

# Invest in Romania!

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## I. Investment Climate

During these troubled times, benefiting from all the incentives available from the state budget and being aware of all state aid scheme that suit their business need is a must for all companies.

The purpose of this booklet is to offer you a high level understanding of what is available at this time and get an overview of what could be applicable for you.

It is not our aim to make an extensive assessment of state aid regulations and their applicability to each tax incentive in this booklet. However, all tax incentives must be compliant with state aid legislation and be duly authorised by the competition authority.

## II. Tax incentives

### TAX INCENTIVES FOR COMPANIES

#### Accelerated depreciation

Under the Fiscal Code, machinery and equipment, computers and their peripherals, as well as patents, may be depreciated by using the accelerated method, under which a maximum of 50% of the fiscal asset's value may be deducted during the first year of usage, while the rest of the asset's value can be depreciated over the remaining useful life.

#### Special Incentives for expenses related to research and development activities

Companies can benefit from an additional deduction of 20% from the eligible expenses in respect of the research and development activities performed by them. Moreover, accelerated depreciation may be applied for devices and equipment used in the research and development activity.

This incentive is applicable provided that the beneficiary participates in a state aid scheme supporting research, development and innovation.

#### Deferred taxation: accounting revaluation recognised for tax purposes

Fixed assets revaluation pursuant to an accounting requirement is also recognised for corporate income tax purposes. In other words, if a Romanian company revalues its fixed assets at a value higher than the book value, due to the increase in their net fiscal value thus achieved, the company can benefit from increased tax depreciation, as well as a lower tax on the profits obtained through a sale of these assets.

The taxable moment for these revaluations is when the related realised revaluation reserves which were previously deducted are distributed to the shareholders. Therefore, these tax provisions have the advantages that the moment of taxation can be deferred, controlled and 100% of the cash from divestment can be used for reinvestment.

#### Tax exempt capital gains on Romanian stock exchange in 2009

During the fiscal year 2009, income obtained by non-resident entities from transactions with participation titles in Romanian legal entities on any market authorised and supervised by the National Commission of Movable Assets is non-taxable income.

#### Dividend tax exemption for reinvestments as of 2009

Distributed dividends are exempted from taxation as of 1 January 2009 if they are invested in the same or in another Romanian company's share capital.

To benefit from this exemption, dividends must be reinvested to preserve and increase the number of employees and to boost existing lines of business.

#### Reduced VAT rate of 5% for sale of buildings

Companies selling buildings can apply a reduced VAT rate of 5% in the following cases:

- if the buildings are part of a social policy, such as old people's homes, retirement homes, orphanages, rehabilitation centres for children with disabilities;

- the building is supplied as housing to an individual / family and has a maximum useful surface of 120 square metres and a value of less than RON 380,000 (exclusive of VAT).

### **Local tax exemptions for business located in industrial parks, and scientific and technological parks**

No property tax is due for buildings and constructions located in an Industrial Park. Also, land within Industrial Parks is exempt from land tax.

The incentives granted for the set up and development of industrial parks includes:

- lower taxes on tangible assets and land used by the park;
- exemption of specific taxes on land;
- deferred payment of VAT for materials, equipment and connection to the public utilities networks during the investment period, until the park is put into operation;
- development programmes for infrastructure, investments and equipment endowments granted by the local and central public administration, companies and foreign financial assistance;
- donations, concessions and structural funds for development.

The companies operating within the park benefit from:

- various services offered by the park administrator free of charge or with reduced fees;
- advantageous conditions with regard to location, use of the infrastructure and communications of the park, with payment in instalments.

### **Special tax regime for micro-companies (\*over in 2010)**

Companies can opt for the micro-company regime if several criteria are met:

- annual turnover up to EUR 100,000
- have between 1 and 9 employees
- derive more than 50% of their turnover from activities other than consultancy and management.

In 2009, micro-companies are subject to tax on revenues of 3% applied to the micro-company's annual turnover, excluding certain types of income.

Had a micro-company fail to meet one of the criteria presented above during a year, it will become a profit tax payer beginning with the next year. However, by way of exception, if during a fiscal year a microcompany derives revenues higher than EUR 100,000 or the percentage of incomes derived from management and consultancy services equals or exceeds 50% of the turnover, the micro-company becomes a profit tax payer starting with the quarter in which one of the two limits are met.

