

2. ROMANIAN TAX LAWS

Updated January 2018

The relevant **Romanian tax laws** are:

- ✓ Fiscal Code approved by Law no. 227/2015 ("**Fiscal Code**"), as amended
- ✓ Fiscal Procedure Code, approved by Law no. 207/2015, as amended
- ✓ Order no. 222 of 2008 of the President of the National Agency for Tax Administration regarding the Transfer Pricing Documentation ("**Order no. 222**")
- ✓ OECD Transfer Pricing Guidelines

Corporate profit tax

Applicability

The revenues of the following entities are subject to corporate profit tax:

- (i) companies tax resident in Romania;
- (ii) foreign companies doing business in Romania through permanent establishments;
- (iii) foreign companies which obtain revenues from or in connection with real estate transactions or from share transactions in Romanian companies;
- (iv) foreign companies and non-resident individuals doing business in Romania through partnerships with or without legal personality;
- (v) resident individuals who form partnerships without legal personality with Romanian companies, for revenues obtained in or outside Romania;
- (vi) companies having their registered office in Romania, established according to the European legislation.

A company is considered resident if its head office is registered in Romania or has its effective place of management in Romania.

Corporate Profit Tax Rate

The standard corporate profit tax rate is of 16%.

Calculation of the Taxable Profit

This is calculated as the difference between the revenues obtained from any source and the expenses incurred in obtaining taxable revenues throughout the fiscal year, adjusted by deducting non-taxable revenues and adding non-deductible expenses. When calculating the taxable profit, the elements similar to revenues and expenses are also taken into account. The fiscal year is considered to be the calendar year or the period during which the entity existed, if it was established or dissolved during that calendar year.

Non-taxable revenues

The Fiscal Code provides for several non-taxable revenues such as:

- (i) Revenues resulting from dividends received by a Romanian company from another Romanian company.
- (ii) Revenues resulting from dividends received by a Romanian company from a subsidiary located in an EU member state, subject to the following conditions:
 - (a) the Romanian company is a registered profit taxpayer; and
 - (b) the Romanian company has held at least 10% of the subsidiary's shares for a continuous period of at least one year until the date the dividends are paid.
- (iii) Revenues resulting from the cancellation of provisions or expenses that were previously non-deductible, revenues resulting from the recovery of expenses that were previously non-deductible and revenues resulting from reversal or cancellation of interest and late-payment penalties that were previously non-deductible.
- (iv) Revenues obtained from the sale of shareholding participations held in (a) Romanian companies or in (b) foreign companies located in a state with which Romania has concluded a double taxation convention, if, at the date of the sale, the taxpayer has held for a continuous period of at least one year at least 10% of shares of the company of which the shareholding participations are sold. This exemption does not apply if the taxpayer who sells shareholding participations in a Romanian company is resident in a state with which Romania did not sign a double taxation convention.
- (v) Non-taxable income expressly provided under agreements and memoranda approved through legal enactments.

Deductibility of the expenses

There are three categories of expenses:

- (i) deductible expenses;
- (ii) limited deductibility expenses;
- (iii) non-deductible expenses.

Deductible expenses

The expenses are deductible only if incurred for the purpose of generating taxable income.

Deductible expenses may be:

- (i) expenses incurred with professional training and development of employees;
- (ii) advertising expenses incurred with promoting the company, products or services, based on written agreements, as well as costs related to the production of the materials required for broadcasting advertisements, including goods granted as samples, with product testing at selling units, as well as other goods and services received in order to stimulate sales;

- (iii) expenses incurred with marketing, market research, promotion on existing or new markets, participation in fairs and exhibitions, in business missions and with publishing of own brochures;
- (iv) expenses incurred with environmental protection and resource preservation;
- (v) expenses incurred with the improvement of management, IT, the introduction, maintenance and development of quality management systems, and with obtaining quality compliance confirmation;
- (vi) travel and accommodation expenses related to business trips in Romania or abroad by employees and directors;
- (vii) expenses incurred in relation to work safety, prevention of work accidents and occupational diseases, the related insurance contributions and professional risk insurance premiums.

