

## International Tax Romania Highlights 2017



### Investment basics:

**Currency** – Romanian New Leu (RON)

**Foreign exchange control** – The national currency is fully convertible and residents are allowed to make external payments in foreign currency (with banks generally requiring documentation).

**Accounting principles/financial statements** – Romanian accounting standards follow the fourth and seventh EU directives. IFRS also is accepted as a second set of financial statements, but only for certain companies. Banks, financial institutions and companies whose securities are traded on a regulated capital market must apply IFRS for accounting purposes.

**Principal business entities** – These are the joint stock company, general partnership, limited partnership, limited partnership by shares, limited liability company, branch of a foreign company and representative office.

### Corporate taxation:

**Residence** – A company is resident in Romania if it is incorporated in accordance with Romanian legislation or if its place of effective management is in Romania. The definition of resident also includes legal entities headquartered in Romania but incorporated under EU rules (e.g. the *Societas Europaea* and European cooperative).

**Basis** – Resident companies are taxed on their worldwide income; nonresident companies are taxed only on Romania-source income. The corporate income tax base is the difference between the gross income and expenses booked in accordance with the applicable accounting regulations, reduced by nontaxable income and increased by nondeductible expenses. Items similar to income and expenses also are taken into account.

**Taxable income** – Generally, all income is taxable, except for income that is specifically exempt (e.g. certain dividends, see “Participation exemption,” below).

**Taxation of dividends** – Dividend income received by a Romanian legal entity from another Romanian legal entity is not taxable, but dividend income received from a foreign legal entity is taxable.

If dividends are paid by a Romanian legal entity to another Romanian legal entity, a 5% dividend tax should be retained, declared and paid by the dividend payer.

Dividends may be exempt from taxation under certain circumstances (see “Participation exemption,” below).

**Capital gains** – Gains derived by resident and nonresident entities from the sale of shares and real property are included in overall profits and taxed at the general corporate tax rate of 16%. However, certain capital gains may be exempt (see “Participation exemption,” below).

**Losses** – Losses may be carried forward for seven years.

**Rate** – The standard corporate tax rate is 16%. Micro enterprises are subject to a tax rate of 1%, 2% or 3%, depending on certain factors.

**Surtax** – No

**Alternative minimum tax** – No

**Foreign tax credit** – A foreign tax credit is granted if provided for in a tax treaty between Romania and the relevant jurisdiction and if the taxpayer can demonstrate that income tax was paid abroad. However, the tax credit may not exceed the Romanian tax payable on the income.

**Participation exemption** – Dividends derived by a resident company from a company in an EU member state or a non-EU country that has concluded a tax treaty

with Romania are exempt from tax if the Romanian recipient company holds at least 10% of the distributing company's shares for an uninterrupted period of at least one year.

Capital gains from the sale/transfer of shares, as well as income arising from the evaluation or revaluation of shares held in a Romanian or foreign legal entity located in a country that has concluded a tax treaty with Romania, are exempt from tax if the recipient holds at least 10% of the share capital of the entity whose shares are sold/transferred or evaluated/revaluated for an uninterrupted period of at least one year.

Income obtained from the liquidation of a Romanian or foreign legal entity situated in a country with which Romania has concluded a tax treaty are not taxable in Romania if the income recipient holds at least 10% of the share capital of the legal entity that is undergoing the liquidation procedure for an uninterrupted period of at least one year.

**Holding company regime** – See “Participation exemption,” above.

**Incentives** – The following corporate income tax incentives are available: an additional 50% deduction for eligible expenses arising from research and development activities; accelerated depreciation of equipment and devices; and a corporate tax exemption for profits reinvested in certain technological equipment acquired after 1 July 2014 and put into operation in 2016.

#### **Withholding tax:**

**Dividends** – As from 1 January 2016, the general withholding tax rate on dividends paid to a nonresident is 5% (reduced from 16%). A 5% rate also applies to dividends paid by a Romanian legal entity to a legal entity resident in another EU member state, or to a permanent establishment (PE) of a company from an EU member state situated in another EU member state if the dividends do not qualify for an exemption under the EU parent-subsidiary directive (a minimum 10% holding for an uninterrupted period of at least one year). The rate is 0% if the directive applies.

