



# The Romanian Tax Pocket Book\* 2009 Edition



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This publication aims to provide a general description of the tax system in Romania. The information contained is based on tax legislation and practice as at 1 February 2009. However, new provisions applicable as of 1 May 2009 were introduced by a Government Emergency Ordinance. The most important changes are summarized in Appendix 3.

# Executive Summary

## 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.

# Chapter 1

## Individuals

### 1.1 Personal Income Tax

#### General principles

- 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).
- The tax rate is a flat rate of 16% for most types of income earned by a individual.
- The fiscal year is the calendar year.

#### Tax residence

##### Romanian tax residents

- Individuals are considered to be Romanian tax residents if they:
  - are domiciled in Romania, or
  - have their centre of vital interests in Romania, or
  - are physically present in Romania for more than 183 days in 12 consecutive months ending in the calendar year concerned\*

\*Foreign nationals resident (for the second and third criteria above) for three consecutive years are taxable on worldwide income as of their fourth year of stay.

##### Non-residents

- Non-residents are only subject to Romanian taxation on their income sourced in Romania. This includes the following types of income:
  - Income derived from conducting independent activities through a permanent establishment in Romania.
  - Income derived from conducting dependent activities in Romania.
  - Some other specified types of income derived in Romania.

#### Taxable Income

- The following categories of individual income are subject to taxation under the Romanian Fiscal Code:
  - Salary income
  - Income from independent activities

- Rental income
- Pension income over RON 1,000 per month
- Income from agricultural activities
- Income from prizes
- Income from investments
- Income from real estate transactions
- Income from gambling
- Other income is subject to the 16% flat tax rate.

## Types of income and the corresponding tax rates

### Salary Income

- Salary is defined as income in cash and / or in kind received by individuals based on employment agreements.
- Salary is taxed at a flat rate of 16%.
- Income relating to salaries includes remuneration paid according to non-competition clauses and taxable benefits expressly stipulated by the relevant Romanian legislation. Taxable benefits include private use of company cars and telephones. Moreover, directors' fees received by members of the General Meeting of Shareholders and of the Board of Directors are treated as salaries.
- The following individuals are considered taxpayers:
  - Employees (and Directors remunerated based on mandate agreements) of Romanian companies, branches and representative offices of foreign companies; employers are liable to calculate, withhold and transfer salary taxes on a monthly basis.
  - Foreign individuals performing services in Romania based only on foreign employment agreements are liable to submit a monthly tax declaration and pay monthly income tax based on salary sourced in Romania.

### Income from Independent Activities

- Income from independent activities is taxed at a flat rate of 16% and includes:
  1. income from freelance activities (authorisation needed);
  2. income from intellectual property rights;
  3. income from commercial mandates and commission agreements.

#### 1. Freelance Activities

- Income from freelance activities is assessed on the basis of entries in the single entry bookkeeping ledgers that providers of independent activities are obliged to keep. Net income is calculated as gross income minus deductible expenses.
- For freelancers (Romanians and EU citizens), the following are non-deductible: fines, late-payment penalties (other than contractual penalties), donations; private scholarships, sponsorship and protocol expenses in excess of the upper limits set by law; per diem and other expenses exceeding limits provided by current law.
- Alternatively, specific categories of freelancers are taxed on the basis of an income quota, as communicated yearly by the Romanian Ministry of Finance.
- Freelancers earning income from independent activities have to make equal quarterly provisional tax payments during the fiscal year.

## 2. Intellectual Property Rights

- Payers of royalties must calculate, withhold and pay 10% advance tax. Receivers include the income in the annual tax return on the basis of which the tax authority decides the amount of the final tax (the final tax rate is 16%).
- The taxable basis for the income earned from intellectual property rights can be calculated as gross income minus a lump sum equal to 40% of the gross income less any mandatory social charges paid.

## 3. Commercial Mandates and Commission Agreements

- A withholding tax of 10% also applies for commercial mandates or commission agreements as advance tax payment. Receivers include the income in annual tax returns on the basis of which the tax authority decides the amount of the final tax (the final tax rate is 16%).