Non-deductible expenses

The Fiscal Code provides for certain non-deductible expenses, such as:

- (i) domestic profit tax and profit tax paid in foreign countries;
- (ii) expenses related to non-taxable revenues;
- (iii) expenses related to withholding tax borne by Romanian taxpayers on behalf of non - residents;
- (iv) interest, fines and penalties due to Romanian or foreign authorities;
- (v) expenses incurred with the management, consultancy, assistance or other services if no related agreements were concluded and the beneficiary cannot justify the supply of such services for the activities performed or for their necessity;
- (vi) sponsorship and patronage expenses and expenses for private scholarships. However, the taxpayers are granted a fiscal credit up to an amount consisting of the lowest value between 0.5% of the turnover and 20% of the due profit tax;
- (vii) expenses recorded without justifying documentation;
- (viii) salary expenses which are not taxed at the level of the individual;
- (ix) expenses made in favour of the shareholders, other than the ones related to goods or services provided by the shareholders at the market value;
- (x) 50% of the fuel expenses for company vehicles weighing under 3,500 kg and with less than nine passenger seats including the driver's seat; the Fiscal Code though provides that in certain cases the fuel expenses are fully deductible.

Limited deductibility expenses

Certain expenses have limited deductibility, such as:

- (i) depreciation of assets under the regulations related to the fiscal depreciation;
- (ii) perishable goods within the limits established by the relevant central administration bodies;

- (iii) protocol expenses are deductible up to the limit of 2% of the accounting profit, to which the protocol and profit tax expenses are added; the collected VAT related to gifts offered by taxpayers, of which value is higher than Lei 100, is included in the protocol expenses;
- (iv) daily allowances for expenses from domestic and foreign travel by employees are deductible up to the level of 2.5 times the legal threshold established for public institutions;
- (v) taxes and contributions paid to non-government organizations and professional associations related to the taxpayer's activity are deductible up to the limit of EUR 4,000 per year;
- (vi) health insurance premiums are deductible up to the limit of EUR 250 per year, per employee;
- (vii) private pension insurance premiums are deductible up to the limit of EUR 400 per year, per person.

Provisions and reserves

As a general rule, the provisions and reserves are non-deductible for profit-tax purposes.

However, the Fiscal Code provides for certain provisions and reserves which can be considered deductible.

Accounting and fiscal depreciation

The Fiscal Code establishes a distinction between accounting and fiscal depreciation.

With regard to the fixed assets, the fiscal depreciation is calculated according to the provisions of the Fiscal Code. Therefore, the deductibility level of the expenses related to the depreciation of the fixed assets does not depend on the level of depreciation recorded in the accounts.

The calculation of the depreciation of fixed assets for tax purposes is based on the tax value.

The said depreciation may need to be adjusted for revaluations according to the accounting rules.

The fiscal depreciation should be calculated based on the asset's tax value and useful life for tax purposes, by applying one of the allowed depreciation methods:

- (i) straight-line method;
- (ii) accelerated depreciation method; and
- (iii) reducing balance method.

The Fiscal Code provides an incentive for the purchase of machinery and equipment, computers and their peripherals, as well as patents. These can be depreciated by using the accelerated method which consists of the deduction of a maximum of 50% of the asset's tax value during the first year of usage. The rest of the asset's value can be depreciated using the straight-line method over the remaining useful life.

Filing the tax returns and payment of tax

The profit tax returns are filed and profit tax is usually paid on a quarterly basis.

Non-resident companies obtaining incomes from real estate property located in Romania or sale of shares held in a Romanian company are obliged to declare and pay the related profit tax. For this purpose, such companies may appoint a tax representative or an authorized person to fulfil this requirement. However, if the buyer is a Romanian company or a Romanian permanent establishment of a non-resident company, the obligation to declare and pay the said profit tax will remain with the buyer.

Taxpayers, with certain exceptions, may opt for computing, declaring and paying the annual profit tax in quarterly advance payments.

Loss carried forward

The annual loss, as established by the profit tax return, is to be recovered from the taxable profits obtained during the following seven consecutive years.

The fiscal regime of the transfers of assets, fiscal residence and/or economic activity carried out through a permanent establishment which are not subject to taxation in Romania

For the transfers of assets, fiscal residence and/or economic activity carried out through a permanent establishment, the taxpayer is subject to tax on profit, which is declared and paid, for the reference fiscal period.

The taxpayer benefits from the right to reschedule the payment of this tax, by paying it in installments during a five-year period, if the conditions provided by the tax legislation are complied with.

Tax exemption for reinvested profit

The reinvested profit is the balance of the profit and loss account, i.e. the accounting gross profit cumulated starting with the beginning of the year. Such reinvested profit, if used for the purchase of equipment will be tax exempt. This exemption will be applicable for the year when the respective equipment is put into use.

The tax exemption for reinvested profit is applicable in case of equipment manufactured and/or purchased as of July 1st, 2014 and put into use until December 31, 2016.

