to RON 300,000. The new threshold is in force from 1 April 2018 and the normative act also provides the necessary transitional measures for the current year. The companies which exceed this threshold are required to register for VAT purposes.

VAT registration

Taxable person not registered for normal VAT purposes in Romania and not required to register are liable to register as an identified person (special VAT registration) in the following situations:

- Purchase of services from persons established in another Member state, having the place of supply in Romania
- Supply of services with place of supply in another EU Member State
- Intra-Community acquisitions of goods from another EU Member State cumulatively exceeding the annual threshold of EUR 10,000.

On a separate note, taxable persons established in Romania, and who do not exceed the VAT registration threshold, may opt to register for VAT purposes in Romania.

VAT threshold for distance sales

A foreign taxable person that makes distance sales to any non-taxable person or that is not registered for VAT in Romania must register for VAT in Romania if the total annual value of the goods/supplies reaches RON 118,000.

Tax representatives

A non-established, non-EU entity that carries on taxable operations in Romania and that is required to register for VAT purposes must appoint a tax representative. A taxable person that is established in the EU may appoint a tax representative, but may also choose to register for VAT in its own right (direct VAT registration).

VAT groups

Romanian legislation provides the option for groups of closely-linked companies to be treated as a single taxable person. For this to happen, these companies (which can be legally independent of one another) must make a joint registration for VAT, and they then become a VAT group.

Taxation of Legal Entities

Under the rules currently in effect, a minimum of two taxable persons may form a fiscal group for a period of at least two years if all of the members meet the following conditions:

- They are established in Romania.
- They do not belong to another fiscal group.
- They use the same tax period.
- Their capital is held directly or indirectly in a proportion of more than 50% by the same shareholders.

Non-residents VAT registration

A non-established business must register for VAT if it undertakes a range of activities, such as the following:

- Intra-Community acquisitions of goods in Romania
- Intra-Community supplies of goods from Romania
- Transfers of its own goods to Romania
- Sending goods to Romania from another EU country for processing with the finished products not returning to the EU country of dispatch
- Distance sales in excess of the annual threshold of RON 118,000
- Exports of goods
- The person is liable to pay the tax

VAT Rates

The standard VAT rate is 19%. The standard VAT rate is applied to all supplies of goods and services (including imports) that neither qualify for an exemption (with or without credit) nor for a reduced VAT rate.

Additionally, the legislation provides reduced VAT rate, as follows:

9% - for prostheses of any type and accessories (except dental prostheses), orthopedic products, medicines suitable to both human and animal use, foodstuffs, water, supply of fertilizers and pesticides used in agriculture, seeds and other agricultural products

5% - for accommodation (from November 2018, before 9%), restaurant and catering services (from November 2018, before 9%), school books, magazines, admission to shows, theatres, circuses, fairs, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities, sale of real estate under certain conditions.

Deductions

Any taxable person shall have the right to deduct the tax related to acquisitions, if these acquisitions are intended for the use for the benefit of taxable operations or operations resulting from economic activities. The VAT paid and due from transactions such as domestic acquisitions of goods or services, intra-EU acquisitions of goods or imports can be deducted.

Taxation of Legal Entities

The VAT deduction right related to the acquisition of road vehicles used for the transport of passengers and vehicles that meet certain characteristics, as well as the acquisition of fuel and all related services used for the respective vehicles, is limited to 50%, except for some specific exceptions (e.g. vehicles used by sales agents, taxis, transport services).

Separately, the VAT resulted from acquisitions of alcohol and tobacco products or the tax related to the amounts paid on behalf and in the account of the client, as well as the tax related to the amounts collected on behalf and in the account of another person, not included in the basis of taxation of the supplies, is not deductible.

Exemptions

Exemptions can be without right of deduction and with right of deduction. Most exempt supplies are examples of 'exemptions without the right to deduct', i.e. supplies in respect of which the input VAT incurred in the prior production and distribution processes preparatory to making that supply cannot be deducted. Examples of exemptions without right of deductions: medical and dental services, postal services, education, cultural activities, financial and insurance services, gambling, transactions involving immovable property (with the option to tax in certain conditions) etc.

Examples of exemptions with right of deductions: intra-community deliveries, exports, public international transport.

Transfer of business as a going concern

The transfer of a totality of assets or a part thereof, irrespective if such transfer is performed further to a sale, spin-off, merger, or contribution in kind to share capital, falls outside of VAT scope ("the TOGC relief"), provided that the transferred assets constitute an independent line of business capable of carrying on economic activities and the parties are taxable persons established and VAT registered in Romania.

Special regime for farmers

The farmers who apply the regime do not collect any output VAT, nor deduct input VAT, but they will charge a flat-rate compensation, as such: 1% for the year 2017, 4% for the year 2018 and 8% for the year 2019.

The taxpayers who make acquisitions from these farmers will have to keep a separate evidence of these and will be able to deduct the flat-rate compensation invoiced by the farmers in the same limits and under the same conditions applicable for the VAT deduction.