## Rental Income

- Gross annual income represents the income earned by the owner during the year as stipulated in the rental agreement registered with the Romanian tax authorities.
- Net taxable income is determined by deducting a 25% expense allowance from the gross income and is taxed at a flat rate of 16%.
- Individuals earning such income have to make quarterly provisional tax payments during the fiscal year.
- Income earned by tax payers from five or more rental contracts is considered freelance income and taxed accordingly, as described above.

## Income from Pensions

- Pensions are taxable at a flat tax rate of 16% for the amount in excess of RON 1,000 per month. The mandatory social contributions (i.e. health fund contribution of 5.5%) are deductible for Romanian tax purposes.

## Income from Agricultural Activities

- The following activities are considered agricultural activities:
  - farming, in greenhouses and / or in irrigated systems, and selling flowers and vegetables
  - farming and selling shrubs, decorative plants and mushrooms
  - vineyard farming
  - the sale of unprocessed agricultural products to specialist units
- Income from agricultural activities is determined either on an income quota basis, or by single entry accounting, by applying a flat rate of 16% to the taxable income.

## Income from Prizes

- Tax on income from prizes is withheld at source and determined by levying 16% on the amount exceeding RON 600 paid for each game or contest, per day.

## Income from Investments

### a. Dividends

- Dividends are taxed at a 16% flat tax rate.

### b. Interest

- Income from interest is taxed at a 16% flat tax rate, except for interest income earned from deposits in Romanian banks or other savings instruments, which is tax free as of January 2009.

### c. Capital gain

- Capital gain is taxed as follows:
  - The income tax rate for capital gains derived from transfers of shares of unlisted companies and limited liability companies is 16%; the income tax is calculated after each transaction and deemed final;
  - The obligation to calculate, withhold and remit the income tax (based on the agreement between parties) lies with the domestic purchaser at the time of the transaction;
  - For income derived from futures transactions in foreign currencies, 1% is paid as an advance on income tax. The annual income tax is established by the tax authorities by levying a 16% rate on the net income;
  - For income derived from transfers of securities, others than those mentioned above, 1% is paid as an advance on income tax. The annual income tax is established by the tax authorities as follows:
    - For securities owned for less than 365 days, 16%, deemed final;
    - For securities owned for more than 365 days, 1%, deemed final.
- The obligation to calculate, withhold and remit the advance income tax lies with the intermediaries (or other income tax payers) following each transaction; Losses incurred from the sale of such securities are to be offset against gains of the same category derived during the same year. Annual loss resulting from offset is not to be carried forward, as it is a final loss;
  - For income derived from liquidation of companies, the shareholders are taxed at a 16% rate. The obligation to calculate, withhold and remit the tax lies with the legal representative of the company.

**Non-resident individuals** obtaining capital gains in Romania are subject to the same tax treatment as that for revenues derived by Romanian individuals. Depending on the details of the transaction, the buyer / the Intermediary of shares has the obligation to compute, withhold and pay the capital gain tax from sale of shares. To fulfil this requirement, non-residents may appoint a Romanian fiscal representative or a tax agent.

For 2009, capital gains derived from transfer of listed shares are tax free.

## Income from real estate transactions

- Income from the transfer of real estate is taxed as follows:

For real estate owned for less than three years:

- for values up to RON 200,000, the income tax is 3%;
- for values exceeding RON 200,000, the income tax is RON 6,000 + 2% of the amount exceeding RON 200,000.

For real estate owned for more than three years:

- for values up to RON 200,000, the income tax is 2%;
  - for values exceeding RON 200,000, the income tax is RON 4,000 + 1% of the amount exceeding RON 200,000.
- No income tax is due for ownership of estates acquired under special laws, for donation deeds between relatives up to the third degree, between spouses and in cases of inheritance, provided the procedure is finalised within two years (an income tax of 1% is levied if the procedure is not completed within those two years).
  - Income tax due for transfer of ownership is withheld by the public notary and calculated at the value declared by the parties in the transfer documents. If the value declared by the parties is lower than the estimated value established by the expert appraisal conducted by the Chamber of Notaries Public, the income tax is calculated at the reference value. The tax is to be remitted by the twenty-fifth of the month following that when the income was withheld.