The taxpayers which benefit from this tax exemption must retain the equipment in their patrimony for a minimum period equal to half of the commercial life of the equipment. There are certain exceptions to this rule, i.e. the equipment is destroyed, lost, stolen or sold during the insolvency procedure. This retention period cannot exceed 5 years.

Furthermore, the taxpayers which benefit from this tax exemption may not use the accelerated depreciation method for the relevant equipment.

Transfer pricing

Transactions with Romanian affiliated companies as well as transactions with non-resident related parties are subject to audits regarding the compliance with transfer pricing legislation.

When auditing such transactions, the tax authorities may adjust the amount of income or expense of either person as necessary in order to reflect the market price for the goods or services provided in the transaction.

The methods that may be used for setting transfer prices are provided by the OECD Transfer Pricing Guidelines. The Romanian audit authorities also refer to local precedents, and interpretation of relevant Romanian laws.

The taxpayers which perform such transactions must prepare their transfer pricing documentation and make the file available upon the written request of the Romanian tax authorities.

The content of the transfer pricing documentation file was approved by Order no. 222.

The said Order is supplemented by the Transfer Pricing Guidelines issued by the OECD Transfer Pricing Guidelines and the Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (“**EUTDP**”).

The deadline for submitting the transfer pricing documentation file must not exceed three months. However, a single extension equal to the period initially established is possible.

Failure to submit the transfer pricing documentation file or the submission of an incomplete file following two consecutive requests will trigger the assessment of the transfer prices by the tax authorities.

Foreign fiscal credit

Romanian companies are granted a fiscal credit for income taxes paid abroad which cannot exceed the profit tax calculated by applying the Romanian profit rate of 16% to the taxable profit obtained abroad.

In this respect, the Romanian company is required to have on file the documentation attesting the payment of taxes abroad.

Fiscal credits may be obtained in Romania for taxes paid to a foreign state only if the Double Taxation Conventions concluded between Romania and the respective state apply, and based on the documentation which proves that the taxes were paid in the foreign state.

Dividend tax, payable by resident companies

Dividend payments made by a Romanian company to a Romanian resident shareholder, or to a non-resident shareholder, are subject to 5% dividend tax.

Dividends paid by Romanian companies/companies having their registered office in Romania, incorporated according to the European regulations to other such companies are tax exempt if the beneficiary of the dividends holds a minimum of 10% of the shares in the other company for an uninterrupted period of at least one year before the date of the payment.

Dividends paid by a Romanian company or a company that has its registered office in Romania, to a company or a permanent establishment of a company resident in an EU member state are tax exempt if the non-resident company which benefits from the dividends:

- (i) is set up according to Art. 20¹ (4) of the Romanian Fiscal Code;
- (ii) is a resident of the respective state and, based on a Double Tax Convention concluded between the respective state and a non-EU state, the said company is not considered to be a resident with the purpose of taxation outside EU;
- (iii) pays profit or a similar tax in their state of residency;

(iv) owns a minimum of 10% of the shares in the Romanian company.

Interest and royalty payments by Romanian companies to other Romanian companies are not subject to withholding tax but are considered as taxable income for the beneficiary and are subject to ordinary corporate profit tax.

In case that the amount of the dividends received is higher than 12 minimum wages, the taxpayer must pay health insurance contribution.

Consolidation

There is no tax consolidation in Romania between entities which have a distinct legal personality. Starting with July 1st 2013, the Romanian tax law allows corporate income tax consolidation between all of the permanent establishments, i.e. management offices, branches, plants, stores, mines, and oil and gas wells operated in Romania by a foreign legal entity, but no change was made with regard to the tax consolidation of entities with distinct legal personality, e.g. subsidiaries.

Capital Gains obtained by residents

Capital gains obtained by Romanian resident companies are taxed at 10%.

Capital losses related to sale of shares are, in general, tax deductible.

Mergers, spin-offs, transfers of assets and exchanges of shares between two Romanian companies should not trigger capital gains tax.

Corporate Tax payable by branches and representative offices of non-residents

General issues

Non - resident foreign legal entities are generally subject to Romanian taxation for the revenues sourced in Romania.

Non - resident foreign entities become subject to Romanian taxation by establishing (i) a branch, (ii) a representative office, or (iii) a permanent establishment. Also, they have to pay withholding tax on the Romania's sourced income.