**Interest** – A 16% withholding tax is levied on interest paid to a nonresident company, unless the rate is reduced under a tax treaty or the EU interest and royalties directive.

**Royalties** – A 16% withholding tax is levied on royalties paid to a nonresident company, unless the rate is reduced under a tax treaty or the EU interest and royalties directive.

**Technical service fees** – All types of fees paid to a

nonresident entity for services performed in Romania are subject to a 16% withholding tax, unless otherwise provided under a tax treaty. Payments made by a Romanian resident to nonresidents for management and consultancy services are subject to a 16% withholding tax regardless of the place in which the services were performed, unless otherwise provided under a tax treaty.

**Branch remittance tax** – No

**Other** – A 50% withholding tax is levied on payments made to an entity or person located in a jurisdiction that has not concluded an agreement with Romania for the exchange of information, if the payment is subject to withholding under the Romanian legislation and is made in relation to an artificial transaction.

#### **Other taxes on corporations:**

**Capital duty** – No

**Payroll tax** – No payroll tax is due from the employer, but the employer must compute and withhold tax on salaries on a monthly basis and remit these taxes to the Romanian state budget by the 25th day of the month following the month in which the salaries/income are paid.

**Real property tax** – Local taxes on buildings and land apply. For buildings owned by a company, the building tax rate is set by the local council and ranges from 0.08% to 0.2% for residential buildings and from 0.2% to 1.3% for nonresidential buildings. There are special rules for establishing the taxable rate, which may vary on a case-by-case basis. Special rules also are applicable for mixed purpose buildings.

Owners of land are subject to land tax at a fixed amount per square meter, depending on where the land is located and the area and category of use, in accordance with the classification made by the local council. Companies also are subject to land tax on land where buildings are situated.

**Social security** – An employer must make the following contributions (calculated on total gross salary): a social security contribution of 15.8% (for normal working conditions), with the base capped at five times the national average gross salary multiplied by the number of employees for the month of January 2017 (as from February 2017 the capped base will no longer apply); a health fund contribution of 5.2%; an unemployment contribution of 0.5%; the salaries guarantee fund contribution of 0.25%; a work-related accident and disease contribution of 0.15%-0.85%; a disabled persons contribution of 50% of the national minimum salary per workplace not occupied by a disabled person (with the

base capped at 4% of the total number of employees in the company); and the medical leave contribution of 0.85% .

**Stamp duty – No**

**Transfer tax – No**

**Other –** Depending on the nature of the taxpayer's business, other taxes may apply (e.g. specific taxes for the energy sector and the pharmaceutical industry).

Certain environmental taxes are payable to the environmental fund authorities.

#### Anti-avoidance rules:

**Transfer pricing –**Romania's transfer pricing rules generally follow the OECD guidelines, although certain provisions regarding the content of the transfer pricing file and how to apply the transfer pricing methods may deviate from the OECD guidelines. The tax authorities may adjust intercompany pricing to reflect fair market value, where appropriate. Any such adjustment made for transfer pricing purposes is subject to general 16% corporate income tax and related interest and late payment penalties.

The estimation of the transfer prices will be performed by the tax authorities when the taxpayer fails to submit the transfer pricing file or when an incomplete transfer pricing file is submitted. The transfer prices will be adjusted / estimated by using the median of the market range. Failing to provide the transfer pricing documentation file may result in fines (i.e. between RON 12,000 and RON 14,000) and transfer pricing adjustments.

As of 2016 large taxpayers carrying out intra-group transactions exceeding certain thresholds have the obligation to prepare the transfer pricing file on an annual basis. The deadline for the preparation is the legal deadline set for the submission of the annual corporate income tax return.

After the submission date of the annual corporate income tax return, the Romanian tax authorities can request the transfer pricing file for large taxpayers that meet or exceed the thresholds defined (EUR 200,000 for financial services rendered/received, EUR 250,000 for services and EUR 350,000 for purchases/sales of tangible or intangible assets) without initiating a fiscal inspection. For the other categories of taxpayers, the transfer pricing file needs to be submitted only upon specific request and only during a fiscal inspection.

The transfer pricing file and all related supporting documentation must be prepared in the Romanian language or should be accompanied by a translation made by an authorized translator.