Taxation of Legal Entities

Cash accounting system

Taxable persons who registered an annual turnover not exceeding the limit of RON 2,250,000 (EUR 500,000) have the possibility to choose whether to apply the cash accounting system. The right to deduct the input VAT for the acquisitions of goods/services from companies applying the system is deferred until the payment is performed.

Split VAT mechanism

The VAT split-payment system is mandatory for the following categories of taxpayers:

the persons that as of December 31st 2017 have overdue VAT in amounts that exceed RON 15,000 (for large taxpayers), RON 10,000 (for medium taxpayers) and RON 5,000 for the others and these amounts will not be paid until January 31st 2018;

the persons that starting 2018 will register unpaid VAT exceeding the above limits, if such amounts will not be paid in 60 working days after the payment deadline; are applying the insolvency prevention or insolvency procedure; they opt voluntarily to apply the Split VAT system (for at least 1 year).

The taxable persons that are in one of the situations above will have to open at least one VAT bank account that must be used only in certain conditions (detailed below). These persons must receive/make 2 payments for each invoice: the value of the invoice will be received in/made from the company's current bank account and the VAT in/from the VAT bank account. The system impacts also the entities which do not have to apply the Split VAT system, because any taxable person must make split payments to the suppliers who apply the system.

The taxpayers who will opt for applying the VAT Split payment system will benefit from a 5% decrease in the corporate income tax/microenterprise income tax due in the period in which they applied the system.

VAT compliance

As a general rule, the fiscal period is the calendar month. For taxable persons registered for VAT purposes whose previous year-end turnover did not exceed EUR 100,000, the fiscal period is the calendar quarter.

VAT returns should be submitted to the tax authorities by the 25th day of the month following the end of the fiscal period; the VAT payment is due by the same date. The VAT return must be submitted by electronic means.

Taxation of Legal Entities

Taxable persons not registered for VAT purposes in Romania and not required to register are liable to pay VAT and to submit a special VAT return in connection to services rendered by non-residents suppliers. These obligations must be fulfilled by the 25th day of the month following that when the services are supplied.

All taxable persons that are registered for VAT in Romania must also submit an informative statement to the Romanian tax authorities. In principle, this statement must include all local supplies and acquisitions performed between taxable/non-taxable persons made in the reporting period. The deadline for this statement is 30th day of the month following the end of the period.

VAT refund

A taxable person may recover input tax, which is due on goods and services supplied to it for business purposes. A taxable person generally recovers input tax offsetting it against output VAT, which is VAT charged on supplies made.

In case of VAT refund for taxable persons registered for VAT in Romania, the amount of VAT reclaimed must be requested through the VAT return. The excess of input VAT over output VAT is generally refundable. Alternatively, it may be offset against future VAT liabilities.

However, the VAT refund procedure involves a tax audit from the Romanian Tax Authorities. During this tax audit, the Romanian Tax Authorities request certain documents showing the whole circuit of the goods purchased by the company or depending on the case, any documents that justify the deductible VAT.

Separately, a taxable person registered for VAT in one EU member state, making taxable supplies in his own Member State (the Member State of Establishment), can reclaim VAT incurred in another member state (the Member State of Refund) under Directive 2008/09/EC. Please note that the Directive was implemented in the national legislation, meaning its provisions were transposed in the Romanian Fiscal Code.

Taxation of Legal Entities

Penalties

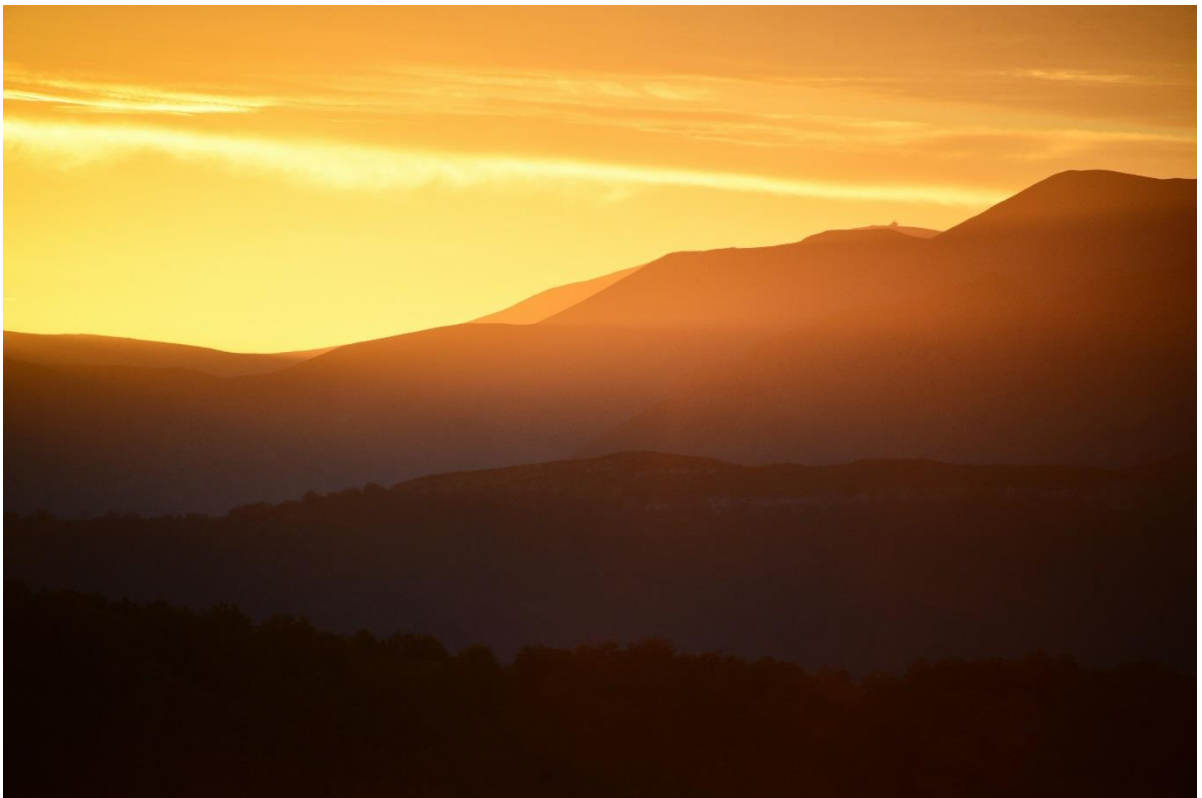
Penalties of RON 1,000 to RON 5,000 (approximately EUR 250 to EUR 1,100) in case of large and medium sized taxpayers and of RON 500 to RON 1,000 (approximately EUR 125 to EUR 250) in case of other taxpayers apply to late registration for VAT purposes.