Branch

The branch is a mere extension of the parent company; it does not have a legal personality. The activities of the branch are controlled and limited by the decisions of the parent company. Given the lack of the legal personality, the branch itself cannot be a party to a contract. The contract can be concluded by the parent company – acting through its branch, or directly by the parent company.

In terms of taxation, there are no major differences between the branch and the subsidiary, i.e. a company registered as a Romanian legal person. From the tax perspective, a branch of a foreign company is considered a taxpayer in Romania, given that the branch can qualify as a permanent establishment according to the provisions of the Romanian Fiscal Code.

The first step of the tax registration is performed at the same time with the registration with the Trade Registry, by filing a Fiscal Registration Form with the Trade Registry.

After the registration of the subsidiary/branch with the Trade Registry, the second step of the tax registration can be carried out, i.e. the issuance by the relevant tax authority of the Tax Registration Certificate, or the VAT Registration Certificate (if the branch will be registered as a Romanian VAT payer). Such formality is usually carried out by the accountants of the newly registered branch.

The branches must be registered with the Trade Registry and with the Romanian tax authorities.

The distribution of funds to the non-resident parent company is not regarded as dividend distribution, therefore, no withholding tax liability arises.

Representative Office

A Representative Office can only perform auxiliary or preparatory activities. It cannot perform trading activities in its own name and cannot engage in any commercial activities. There is a flat tax of EUR 4,000 per year for representative offices, payable in two equal instalments, and a tax of EUR 1,200 per year for the renewal of the authorization.

If a Representative Office is set up or dissolved during the year, the tax due for the respective year is pro-rated for the months when the Representative Office is operational.

Permanent establishment (“PE”)

A Permanent Establishment refers to a taxable presence of a non-resident in Romania. A PE is a place where the activity of a non-resident is conducted, fully or partially, directly or through a dependent agent. The Fiscal Code includes in this category the following:

- (i) a place of management;
- (ii) a branch;
- (ii) an office;
- (iv) a factory;
- (v) a shop;
- (vi) a workshop;
- (vii) a mine;
- (viii) an oil or gas well;
- (ix) a quarry or other places of extraction of natural resources;
- (x) the location where a certain activity involving the assets and liabilities of a Romanian legal entity entering into reorganization continues to be performed.

The profit derived from the activity performed of the PE is subject to profit tax.

Withholding Tax (“WHT”)

Non-resident companies which are not operating through a PE are subject to tax in Romania for the income from Romanian-based sources. The WHT covered by the Double Tax Conventions to which Romania is a party range from 0 %, to 15 %.

WHT is applicable to the following revenues:

- (i) commissions;
- (ii) revenues from services rendered in Romania;
- (iii) revenues resulted from the liquidation of a Romanian legal entity.

If there is no applicable Double Tax Convention, the revenues of the respective non-resident sourced from Romania are taxed at the rate of 10%.

There are certain exceptions to the above rate, such as:

- (i) dividends - dividends paid by Romanian companies to payees residing in one of the EU countries are exempt from WHT, if the dividend beneficiary:
 - a. is set up according to Art. 20¹ (4) of the Romanian Fiscal Code;
 - b. is a resident of the respective EU state, and based on a Double Tax Convention concluded between the respective EU state and a non-EU state, the said company is not considered to be a resident of the EU state for the purpose of taxation outside EU;
 - c. pays profit or a similar tax in its state of residence;
 - d. owns a minimum of 10% of the shares in the Romanian company.
- (ii) interest and royalties - interest and royalties payments are exempted from WHT if the beneficiary is (1) a company resident in another member state, or (2) a PE of a company resident in a member state, located in another member state.
- (iii) gambling - the applicable WHT rate is of 25%.
- (iv) revenues paid in a state with which Romania did not conclude any legal agreements providing an exchange of information between the states, i.e. revenues paid in fiscal paradises – as of February 1st, 2013, the applicable WHT rate is of 50%.

In order to apply the favourable European legislation, non-residents must submit a tax residence certificate and must issue a declaration attesting the compliance with the requirements provided by the European Directives.

As of June 1st, 2015, non-resident taxpayers which earn interest income in Romania may opt to apply the tax treatment provided for resident taxpayers.

Thus, non-resident taxpayers may opt to register for profit tax purposes in Romania, directly or through a tax agent. The option is available for non-resident legal entities which reside in the European Union or in the European Economic Area member states which concluded Double Tax Conventions or Information Exchange Agreements with Romania.

Capital Gains obtained by non-residents

Capital gains obtained by non-residents from the sale of real estate located in Romania or from the sale of shares held in Romanian companies are taxable in Romania at a rate of 10%. However, Double Tax Conventions may provide more favourable rates.