An advance pricing agreement (APA) can be obtained. The deadline for issuing an APA is up to 12 months (for unilateral agreements) and up to 18 months (for bilateral or multilateral agreements) from the filing date of the APA request. The filing fee for an APA varies, depending

on the taxpayer's classification. An APA can be concluded for up to five years.

**Thin capitalization –** Interest expense on loans from banking institutions, non-banking financial institutions as well as finance leasing companies is fully deductible, provided the loans are incurred to generate taxable income. The deductibility of interest expense related to other loans is limited to an interest rate of 4% for foreign currency-denominated loans and the interest reference rate set by the National Bank of Romania for local currency loans. Interest expense exceeding these limits is nondeductible and may not be carried forward.

Further, if the debt-to-equity ratio is negative or higher than three, the interest expense and related net losses from foreign exchange differences are nondeductible. However, such nondeductible expenses may be carried forward indefinitely and deducted when the debt-to equity ratio criteria is fulfilled.

**Controlled foreign companies – No**

**Disclosure requirements –** Transfer pricing documentation requirements apply, see "Transfer pricing," above.

**Other –** The tax authorities may disregard a transaction or reclassify the nature of a transaction to reflect economic substance if the transaction is viewed as artificial or would not form part of an entity's regular business. Tax treaties and EU directives are not applicable in cases of artificial transactions.

#### Compliance for corporations:

**Tax year –** Calendar year, although taxpayers can opt for a fiscal year corresponding to a financial accounting year. Romanian subsidiaries of foreign companies, which have a modified financial accounting year, can modify the date set for the completion of their financial statements only if the parent company adjusts its reporting date or is subject to reorganization procedures.

**Consolidated returns –** Consolidated returns are not permitted; each company must file a separate return.

**Filing requirements –** Corporate income tax compliance is carried out on a quarterly basis, followed by the final year-end computation, declaration and payment of tax. Corporate income tax is computed and paid on a quarterly basis based on actual figures. Quarterly returns and payments are due by the 25th day of the month following the reporting quarter (applicable for the first three quarters). At year end, the annual corporate income tax must be computed, declared in the annual tax return and paid by 25 March of the year following the tax year.

Certain taxpayers may opt to declare and pay annual

corporate income tax by making advance payments on a quarterly basis (i.e. four equal installments based on the income of the previous year, as adjusted for inflation). At year end, the taxpayer computes the annual corporate income tax liability based on actual figures and pays any difference. The election to use this system must be made at the beginning of the fiscal year, and once the election is made, it must be maintained for at least two consecutive years.

Nonresident legal entities that carry out activities in Romania through multiple PEs must designate a PE to fulfill the corporate income tax obligations (i.e. prepare a single set of returns consolidating income and expense items at the level of all Romanian PEs of the nonresident).

**Penalties** – Late payment of tax is subject to interest at a rate of 0.02% per day of delay, with an additional late payment penalty of 0.01% per day of delay. An additional penalty of 0.08% per day applies to unreported or erroneously reported tax amounts.

**Rulings** – Advance pricing agreements are available, see “Transfer pricing,” above.

#### Personal taxation:

**Basis** – Resident individuals are taxed on their worldwide income irrespective of the type or source of income; nonresidents are taxed only on Romania-source income.

**Residence** – An individual is resident in Romania if he/she satisfies at least one of the following conditions: the individual has his/her domicile in Romania; the individual's center of vital interests is in Romania; the individual is present in Romania for a period or periods that exceed in the aggregate 183 days during any consecutive 12-month period ending in the relevant calendar year; or the individual is a Romanian citizen who is serving abroad as an official or employee of Romania in a foreign state.

Tax residence is officially determined by the Romanian tax authorities by means of a specific procedure. All individuals entering or leaving Romania for a period exceeding 183 days must self-report their tax residence to the Romanian authorities.

**Filing status** – Each taxpayer must file a tax return; joint filing is not permitted.

**Taxable income** – All salaries and related income are subject to tax. The taxable income of employees under an employment contract is determined as the difference between gross income from salaries (including salary-related allowances and benefits in kind) and allowable personal deductions, union dues paid, mandatory social contributions due at the level of the employee and

contributions to private pension/private health insurance funds (including subscriptions to private medical services paid directly by the employee) - contributions to each fund are limited to EUR 400 per year.