Separate penalties range from RON 1,000 to RON 5,000 and are assessed for delays in submitting VAT returns.

The late-payment interest rate is 0.02% for each day of delay. Subsequent late-payment penalties also apply.

The penalty is set at 0.01% per day of delay. This penalty does not apply to main tax obligations not declared by the taxpayer and is established by a tax inspection authority decision.

A non-declaration penalty is applicable, at 0.08% per day, starting from the day following the due date until the date of payment. This penalty applies to the main tax obligations declared incorrectly or not declared by the taxpayer and is established by a tax inspection authority decision.



Taxation of Legal Entities

Local Taxes

Building tax

The building tax calculation method differentiates between buildings depending on their destination usage:

Residential buildings - Tax rate between 0.08% and 0.2% applicable to the taxable value as per the specific table provided by the law for individuals and the value resulted from the evaluation report for legal entities).

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 - sum of the tax calculated for the area that is used for residential purposes and the tax calculated for the area used for nonresidential buildings.

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

Land tax

Owners of land are subject to land tax established at a fixed amount per square meter, depending on the rank of the area where the land is located and the area or category of land use, in accordance with the classification made by the Local Council.

Similar to building tax, land tax is paid annually, in two equal instalments, by 31 March and 30 September. A 10% reduction is granted for full advance payment of this tax by 31 March.

Special taxes

Economic operators in the tourism, hotel, restaurants, bars, and catering sector will pay a specific tax, regardless of the size of the turnover and the level of profits. This special tax is regulated by Law 170/2016.

Taxation of Legal Entities

Customs and Excise Duties

Entry into the EU had the immediate effect of bringing Romania into the EU customs zone, with the result that, with regard to the position in law as far as tax and customs are concerned, the first geographical area to be considered is the EU area (customs and other taxes on imports and exports established by EU regulations) while the second in line is the national area (VAT and excise duties).

At an EU level, it should be remembered that customs regulations are applied across the board throughout the whole of the EU. One important feature where the position in law regarding customs is concerned is the material nature of the goods.

Customs value is established on the basis of the provisions of the WTO (World Trade Organization) Customs Valuation Agreement. Where the duty to pay sums due at customs is concerned, a taxpayer is any individual or legal entity carrying out the relevant transactions. The rates are those established at EU level.

Suspension/Exemption

There are two sets of circumstances in which customs duties can be suspended or there can be exemption from liability. The first is where goods are imported on a temporary basis in order to be processed. An application can be made for no customs duties to be payable on the grounds that the goods are to be re-exported following processing ('Inward Processing Relief' [IPR]).

Similarly, goods leaving the EU in order to be processed in non-EU countries can be re-imported without being subject to customs duties save on the compensating part ('Outward Processing Relief' [OPR]).

At a national level, as well as being subject to VAT, imports also attract excise duties. These are charged on goods in three market sectors, and, while there are EU rates in force, are currently levied and calculated on a national basis:

oil and energy products

alcoholic products and alcoholic beverages

tobacco products.

Some goods, such as alcoholic beverages and tobacco products, are required to have a duty stamp affixed prior to being put on sale; this is the responsibility of those operating the fiscal warehouses and importers. With the agreement of the EU, Romania is currently levying customs duties in excess of the minimum level established by the Union on certain other products (e.g. coffee, ships etc.) as part of a gradual harmonization plan.



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