## Income from Gambling

- Tax on income from gambling is determined by levying the tax rate on the net income, as follows:
  - at 20% for amounts up to RON 10,000 (about EUR 2,325)
  - at 25% for amounts exceeding RON 10,000.
- The tax calculated and withheld upon disbursement is final. The net income is the amount exceeding RON 600 paid for each game or contest, per day.

## Other Income Subject to 16% Flat Tax Rate

The following types of taxable income are included in this category (NB. The list is not exhaustive):

- Insurance premiums incurred by the payer from services rendered to individuals with whom they have no employment relationship
- Gains on depreciation drawings, received from insurance companies as a result of insurance contracts concluded between the parties
- Income granted to retired former employees, in the form of discounts for goods, services and other entitlements, according to clauses in employment agreements or under special laws
- Income derived by individual taxpayers in the form of fees from commercial arbitration
- Income from gift tickets for parties other than employees of the disburser.

## Tax-exempt Income

The main categories of tax-exempt income are:

- Allowance for maternity leave, maternity risk and for child care leave (up to two years) paid from the health fund
- Incentives granted as aid to families for child care leave
- Salaries obtained by seriously disabled individuals (from their basic activity)
- Meal tickets
- Stock option plan advantages, at the moment of being granted and exercised

- Amounts received for transport and accommodation expenses incurred during delegation / secondment
- Salary income related to the design and creation of software (some criteria need to be observed)
- Sponsorship and donations
- Inheritance
- Income from the sale of movable assets (with the exception of shares described as "capital gains"), if not received on a regular basis
- Nursery tickets distributed as per law.

## Deductions from Income Tax

- For the primary job, the following amounts are to be deducted from the gross income when calculating the taxable income from salary:
  - mandatory state social security contributions;
  - personal and family related deductions calculated in accordance with the relevant laws;
  - contributions to facultative pension funds, up to the RON equivalent of EUR 400 annually;
  - trade union membership fees paid in accordance with the relevant laws;
  - expenses incurred from collective savings system for housing, up to RON 300 annually (approximately equivalent to EUR 70).
- For each secondary job, taxable income is assessed as the difference between the gross income and the social security obligations.
- Taxpayers may give up to 2% of the annual income tax due to charitable purposes (sponsorship).

## Taxation of Non-Residents

- Income earned by non-resident individuals from activities performed in Romania is also subject to taxation in Romania. A 16% withholding tax rate is applicable on the following types of income:
  - a) salary income and director fees received by administrators or members of the Board of Directors, paid by Romanian companies;
  - b) dividend income paid by Romanian companies;
  - c) interest income paid by residents (interest payments received from Romania by individuals resident in EU Member States are exempt from withholding tax); for 2009 interest income is tax free in Romania;
  - d) interest income paid by non-residents, if they have permanent establishments in Romania and the interest is a deductible expense for that permanent establishment;
  - e) royalties derived from residents;
  - f) royalties paid by non-residents, if they have permanent establishments in Romania and the payment is a deductible expense for those permanent establishments;
  - g) income from commissions paid by residents;
  - h) income from commissions paid by non-residents, if they have permanent establishments in Romania and the payments are expenses for those permanent establishments;

- i) income derived from sports and entertainment activities performed in Romania;
  - j) income from transactions in unlisted shares;
  - k) income from management and consultancy activities;
  - l) income from independent activities;
  - m) income from prizes received in Romania.
- Income from gambling, real estate transactions and income derived from transactions in listed shares is taxed at specific rates, according to the income category.
  - Where foreigners can claim treaty protection, the more favourable rates under the relevant tax treaty can immediately be applied by Romanian disburers of income, if the beneficiaries have produced the required tax residency certificate.

## 1.2 Health and Social Security

### The Social Security System

- In Romania, all employers and employees, as well as other categories of taxpayers, have to contribute to the state social, health and employment security system.