Double Tax Conventions

Double Tax Conventions concluded between Romania and the country of residence of the payment beneficiary may provide different WHT rates.

The list of countries with which Romania concluded Double Tax Conventions is found at http://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm.

In order to avoid withholding, the non-resident recipient has to provide the resident payer with a valid tax residence certificate prior to the payment of the income. The tax residence certificate should stipulate that the foreign beneficiary was a tax resident in a country other than Romania, during the period when the Romanian income was obtained.

The tax residence certificate valid for the year for which the payments are made is also valid during the first 60 days of the following year if the residency conditions did not change.

The WHT rates provided by the Romanian Fiscal Code will apply if a tax residence certificate is not available. However, a refund can be requested if the tax residence certificate is submitted during a 5-year period following the receipt of income from a Romanian resident.

Special provisions

When establishing the amount of a tax or of a charge according to the provisions of this Fiscal Code, the tax authorities may not take into account a transaction which does not have an economic purpose or may reclassify the form of a transaction in order to reflect the economic content of the transaction. In case the transactions or a series of transactions are qualified as being artificial, provisions of the relevant Double Tax Treaty will not apply, and the transactions in question will be taxed according to the Romanian Fiscal Code. Artificial transactions are the transactions or series of transactions which do not have an economic content and which cannot be normally used within regular economic practices, the essential purpose thereof being to avoid taxation or to obtain tax advantages which could not be granted otherwise.

Local Taxes and Other Taxes

The Fiscal Code provides certain local taxes, such as:

- (i) building tax;
- (ii) land tax;
- (iii) tax on means of transport;
- (iv) tax related to promotion and advertising;
- (v) taxes for the issuance of certain certificates, licenses and authorizations;
- (vi) tax on revenues obtained from public performances.

Building Tax

For buildings owned by companies, the building tax rate is established by the Local Council at a rate between 0.25% to 1.5% of the registration value of the building, adjusted, by case, with the value of reconstruction, consolidation, modernization, modification and extension works.

If the building has not been reassessed in the previous 3 (three) years, the tax rate is increased by the Local Council by 5% to 10%. The taxable value of fully depreciated buildings is reduced by 15%.

The building tax is due twice a year, by March 31, and September 30, and is paid in equal instalments.

Land Tax

Owners of land must pay a land tax per square meter, according to the classification established by the municipality where the land is located, and the zoning of the area where the land is located. The zoning is determined by the local municipality.

The land tax is due twice a year, by 31 March, and by 30 September, and is paid in equal instalments.

Registration of the agreements concluded between non-residents and Romanian entities, and natural persons regarding certain services rendered in Romania

According to Order no. 2310 of 2007, the Romanian legal and natural persons have the obligation to register the agreements concluded with foreign legal entities or non-resident natural persons which render on the Romanian territory services like: construction works, installation works, surveillance works, consultancy works, technical assistance works and any other activities which may be considered a permanent establishment in Romania.

These agreements must be registered with the territorial tax authorities in the jurisdiction in which the Romanian legal entities benefitting of the above-mentioned activities have their fiscal domicile, or, in the case of medium-sized and large taxpayers, with the competent tax authority.

Contributions to the Social Security System

Under the Romanian employment and tax regulations, certain contributions must be paid to the social security system. The basis for the calculation of social security contributions is the gross salary received by the employees or the assimilated compensation thereof.

The social insurance contributions are:

- (i) 25% for normal working conditions, which is payable by the employees, or persons assimilated to them;
- (ii) 4% for extraordinary working conditions, which is payable by employers or persons assimilated to them;
- (iii) 8% for special working conditions, which is payable by employers or persons assimilated to them.

Employers have the obligation to calculate and withhold the social insurance contribution owed by the employees, or persons who receive incomes assimilated to salaries.

The contributions must be paid by the 25th day of the month following the month for which income is paid, or until the 25th day of the month following the quarter for which the payment is due.

The social insurance contribution owed by the individuals who obtain income from salaries or assimilated to salaries, on the basis of a full-time, or part-time employment agreement, with certain exceptions, may not be less than the level of the social insurance contribution calculated with regard to the minimum national gross basic salary for the month for which the social insurance contribution is due.

Social health insurance contributions

The social health insurance contributions is of 10% of the gross salary, and is payable by employees or persons assimilated to them.

Persons, and legal entities who have the capacity of employers or are assimilated to them have the obligation to calculate and to withhold the social health insurance contribution due by the individuals who receive incomes from salaries or revenues assimilated to salaries.