### **EMPLOYMENT INCENTIVES FOR SPECIAL CATEGORIES OF EMPLOYERS**

For employment of recent graduates, the employer can apply for a monthly grant of 1 - 1.5 (depending on the level of educational background) times the reference social indicator (currently set at RON 500) for each new graduate of a recognised institution for a period of 12 months. The employers benefiting from this incentive have the obligation to keep this employment relation for at least 3 years. Moreover, the employer may also be exempt for these 12 months for paying the unemployment contribution due for these graduates.

Additionally, grants amounting to the social security contributions for 2 years due in respect of the recent graduates are available if they are still employed by the company for 2 additional years after the first 3 years pass.

The same incentives apply for the employment of recent graduates with disabilities, except for the fact that the period for which the exemption from contributions to the unemployment fund and the monthly grants apply is extended to 18 months.

Employers can also apply for exemption from unemployment fund and for a monthly grant equal to the reference social indicator for each unemployed person with an age exceeding 45 years, or for each such person who is the sole family supporter. This monthly grant is available for a period of 12 months. The employers benefiting from this incentive have the obligation to keep this employment relation for at least 2 years. Employers running professional training programmes for their employees may apply for a refund of 50% of their expenses for up to 20% of their workforce, subject to certain conditions and limitations.

### III. State aid

Regulations on state aid have been in place in Romania since 1999. However, their implementation has not been effective or efficient until recently, when Romania's preparation for EU accession prompted an almost complete alignment of national laws with the EU acquis in the field. Nevertheless, certain efforts are still to be made, specifically in terms of state aid rules implementation and compliance with EU procedures. Given Romania's accession to the EU, the Competition Council (the national authority previously holding full competence in state aid matters) has transferred since 1 January 2007 all of its state aid clearance powers to the European Commission.

A new National State Aid Policy was approved by the Government for the period 2006 – 2013, promoting an extensive focus on state aid schemes, currently underway with the competent central authorities.

In January 2007, the European Commission approved the regional aid map for Romania for the period 2007-2013.

Other state aid schemes are now in the pipeline to foster the absorption of Structural funds available to Romania from 1 January 2007.

#### STATE AID SCHEME FOR INVESTMENTS IN ROMANIA

##### State aid schemes available for large investments

**General framework:** The Law regarding investment stimulation (**Government Ordinance no. 85 / 2008**) establishes the general framework applicable to state aid that can be granted for the encouragement of certain types of investments.

As a general rule, if the investment also benefited from non-reimbursable financing (either EU or from other sources), is not longer eligible for obtaining financing based on this general framework.

**Types of incentives:** The following types of incentives can be granted based on state aid schemes or on individual aid:

- Non-refundable amounts for the acquisition of tangible or intangible assets;
- Financial contributions from the state budget for jobs newly created ;
- Subsidized interest on contracted loans, as well as other types of incentives prescribed by the legislation in force.

**Types of investments:** The state aid schemes / individual aid for investments can be granted for the following objectives:

- acquisition of tangible or intangible assets regarding the setting-up of a new unit, the extension of an existing unit, the diversifying of production, the fundamental change of the production process;
- acquisition of fixed assets directly linked to a closed unit or to one that that would have been closed;
- commencement of certain research and development projects;
- creation of new jobs;
- professional training of employees;
- commencement of projects regarding the use of renewable energy resources, environment protection and lasting development.

In order to benefit of state aid based on the Ordinance, the investments should contribute to the achievement of one of the following objectives:

- development and regional cohesion;
- environment protection and rehabilitation;
- increase of energetic efficiency, production and use of energy from renewable resources;
- encouragement of research and development and innovation processes;
- employment and training of workforce.

The areas of activity which are eligible for this incentive include:

- agro-industrial processing;
- manufacturing industry;
- energy production and supply;
- environment protection;

- water supply, sanitation, waste management;
- IT&C;
- research, development and innovation;
- services related to the workforce.

**Eligibility criteria:** In order to benefit by this incentive, an investment must meet one of the following criteria:

- is localized in regions with a weak level of economical development;
- is localized in regions with high unemployment rate;
- aims at reaching new infrastructure objectives or to modernising existing ones;
- involves research and development, innovation activities, or high use of technology;
- leads to the improvement of energetic efficiency and use of renewable energy resources;
- has a positive impact on the environment;
- provides the development of human resources, the performance of professional improvement and training programs.

Moreover, the investor itself must meet certain criteria. As such, the investor must be a legal entity performing investments in Romania and meeting the following cumulative criteria:

- it does not have debts to the state budget;
- it has not requested the Ministry of Economy and Finance to perform payment of outstanding debts under internal/ external loans guaranteed by the state or by the risk fund;
- it did not benefit from state guarantees;
- it is not under forced execution or insolvency, dissolution procedure or any other case provided by the law;
- it was not subject to any state aid recovery decision or, in case decision was issued, it has been duly executed in accordance with the law.