### Coverage

- Social and health security covers pensions, child benefits, illness and other social care services. Employment security covers minimal unemployment benefits and grants aimed at generating employment.

### Contributions

- Employers and employees are required to contribute to the social security system. The percentages paid by employers and employees are based on the gross salary as follows:

#### Employee Contributions as a Percentage of Gross Salary in 2009:

- Social security contribution 10.5%
- Unemployment fund 0.5%
- Health fund 5.5%.

#### Employer Contributions in 2009:

- Social security fund 20.8%; 25.8%; 30.8% depending on working conditions
  - Health fund 5.2%
  - Contribution for medical leave 0.85% (capped)
  - Guarantee Fund 0.25% of the salary fund
  - Unemployment fund 0.5%
  - Work accidents insurance fund 0.15% to 0.85%
  - Labour office commission 0.25% or 0.75%.
- Note that increases in both employer and employees contributions are expected for 2009, based on provisions of the 2009 budget law.

- The monthly basis for calculating medical leave contributions due for employees cannot exceed the product of multiplying the number of employees by 12 minimum gross salaries (the current minimum gross salary is RON 600).
- The percentage contribution to the work accident insurance fund varies between 0.15% and 0.85%, depending on the risk category. The criteria for establishing risk categories were established by the methodological norms.
- Employers calculate and withhold salary contributions when paying salaries. State budget contributions are payable by the twenty-fifth of the month following that to which the salary relates. Failure to pay these withholding contributions within 15 days of their becoming due is a minor offence and sanctioned accordingly.

## Foreign Personnel

### Fiscal Registration Number

- Foreign individuals earning income sourced in Romania need to file a fiscal application form with the Romanian tax authorities through a fiscal agent to obtain a fiscal registration number.
- Foreign staff should be aware that the number allocated through their residency permit (registration certificate for EU citizens) is used as their fiscal identification number upon registering with the Romanian Tax Authorities.

### Authorisations for Work

Foreign individuals performing services in Romania may have:

- only foreign employment agreements
- both foreign and local employment agreements, or
- only local employment agreements.

As a general rule, foreign individuals working in Romania need to apply for a Romanian work authorisation (before obtaining their residence here). There are some exceptions to this rule, as follows:

- EU individuals working in Romania as local employees are not required to obtain work authorisations; they are granted free access to the local labour market
- EU and non-EU nationals seconded to Romania by companies located in EU/EEA member states do not require work authorisations; there is instead a procedure for notifying the labour authorities of the secondment
- EU individuals seconded to Romania by companies located in third countries can perform their activities here without any immigration restrictions.

The type of employment relationship can significantly affect tax and social security liabilities (e.g. foreigners performing activities in Romania based on local employment agreements are liable to pay income tax on their entire remuneration received in Romania as well as all social security contributions required by the Romanian legislation, while foreigners sent to Romania on assignment are entitled to a tax-free secondment allowance while observing the limitations/exceptions provided by domestic law and/or the EU regulations for immigration and social security).

Further to Romania's EU accession, the EU regulations on social security contributions now prevail over domestic legislation. Accordingly, EU and non-EU expatriates working in Romania can be exempted from paying social security contributions, provided that they obtain the E101 certificate from another EU member state where their employer is located.

## Work authorisation for local employment purposes

- If a local employment contract is to be concluded between a non-EU individual and a Romanian company, a work authorisation for permanent workers must previously have been obtained for this purpose. The expatriates become taxable in Romania from the first day, with salary tax and social charges being withheld monthly by the employer through the payroll.

## Work authorisation for secondment purposes

- Non-EU nationals can be seconded to Romania by companies located in third countries (i.e. based on a foreign employment contract) for a total of one year within a five-year period.
- To obtain work authorisation for secondees requiring long-term visas, a work visa should be obtained from the Romanian diplomatic mission or consular offices in the country where the expatriate is domiciled.
- Individuals seconded to perform services for Romanian companies are required to contribute to the health fund. Health fund contributions of 5.5% are payable once residency permits are obtained, as foreigners are then considered to be resident in Romania. Such individuals have to calculate and pay salary taxes (i.e. income tax and health fund contributions) on a monthly basis.