**Capital gains** – Capital gains generally are taxed at the ordinary individual income tax rate (but see “Rates,” below).

**Deductions and allowances** – There are certain allowances for children and personal deductions for taxable persons having dependents.

**Rates** – A flat rate of 16% applies. Dividend income received by a Romanian resident is taxable at a special individual tax rate of 5%.

Taxable income from the sale of real estate is taxed at a rate of 3%. A flat deduction of 450,000 RON is allowed when computing the taxable income.

#### Other taxes on individuals:

**Capital duty** – No

**Stamp duty** – No

**Capital acquisitions tax** – No

**Real property tax** – Real property tax is levied as a fixed fee (established by location and other factors) per square meter of land and buildings.

**Inheritance/estate tax** – No, if the succession is made during the first two years after death; otherwise, a 1% tax on the value of the property is levied.

**Net wealth/net worth tax** – No

**Social security** – Employee contributions include a pension contribution of 10.5% (which includes the 5.1% to be paid for the private pension scheme); a health contribution of 5.5%; and an unemployment contribution of 0.5%. The pension and health contribution on salary income attributable to the month of January 2017 will have their bases capped at five times the national average gross salary, while as from February 2017 the caps will no longer apply. The mandatory social contributions due at the level of the employee are deductible for income tax calculation purposes.

All other types of taxable private income (i.e. freelancing, investment, rental, other sources, etc.) are subject to a health insurance contribution of 5.5%. However, certain exemptions apply for 2017 if, for example, the individual derives other income for which the mandatory health insurance already is due and paid.

#### Compliance for individuals:

**Tax year** – Calendar year

**Filing and payment** – Personal income tax returns are due by 25 May of the year following the year in which the

income is realized. An individual must remit tax due to the authorities within 60 days from the receipt of a tax assessment.

Returns relating to salary-type income earned from a Romanian employer or for such income earned from abroad for activities performed in Romania are due by the 25th day of each month for salary derived in the previous month; the employer must remit the tax to the authorities.

The salary tax is flat and final. No year-end reconciliation via an annual tax return is required on salary income.

**Penalties** – Late payment of tax is subject to interest at a rate of 0.02% per day of delay, with an additional late payment penalty of 0.01% per day of delay. An additional penalty of 0.08% per day applies to unreported or erroneously declared tax amounts.

#### Value added tax:

**Taxable transactions** – VAT is levied on the supply of goods and services performed for payment.

The place of supply of telecommunication services, radio and television broadcasting services and electronically supplied services to non-taxable persons is considered to be the place where the customer is established or usually resides. This means that a foreign business performing such supplies to a Romanian consumer (B2C) has to pay Romanian VAT (a specific regime is applicable).

**Rates** – The standard rate of VAT is 19% (in 2016, 20%), with two reduced rates of 9% (e.g. orthopedic products, medicines suitable to both human and animal use, restaurant and catering services, except alcoholic products) and 5% (e.g. magazines, school books, admission to museums, zoos, cinemas, exhibitions and other similar cultural events). Exports, intra-community

supplies of goods and international transport are exempt. Social, medical, educational, cultural, financial and banking services, certain real estate transactions, as well as the supplies of goods related to exempt transactions are also VAT exempt.

**Registration** – VAT registration is required for taxable persons carrying out transactions that are taxable (for which VAT is deductible). A VAT registration obligation also is triggered where a person carries out intra-EU acquisitions. Taxable persons with annual turnover of less than EUR 65,000 are eligible for a special VAT exemption regime.

**Filing and payment** – VAT returns must be submitted on a monthly basis. Quarterly payments and filing are available for taxable persons with an annual turnover of less than EUR 100,000.

An optional VAT cash accounting system is available, under which local suppliers established in Romania with annual turnover below EUR 500,000 are required to collect VAT only when their invoices have been paid.

VAT consolidation between qualifying related parties is allowed (under certain conditions).

**Source of tax law:** Tax Code and Tax Procedure Code

**Tax treaties:** Romania has concluded tax treaties with approximately 85 countries.

**Tax authorities:** National Agency for Tax Administration

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