In order to be eligible, the investment should not start prior to the signing of a approval in principle issued by the competent authority.

### **Special investment scheme for investments over EURO 50 million**

**Government Decision No. 1680 / 2008** provides for a state aid scheme for supporting economic growth and investments in Romania.

In order to benefit from this state aid scheme, companies have to cumulatively fulfil the following criteria:

- the value of the initial investment exceeds EUR 30 million
- create at least 300 new jobs.

Additionally, companies have to prove that the state aid such obtained has an "*incentive effect*", namely:

- it provides a substantial increase in the size of the project / planned activity
- it provides a substantial increase in the area of applicability of the project / planned activity
- it provides a substantial increase of the costs borne by the beneficiary
- It provides a substantial reduction of the duration for finalising the project
- the project would have not been performed had it not been for the state aid

The aid consists of non-reimbursable funds amounting up to 50% of the eligible costs of the investment (i.e. investment in fixed, tangible and intangible assets). Nevertheless, the maximum value of non-reimbursable funds available is capped at EUR 22.5 million for investments in Ilfov region and EUR 28.12 million for investments in the rest of the country.

The annual average budget allocated under this scheme is of EUR 200 million.

### **Special investment scheme for investments over EURO 100 million**

**Government Decision No. 753 / 2008** for regional development by encouraging investments in Romania introduced a new state aid scheme. This state aid scheme is issued based on national procedures and policies regarding State aid and follows European Union rules for regional state aid.

In order to benefit from this State aid scheme, a large company (i.e. at least 250 employees and a net turnover of at least EUR 50 million) has to be registered under Romanian Company Law, has to have registered offices and to perform activities in Romania and plans investments which fulfil the following criteria:

- are above EUR 100 million *and*
- eligible costs are higher than EUR 50 million *and*
- create at least 500 new jobs as a result of the initial investment.

All domains of activity are eligible for state aid schemes, with the *exception of* primary production of the agricultural products as provided under appendix 1 to the Treaty establishing the European Community, fishery, coal industry, steel industry, transport, maritime ship building, and synthetic fibbers.

Incentives under this State aid scheme are available as non-reimbursable funds, subject to a double cap limitation:

- the maximum amount granted as state aid is computed based on a specific ratio called "intensity". The maximum intensity level is computed as a percentage of the eligible expenditures for investment (specific intensity levels have been established depending on the level of the investment and its location).
- the maximum value, established based on the budgeted funds (i.e. the same entity can benefit from up to EUR 30 million for investments in Bucharest – Ilfov region and EUR 37.5 million for investments in any other region).

Eligible expenditures are defined as the higher of:

- the investment costs for tangible and intangible assets in the initial investment *or*
- employment costs estimated for the investment project.

Companies may benefit from the state aid scheme if they:

- do not have outstanding debts to the State Budget;
- have not been declared "in difficulty" as defined by the European Community Guidelines on State aid for rescuing and restructuring firms in difficulty;
- have not been subject to a state aid reimbursement decision;
- have not obtained State aid for the same eligible costs from other State aid suppliers or for other types of regional State aid schemes;
- maintain the initial investment for a certain period of time (i.e. five years for large enterprises);
- contribute at least 25% of the investment costs.

## IV. EU Funds

EU membership enables companies to seek financial support through the EU structural and cohesion funds. In most cases incentives take the form of development grants. A range of investment incentives are available to qualified applicants active in different economic sectors, in particular to small and medium size enterprises.

Around EUR 27.9 billion are available for 2007-2013 for Romania under European Social Fund, European Regional Development Fund and of European Agricultural Fund for Rural Development. These funds are designed to reduce regional disparities and to promote economic and social cohesion within the European Union. They are intended to be used to support projects which directly address locally identified needs (e.g. to help train people with new skills, or help develop the existing businesses).

The implementation of the European funds is usually done by programmes which set up allocation priorities and gives information about the type of projects it finances. Applicants for EU grants need to identify the programmes which would best fit their projects. The selection of projects is carried out by the national authority competent for each programme.