## Residency documents: certificates of registration and residency cards versus residency permits

- Following Romania's EU accession, favourable provisions were implemented concerning the Romanian residence for EU/EEA nationals, whereas the provisions for non-EU nationals remained broadly the same.

## Romanian residence for EU/EEA individuals and their family members who are not EU/EEA citizens

- EU nationals can enter and reside in Romania for a three-month period without obtaining any formal residency documents. After this period, they can extend their legal stay here by obtaining a 'certificate of registration' (the certificate is obtained the same day, with unlimited validity). Application files are to be prepared in accordance with the purpose of the expatriate's stay in Romania (e.g. secondee, employee, family members).

However, family members who are not EU/EEA citizens themselves are subject to different immigration compliance requirements, as follows:

- they should obtain Romanian entry visas if necessary; and
- they should obtain Romanian residency cards to extend their legal stay in Romania over a three-month period.

## Romanian residence for non-EU individuals

- Non-EU Individuals whose stay in Romania exceeds 90 days within a six-month period need to apply for temporary residency permits, unless relevant international agreements or special laws stipulate otherwise.
- Residency permit applications can be made based on long-term visas which should be obtained from the Romanian embassy or consulate abroad prior to the application. Foreign nationals from certain countries, including USA, Canada, Japan and Australia, are exempted from obtaining Romanian long-term visas.
- The documentary requirements for obtaining Romanian long-term visas / residency permits depend on the purpose of stay.

# Chapter 2

## Taxation of Corporations

### 2.1 Corporate Income Tax

#### Entities subject to corporate income tax

The following entities are liable for corporate income tax:

- Companies resident in Romania
- Foreign companies doing business in Romania through permanent establishments
- Foreign companies which derive revenues from or in connection with real estate transactions or from share transactions in Romanian companies
- Foreign companies and individuals doing business in Romania through partnerships without legal capacity
- Resident individuals who form partnerships without legal capacity with Romanian companies, for revenues derived in or outside Romania.

#### Territoriality

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

#### Corporate Income Tax Rate

- The standard corporate income tax rate is 16%.
- The profit tax liability due for nightclubs and gambling operations is the lower of 5% of the revenues obtained and 16% of the taxable profit corresponding to such activities.

### 2.2 Calculation of Taxable Profits

#### Accounting and fiscal period

- The accounting and fiscal year is considered to be the calendar year or the period during which the entity existed if it was set up or ceased to exist during that year.
- The Ministry of Economy and Finance can establish terms other than the calendar year for drafting and submitting financial statements.
- From 2009, certain categories of entities (i.e. Romanian branches of foreign companies, Romanian consolidated subsidiaries and subsidiaries of the subsidiaries of foreign companies, except for

credit institutions) are allowed to set an accounting year other than the calendar year, if the financial year of the parent company is different from the calendar year. Please note that, as the competent authorities lack the technical support and corresponding information systems required to register the related information, this provision may not be applicable in practice.

## Tax base

- The taxable profit of a company is calculated as the difference between the revenues derived from any source and the expenses incurred in obtaining taxable revenues throughout the tax year, adjusted for fiscal purposes by deducting non-taxable revenues and adding non-deductible expenses. Other elements similar to revenues and expenses are also to be taken into account when calculating the taxable profit.

## Non-taxable revenues

The most relevant non-taxable revenues stipulated by the Romanian Fiscal Code are:

- Revenues from dividends received by a Romanian company from another Romanian company
- Revenues from dividends received by a Romanian company from a subsidiary situated in an EU member state, subject to certain conditions, i.e. the Romanian company is a profit taxpayer and has held at least 10% of the subsidiary's shares for a continuous period of at least two years by the date the dividends are paid.
- During fiscal year 2009, income from securities transactions on Romanian capital markets is non-taxable.
- Revenues from reversal or cancellation of provisions / expenses that were previously non-deductible and recovery of expenses that were previously non-deductible
- Non-taxable income expressly provided for under agreements and memoranda.