The social health insurance contribution must be paid until the 25th day of the month following the month for which income is paid, or until the 25th day of the month following the quarter for which the payment is due.

The social health insurance contribution owed by the individuals who obtain income from salaries or assimilated to salaries, on the basis of a full-time or part-time individual employment agreement, with certain exceptions, may not be less than the level of the social health insurance contribution calculated with regard to the minimum national gross basic salary.

Contribution to the Health Fund by foreign individuals

Citizens of the European Economic Area (“**EEA**”) countries and Switzerland benefit from coverage of medical expenses incurred in Romania, as well as from exemption from the social security contributions. Such exemptions are granted if the expats obtain the A1 certificate from another EU Member state where their employer is located or the E101 certificate from Norway, Iceland, Liechtenstein, and Switzerland for expats whose employers are located in these states.

If an individual is not subject to social contributions in his/her home country, that person will be subject to the jurisdiction of the Romanian social security system and will be liable to pay social security contributions due under Romanian regulations.

Work insurance contributions

The taxpayers obliged to pay work insurance contribution for Romanian citizens, citizens of other states or for stateless persons, employed during the period when their domicile or residence is in Romania, are the employers or persons assimilated to employers.

The work insurance contribution is of 2,25% of the gross earnings from salaries and incomes assimilated to salaries in Romania and abroad.

The contribution must be paid by the 25th day of the month following the month for which the gross salary, or income assimilated to salary is paid, or by the 25th of the month following the quarter for which the payment is due.

Value Added Tax (“VAT”)

General issues

According to the Romanian legislation, before undertaking any economic activities involving VAT taxable and/or exempted transactions, such as supply of goods or services, any taxpayer whose economic activity is based in Romania, or has the centre of its activity outside Romania, but has a fixed establishment in Romania, must register with the competent tax authorities for VAT purposes. However, the Fiscal Code provides that companies which estimate that their annual turnover will be lower than the threshold provided by law may opt not to register for VAT purposes.

The annual turnover threshold for VAT registration is Lei 220,000, i.e. EUR 65,000. However, if within the fiscal year, the turnover of the taxpayer becomes higher than the said amount, the taxable person will have to register for VAT purposes with the competent tax authorities.

Depending on the resident status, the taxpayers may opt for:

1. standard VAT registration applicable to companies registered in Romania;
2. special VAT registration of Romanian companies for intra-community (European Union) acquisitions;
3. non-resident EU registered entities, or non-EU entities operating in Romania may appoint a fiscal representative and register for VAT purposes;
4. direct VAT registration in case of EU resident taxpayers.

A Romanian company may be required to register for VAT purposes in other EU Member States where it performs operations such as intra - EU community acquisition of goods, or holding a stock of goods.

From the VAT perspective, the economic activities of any entity carried out in an independent manner, irrespective of the purpose or result of those activities, is subject to VAT.

VAT establishment

A taxpayer is considered to be a resident of Romania if it registered its main business place in Romania, or it has a fixed establishment in Romania.

A taxpayer with its main place of business outside Romania has a fixed establishment in Romania if it has sufficient technical and human resources in order to perform taxable deliveries of goods and/or services on a regular basis.

Transfer of business

Any type of partial or total transfer of assets such as the transfer of a going concern is not subject to VAT if the beneficiary is a taxpayer. In order for a partial transfer of assets to be exempt from VAT, the transferred assets must constitute an autonomous business unit capable of autonomous economic activity.

VAT territoriality

The rules for establishing the place of supply of goods and services i.e. the place of VAT levy, are in line with the EU VAT Directives.

The supply of natural gas, electricity, and thermal energy is subject to VAT where the trader has its main business place or, in the case of supplies to an end customer, the place where they are used and consumed.

Services provided by non-resident entities

Services provided by *non-resident* entities to Romanian companies with the place of supply in Romania are subject to Romanian VAT.

For services provided by taxpayers to other taxpayers, the place of taxation is the place where the beneficiary established its business place, or it has a fixed establishment, domicile or habitual residence.

The Fiscal Code provides various exceptions from the above rules regarding VAT applicability in case of non-residents regarding certain services such as (i) transport related auxiliary services, (ii) works involving movable tangible goods, (iii) valuation of movable tangible goods, and (iv) local transport of goods. If such services are rendered to a non-EU resident taxpayer and the effective use of the services takes place in Romania, then the place of taxation is considered to be Romania.