**For companies, the most relevant national programmes implementing EU funds are:**

- The Sectoral Operational Programme "Increase of Economic Competitiveness" which is managed by the Ministry of Economy, has a budget of 3,011 billion EUR and the main

objective to increase of Romanian companies' productivity. The main type of investments funded are:

o Productive capacity: In this respect, the target beneficiaries are both existing enterprises that need to modernize and develop their products and technological processes and new enterprises, especially from processing industry and construction sector that need qualified and integrated support by a proper development of business environment.

o Research and development: Companies could get EU funds for industrial research and precompetitive development activities that generate results of economic interest and support the transformation of the research results into new or improved products, technologies and services with high demand on the market. Different forms of collaboration between enterprises and R&D institutions are encouraged with the aim of enhancing their R&D activities and fostering the technology transfer. On order to raise their level of innovation and their market competitiveness and to create new R&D jobs, support is provided for the development of the research capacities in enterprises. The procurement of instruments, equipment, computers, software, etc necessary for R&D activity is financed.

o Information and Communication Technology: Under the key area of intervention "Sustaining the E-Economy" financial support is directed towards ICT applications and their interoperability, adoption of integrated solutions for companies leading to long term costcutting thus facilitating the access to internal and international market and sustaining more efficient management processes, observing at the same time the increased security of the electronic networks and the adoption of anti-fraud solutions in order to develop a secure and dynamic E-Business sector.

o Energy: The Programme is also financing projects aiming to improve the energy efficiency at the end-users envisages specific types of investments in installations/equipments of industrial operators in order to achieve energy savings, based on energy balance.

Investments in installations for their energy consumption reduction at industrial users and investments in upgrading and building new power and heating production capacities by valorisation of renewable energy sources are also eligible for financing.

- The "National Programme for Rural Development" managed by the Ministry of Agriculture, Forest and Rural Development with a budget of 8,022 billion EUR is supporting the restructuring and modernizing the agricultural and forestry products processing and marketing sectors, while observing the principles of sustainable development. Promoting the investments in agricultural holdings, both in the vegetal and animal breeding sectors, for new buildings and/or the modernisation of existent agricultural buildings as part of the holding, as well as the connected utilities, the acquisition of new equipment and machines and the setting-up of plantations is also a priority of the Programme.

- The Sectoral Operational Programme "Human Resources Development" managed by the Ministry of Labour, Family and Social Solidarity, with a budget of 4,089 billion EUR has the objective to develop the human capital and to increase the employee competitiveness, by linking education and lifelong learning with the labour market. One priority of the Operational Programme is to promote entrepreneurial culture, flexicurity and adaptability by supporting skilled, trained and adaptable labour force and enterprises. The programme supports the individuals in creating new business; innovative forms of work organisation, including better health and safety at work and diversity of contractual and working arrangements, with a view to improve quality and productivity at work. The actions cover also support for enterprises on specific training, with focus on new technologies and organizational improvement.

**Other important European Funds** available are:

[LIFE+ 2007-2013 Programme](#)

- The LIFE+ 2007-2013 programme aims to reduce the environmental impact of goods and services.

Projects may cover an extremely broad area ranging from the demonstration of innovative clean technologies in various types of industry and other economic sectors, to the development and optimisation of methods for monitoring and managing environmental impacts.

#### [The Competitiveness and Innovation Framework Programme 2007-2013 Programme](#)

- The Competitiveness and Innovation Framework Programme (CIP) aims to encourage the competitiveness of European enterprises. With small and medium-sized enterprises as its main target, the programme supports innovation activities (including eco-innovation), provide better access to finance and deliver business support services in the regions. It encourages a better takeup and use of information and communications technologies (ICT) and help to develop the information society. It also promotes the increased use of renewable energies and energy efficiency.

#### [Seventh Research Framework Programme \(FP7\)](#)

- The Seventh Framework Programme for research and technological development (FP7) is the European Union 's main instrument for funding research over the period 2007 to 2013. Support is given to the whole range of research activities carried out in transnational cooperation, from collaborative projects and networks to the coordination of research programmes. Programme focuses on nine thematic areas: health, food, agriculture and biotechnology; information and communication technologies; nano-sciences, nanotechnologies, materials and new production technologies; energy; environment and climate change; transport and aeronautics; socio-economic sciences and the humanities; space and security.

#### [The Intelligent Energy - Europe programme](#)

- The Intelligent Energy - Europe programme is the EU's tool for funding action to improve these conditions and move us towards a more energy intelligent Europe. The programme is financing projects in various areas such as capacity building, spreading of know-how, exchange of experience, policy input, awareness raising, education and training.

#### [Media 2007](#)

- The MEDIA Plus programme provides funding for independent European producers of audiovisual projects with a European dimension, both upstream of production stage and during production. The funding is designed to help you cover your costs for project development, financing, television production. Also support is given to distributors of European films, European sales agents and publishers of European DVDs. MEDIA also supports the distribution of European audiovisual works at two other levels: support for cinemas and support for television broadcasting.

