

International Tax Romania Highlights 2018



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 at the level of the recipient, but dividend income received from a foreign legal entity may be taxable to the recipient.

If dividends are paid by a Romanian legal entity to another Romanian legal entity, a 5% dividend tax must be withheld, 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 estate 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. The carryback of losses is not permitted.

Rate – The standard corporate tax rate is 16%. Micro enterprises are subject to a tax rate of 1% 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 valuation 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 valued/revalued 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; a corporate tax exemption for profits reinvested in certain technological equipment acquired and put in use; and a 10-year corporate income tax exemption for taxpayers that have the sole business activity of research, development and innovation.

Withholding tax:

Dividends – The general withholding tax rate on dividends paid to a nonresident is 5%. 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 is liable to pay the employment insurance contribution, which is calculated at 2.25% on the total gross salary.

In addition, under particular or special conditions, an amount representing the pension contribution at a rate of 4% or 8% of the gross salary, respectively, also is due from the employer.

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 there may be certain deviations regarding the content of the transfer pricing file and how to apply the transfer pricing methods. 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 the general 16% corporate income tax, and related interest and late payment penalties.

Large taxpayers carrying out intragroup transactions exceeding certain thresholds have the obligation to prepare a transfer pricing file on an annual basis. The transfer pricing file and all related supporting documentation must be prepared in the Romanian language or accompanied by a translation made by an authorized translator.

The deadline for the preparation of the transfer pricing file is the legal deadline set for the submission of the annual corporate income tax return. After this deadline, 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 other categories of taxpayers, the transfer pricing file must be submitted only upon a specific request during a fiscal inspection.

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

An advance pricing agreement (APA) may 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.

Country-by-country (CbC) reporting obligations also apply (see below under "Disclosure requirements").

Thin capitalization – As from 1 January 2018, new rules apply to the deductibility of interest and other costs economically equivalent to interest. "Excess borrowing costs" (the difference between borrowing costs and interest income and other economically equivalent income) higher than the deductible limit of EUR 200,000 will be deductible only up to 10% of the "base computation."

The base computation is calculated starting with the difference between income and expenses recorded as per the accounting rules, from which nontaxable income is subtracted and the corporate income tax expense, exceeding borrowing costs and tax depreciation amounts are added back. If the base computation is negative or zero, the excess borrowing costs are nondeductible in the relevant tax period, but may be carried forward to an unlimited number of tax years.

An exception applies, under which excess borrowing costs may be fully deductible in the relevant tax period if the taxpayer is an independent entity (i.e. does not form part of a financial accounting consolidated group and has no associated enterprises or PEs).

Controlled foreign companies – As from 1 January 2018, Romanian corporate income tax payers that control a foreign company must include certain income of the controlled foreign company (CFC) in their taxable base. A CFC is an entity or PE that meets the following criteria:

- The corporate income tax payer directly or indirectly holds at least 50% of the foreign company's capital or has the right to receive at least 50% of its profits; and
- The corporate income tax effectively paid by the foreign entity is less than the difference between the corporate income tax that would have been imposed under the Romanian tax rules and the corporate income tax effectively paid.

The CFC income that will be included in the taxable base of the Romanian corporate income tax payer, in an amount proportionate to its participation in the CFC, includes dividends, interest, royalties and capital gains; income from finance leases, insurance activities and banking activities; income from invoicing companies that carry out sales; and services income relating to goods and services purchased from and sold to associated enterprises, in cases where the services carried out add little or no economic value.

Disclosure requirements – Transfer pricing documentation requirements apply, see “Transfer pricing.”

As from 2017, any parent company or other reporting entity that is resident in Romania and is part of a multinational group of companies (MNE group) with consolidated income exceeding EUR 750 million is required to submit a CbC report for each reporting year, starting with fiscal year 2016 for EU entities and 2017 for non-EU entities.

Romanian entities that are part of MNE groups meeting the criteria for CbC reporting must file an annual notification indicating the party that will prepare and file the CbC report by the last day of the reporting fiscal year, but no later than the deadline for the submission of the annual corporate income tax return for the previous fiscal year.

Late submission of the CbC report or the transmission of incorrect or incomplete information may result in a fine between RON 30,000 and RON 50,000, and failure to submit the report may result in a fine between RON 70,000 and RON 100,000.

Other – The tax authorities may disregard a transaction or reclassify the nature of a transaction to reflect economic substance if they take the view that the transaction is 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 – The tax year is the calendar year, although taxpayers can opt for a fiscal year corresponding to a financial accounting year. Romanian subsidiaries of foreign companies that have a modified financial accounting year may 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 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 – APAs are available, see “Transfer pricing.”

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, as per the domestic legislation, if he/she meets at least one of the following conditions: his/her domicile is in Romania; his/her center of vital interests is in Romania; he/she 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 he/she is a Romanian citizen who is serving abroad as an official or employee of Romania in a foreign state.

The Romanian tax authorities officially determine an individual's tax residency by means of a specific procedure. All individuals entering or leaving Romania for a period exceeding 183 days within 12 consecutive months must submit a questionnaire along with supporting documents to the Romanian authorities. The deadline for submitting the questionnaire relating to entry is within 30 days of reaching 183 days of presence in Romania, while the questionnaire relating to departure is due 30 days before the departure date. As from 2018, a fine ranging between RON 50 and RON 100 is applicable for late submission of the documentation.

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 payable 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 10% 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 RON 450,000 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 tax applies 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 – As from 1 January 2018, a significant portion of the social security contributions formerly due from the employer has been transferred to the employee. However, the compliance procedure remains the responsibility of the employer. The mandatory employee contributions are the pension contribution of 25% and the health insurance contribution of 10%, which are deductible for income tax calculation purposes.

All other types of taxable private income (i.e. income from freelancing, investment, rental and other sources) are subject to a health insurance contribution of 10% if the level of the income derived from all these types of activity exceeds 12 times the national minimum salary (RON 1900 per month). The computation base is the

national minimum salary. A 25% pension contribution may be applicable for income from independent activities, under certain conditions, on the amount of “insured income” (an amount chosen by the individual, to which the pension contribution rate is applied, which cannot be less than the national minimum salary).

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 for 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 in exchange of remuneration.

Rates – The standard rate of VAT is 19%, with two reduced rates of 9% (e.g. for orthopedic products, medicines suitable to both human and animal use and restaurant and catering services (except alcoholic products)) and 5% (e.g. for newspapers and magazines; school books; and admission to museums, zoos, cinemas, exhibitions and other similar cultural events). Exports, intracommunity supplies of goods and international transport are exempt. Social, medical, educational, cultural, financial and banking services; certain real estate transactions; and the supplies of goods related to exempt transactions also are VAT exempt.

Registration – VAT registration is required for taxable persons carrying out taxable transactions. 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 (RON 220,000) 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 (RON 2,250,000) are required to collect VAT only when their invoices are paid.

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

A split VAT system is applicable as from 1 January 2018. Taxable persons that are VAT registered in Romania must

open a separate bank account for VAT payment and collection.

Source of tax law: Tax Code and Tax Procedure Code

Tax treaties: Romania has concluded tax treaties with approximately 85 countries. Romania signed the OECD multilateral instrument on 7 June 2017.

Tax authorities: National Agency for Tax Administration

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