The VAT quota

The standard VAT quota currently applied in Romania is of 19% of the taxable base. The taxable base in respect of the VAT is the value of the delivery of a commodity, the value of the services rendered, the value of a taxable import, or the value of an intra-EU Community acquisition, as defined by the Fiscal Code.

The reduced VAT quota of 9% is levied on medicines for human and veterinarian use, books, newspapers and periodicals, accommodation in hotels or in establishments with a similar function, cinema tickets, admission fees at museums, historical monuments, zoos and botanical gardens, fairs and exhibitions, supply of school manuals, supply of prostheses and orthopaedic products, restaurant and catering services, excluding alcoholic beverages, most of the food and beverage products (excluding alcoholic beverages) intended for human and animal consumption, such as live domestic animals and poultry, seeds, plants and ingredients used in preparing food, certain food supplements or substitutes.

The reduced VAT quota of 5% applies to housing delivered as part of an approved welfare scheme, including: old people's homes, retirement homes, orphanages, rehabilitation centres for children with disabilities, including buildings and parts thereof supplied as housing, subject to certain conditions. Houses with no more than 120 square meters and a value of maximum Lei 380,000 also qualify for the reduced 5% VAT rate.

Calculation of VAT

Any taxable person has the right to deduct the VAT related to purchases, if these are intended to be used for generating taxable revenues.

The difference between the VAT collected by a Romanian VAT payer, and the deductible VAT paid by the same results in a VAT balance, which will be reflected in the VAT return.

If the VAT balance is positive, i.e. the collected VAT is higher than the deductible paid VAT, the VAT balance will have to be paid to the state budget.

If the VAT balance is negative, and the amount of such balance is higher than Lei 5,000, the VAT payer may request the reimbursement by the state of the respective VAT balance. The reimbursement of VAT is usually done after the conduct of a tax audit by the relevant tax authorities.

As of March 1, 2014, the VAT returns requesting the reimbursement of an amount of less than Lei 45,000, will be granted prior to the conduct of the tax audit. For the VAT returns requesting the reimbursement of an amount higher than 45,000 lei, the tax authority, after a risk analysis, will decide if the tax audit has to be conducted prior, or after the VAT reimbursement.

Within the investment period of a company which is starting a new business, the VAT may be reimbursed prior to the conduct of a tax audit by the relevant tax authorities. In this case, a bank guarantee is necessary, the cost of such letter may be lower than the cost that may be caused by the late reimbursement of VAT.

VAT chargeability

VAT is usually chargeable on the date of the sale of goods, or of the rendering of services.

The Fiscal Code provides certain exemptions to this rule, i.e. the tax becomes chargeable:

- (i) on the date of the issuance of an invoice, if the invoice is issued before the date when the generating fact occurs;
- (ii) on the date of the receipt of the advance payment, for the payments in advance made before the date of the supply of goods/services.
- (iii) on the date of cash withdrawal, for the delivery or supply of goods or services performed by automatic sale machines, game machines, or other similar machines.

Moreover, the following categories of taxpayers:

- (i) taxpayers registered for VAT purposes in Romania having their registered place of economic activity located in Romania, which registered an annual turnover in the previous fiscal year below Lei 2,250,000; or
- (ii) taxpayers having their registered offices of their economic activity located in Romania, who registered for VAT purposes in Romania during the current calendar year

may opt to charge VAT on the date of receipt of the full, or partial price for the goods, or services sold.

If during the current calendar year, the turnover of the above-mentioned taxpayers exceeds the ceiling of Lei 2,250,000, the option to pay VAT upon receipt of payment for goods or services rendered shall be applicable until the end of the tax period following the period in which the ceiling was exceeded.

The VAT payable upon receipt of the price for the goods, or services rendered is mandatory for the above-mentioned taxpayers. However, this procedure is not applicable to taxpayers which are members of a tax group as defined by the Fiscal Code. Furthermore, the VAT payable upon receipt is applicable only for operations for which the location of delivery or performance is considered to be in Romania.

Invoicing

The taxpayers must issue an invoice no later than the 15th day of the month following the one in which the tax became chargeable.

The taxpayers must also issue an invoice for the amount of the advance payments received in connection with the supply of goods/services no later than the 15th day of the month following the one in which the advance payments were received.

VAT payment

If the annual turnover of a taxable person is lower than the equivalent of EUR 100,000, the VAT returns must be filed, and the VAT must be paid on a quarterly basis.

If the annual turnover of the respective taxpayer is higher than the equivalent of EUR 100,000, the VAT returns must be filed on a monthly basis, and the VAT balance must be paid on a monthly basis.