The EU structural funds are mostly granted for projects having a substantial and measurable impact on economic and social development in a particular region. In addition, to be successful a company must show that its project: will at least add value (in other words, would not take place or would be less effective without EU support), give high value for money and contribute to meeting the Programmes requirements and targets; is feasible and sustainable, is an innovative pilot project which reflects value added on inputs and outputs; is a market-oriented project having a strong market and needs analysis and justification.

## V. Taxes

### Taxation of individuals

- Most types of income earned by individuals are taxed at a flat rate of 16%.
- Romanians domiciled in Romania are subject to taxation on their worldwide income (except for salaries received from abroad for services performed abroad).
- Romanians not domiciled in Romania and foreign individuals, regardless of their domicile, are subject to Romanian taxation only for income sourced in Romania (as of 2007, foreign individuals are taxed on their worldwide income if specific criteria are met).
- Foreign individuals who meet Romanian tax residency criteria are required each month to calculate, declare and pay individual income taxes and contributions to the Romanian Social Security system (observing specific criteria), for income from personal services performed in Romania.
- Salary tax exemption may be applied for software engineers if certain conditions are fulfilled.
- Dividend income, domestic interest income, income from prizes and income from other sources (excluding gambling income, which is taxed at higher rates) are subject to a final 16% withholding tax.
- Capital gains from transfers of securities are taxed at 16%, except for securities traded on an open market held for more than 365 days, which are subjected to 1% income tax. Capital gains from transfer of listed shares are tax free for 2009.
- Interest income earned from deposits in Romanian banks or other savings instruments is tax free as of January 2009.
- Starting february 2009, employer related social security contributions amount to a maximum of 28 - 39,2% of gross payroll costs.

### Taxation of corporations

- Standard corporate income tax rate is 16%.
- Micro-companies can opt for profit tax exemption and pay instead a tax of 3% on revenue in 2009.
- Standard dividend tax rate is 16% on dividends paid to Romanian individuals and 10% on dividends paid to Romanian companies. From 2009, distributed dividends are exempt from taxation if they are invested in the same or in another Romanian company's share capital, to preserve and increase the number of employees and to boost business activity.
- A standard withholding tax of 16% is applicable for dividends distributions to non-resident companies but this can be reduced by the double tax treaties to the lower of the treaty rate and the rate applied to domestic companies.
- Dividend tax is reduced to nil if the beneficiary is a company resident in Romania, an EU or EFTA member state that holds, for at least two years, at least 10% of the shares of the company distributing the dividends.
- Standard withholding tax on interest and royalties paid to non-residents is 16%, which can be reduced under more favourable treaties. Until 2010, a 10% rate applies to payments made to an EU resident company holding at least 25% of the shares of the payer for at least two years. From 2011, such payments are to be withholding tax exempt.
- The fiscal year is the calendar year.

### **Value Added Tax**

- Standard rate of VAT is 19% and the reduced VAT rates are 9% and 5%.
- Specific VAT treatment for EU business transactions.
- No VAT is applicable for the transfer of going concerns.
- VAT applies to factoring and debt collection activities.
- Invoicing deadline is the fifteenth day of the month following that in which the supply was performed.
- VAT refund for EU and non-EU businesses.

### **Customs and International Trade**

- As an EU member, Romania applies the EU Common Customs Tariff & EU customs regulations.
- Romania applies all EU free trade agreements concluded with third countries.
- Import licences are required for commodities such as oil, certain chemical products and weapons.
- No customs formalities are applied for goods with community status (goods produced in the EU or goods released for free circulation in the EU).
- Compensatory interest is due for Inward Processing & Temporary Admission regime goods released for free circulation in the EU.
- Security required for suspensive customs regimes, with a few exceptions.

### **Excise duties**

- EU harmonised excisable products and "non-harmonised" excisable products.
- Tax warehouse for production and storage purposes.
- Registered and non-registered traders.
- Excisable products can be produced, transformed, transported and stored under suspensive arrangements.

### **Environmental Fund Contributions**

- Contributions for packaging, tyres, air-pollutant emissions from fixed sources, sale of ferrous and non-ferrous waste, standing wood, etc.
- Some contributions depend on compliance with waste management obligations
- Registration of producers / importers / exporters of EEE (electrical and electronic equipment).
- Registration obligation for producers / importers of chemical substances and preparations.