For the taxpayers which perform Intra - EU Community acquisitions which are subject to taxation for VAT purposes in Romania, the tax period for VAT purposes will be the month, i.e. the VAT returns must be filed, and the VAT balance must be paid on a monthly basis.

Split VAT payment

Starting January 2018, the split VAT payment will be mandatory for insolvent firms and companies that register VAT debts over a certain threshold at the end of 2017 and in 2018. For the VAT split-payment mechanism to be implemented, VAT receipts and disbursements must be made from a separate VAT account.

Taxpayers become subject to the the split VAT system if they have VAT debts in excess of the following thresholds:

- a. large taxpayers - RON 15,000;
- b. medium taxpayers - RON 10,000;
- c. small taxpayers - RON 5,000.

Payments to companies, which are subject to the split VAT system must be segregated as follows: the VAT payment must be paid to the VAT account of the payee, and the principal to the regular bank account.

Tax exemption for the import of goods followed by Intra - EU Community deliveries of goods

According to the provisions of the Fiscal Code, if the import in Romania of goods from a third country, is followed by intra-community deliveries of the respective goods, the said import is VAT exempted. This exemption is granted only if the importer provides the customs authorities with the following information:

- a) code of registration for VAT purposes;
- b) code of registration for VAT purposes of the counterparty to which the goods are delivered in another EU member state;
- c) proof of the fact that the imported goods are to be delivered from Romania to another EU member state, in the same condition they were at the time of the import.

The customs authorities may request guarantees regarding the VAT related to the import of goods exempted as per the above-mentioned provisions.

In practice, if the import is not immediately followed by an intra-community delivery, the importer may request approval of temporary storage of the goods until a EU counterparty is found, or until the logistics required for the delivery are finalized.

This exemption may be also applicable if the imported goods are subject to more or less complex processing in Romania prior to intra-community delivery.

VAT consolidation

It is possible for certain companies to form a fiscal group for VAT purposes. For example, a foreign company which establishes two branches in Romania will appoint only one of the branches to register as a Romanian VAT taxpayer.

VAT simplification measures

For sale-purchase transactions between taxable persons registered for VAT purposes in Romania that involve waste materials, wood or secondary raw materials and certain wheat, VAT is not actually paid, but only evidenced by the purchaser in the VAT return as both output and input tax.

Simplification measures also apply for the transfer of greenhouse gas emission certificates. Consequently, for transactions with such certificates between taxable persons registered for VAT in Romania, the beneficiaries will have the obligation to pay VAT by applying the reverse-charge mechanism.

VAT refund to taxable persons established in the EU or outside the EU

Taxable persons not registered for VAT purposes and which do not have the obligation to register for VAT purposes in Romania may request a VAT refund from Romania based on the refund request transmitted electronically to the authorities from the Member State where they are registered.

Such requests have to be transmitted to the Member State in which the applicant is registered, until September 30th of the year following the reimbursement period.

The competent authorities from the Member State where the taxable persons are established will forward the request to the competent authority in Romania which will inform the applicant with regard to the request's arrival date.

The settlement period is of 4 (four) months starting from the date when the application is received by the Romanian authorities. The said period will be extended up to eight months if the tax authorities request further information.

Taxable persons established outside the EU also have the right to claim a VAT refund from Romania, based on the reciprocity agreements signed by Romania.

Late payment penalties

Late payment interest and late payment penalties are applied for late payment of the fiscal claims owed to the State Budget. The late payment interest rate is of 0.02% per day.

Other late payment penalties are as follows:

- (i) the late payment penalty is of 0.01% per day;

- (ii) in case the main tax obligations are established by the tax audit authority due to the fact that they were undeclared or incorrectly declared, the late payment penalty is of 0.08% per day.

Additional taxes to be paid by certain economic operators

As of 2013, the following additional taxes have to be paid by the economic operators which carry out activities related to the extraction and trading of the natural resources:

- (i) special tax of 0.5% applied to the revenues obtained from the exploitation of the natural resources, other than gas - to be paid by the economic operators which carry out activities related to the exploitation and trading of the natural resources;
- (iii) tax of 60% applied to the additional revenues obtained from the deregulation of the prices from the natural gas sector – to be paid by the economic operators which carry out activities related to both extraction and trading of natural gas.

Bonus for ANAF employees

The tax authority may withhold 15% of the funds collected as a result of the tax audits for the purpose of granting motivational bonuses to its employees.