## Deductibility of expenses

From the deductibility standpoint, expenses fall into three categories: deductible expenses, limited deductibility expenses and non-deductible expenses.

## Deductible expenses

As a general rule, expenses are deductible only if incurred for the purpose of generating taxable income.

The following expenses are considered as being incurred for the purpose of generating taxable income:

- Expenses incurred for marketing, market research, promotion on existing or new markets, participation in fairs and exhibitions, in business missions and publishing of own brochures;
- Advertising expenses incurred in promoting the company, products or services, based on written contracts, as well as costs associated with the production of the materials necessary for broadcasting advertisements, including goods granted as samples, for product testing at selling units, as well as other goods and services granted in order to stimulate sales;
- Research and development expenses that do not meet the requirements to be recognised as intangible assets for accounting purposes;

- Expenses incurred for environmental protection and resource conservation;
- Expenses incurred for improvement of management, IT, the introduction, maintenance and development of quality management systems, and obtaining quality compliance confirmation;
- Bad debts expenses are fully deductible in any of the following cases: the bankruptcy procedure of the debtor was closed based on a court decision; the debtor is deceased and the receivable cannot be recovered from the heirs; the debtor is dissolved or liquidated; the debtor has major financial difficulties affecting its entire patrimony;
- Travel and accommodation expenses related to business trips in Romania or abroad by employees and directors, and also individuals treated as holding these positions (directors based on mandate and secondees whose costs are covered by the Romanian company); this also includes personnel's transport to and from the workplace;
- Expenses incurred from professional training and development of employees;
- Expenses incurred in relation to work safety, prevention of work accidents and occupational diseases, the related insurance contributions and professional risk insurance premiums;
- Expenses incurred from acquisition of packaging during their useful life.

## Limited deductibility expenses

The deductibility of certain expenses is limited as follows:

- Interest and foreign exchange losses under thin capitalisation rules (see details below);
- Depreciation of assets under fiscal depreciation rules (see details below);
- Perishable goods capped as set by the relevant central administration bodies;
- Protocol expenses are deductible up to the limit of 2% of the difference between total taxable revenue and total expenses related to taxable revenue, except for protocol and profit tax expenses;
- Daily allowances for expenses from domestic and foreign travel by employees are deductible up to the level of 2.5 times the ceiling set for public institutions;
- Social expenses are deductible up to 2% of salary expenses. Among others they can include maternity allowances, expenses for nursery tickets, funeral benefits and allowances for serious or incurable diseases and prostheses, as well as expenses for the proper operation of certain activities or units under taxpayers' administration (i.e. kindergartens, nurseries, health services supplied for occupational diseases and work accidents prior to admission to health establishments, canteens, sports clubs, clubs, etc);
- Health insurance premiums are deductible for employers up to the limit of EUR 250 per year, per person; private pension insurance premiums are deductible up to the limit of EUR 400 per year, per person;
- Taxes and contributions paid to non-government organisations and professional associations related to the taxpayer's activity are deductible up to the limit of EUR 4,000 per year.

## Non-deductible expenses

Expenses which are specifically non-deductible include, among others, the following:

- Domestic profit tax and profit tax paid in foreign countries;

- Expenses related to non-taxable revenues; Note that revenues from dividends have no corresponding expenses.
- Expenses related to withholding tax supported by Romanian taxpayers on behalf of non-residents;
- Interest, fines and penalties due to Romanian or foreign authorities, as well as to non-residents based on commercial agreements, save for penalties regulated under Double Tax Treaties;
- Expenses incurred from management, consultancy, assistance or other supply of services if no contracts or any other lawful agreements are entered into and the beneficiary cannot justify the supply of such services for the activities performed and their necessity;
- Sponsorship and patronage expenses and expenses for private scholarships. Taxpayers are, however, granted a fiscal credit up to whichever is the lower of 0.3% of turnover and 20% of the profit tax due.
- Other salary and / or similar expenses (if not taxed at the level of the individual), except for those specifically exempted from individual income taxation;
- Expenses incurred from insurance premiums unrelated to company assets or business, save for those regarding goods which are bank collateral on loans used to conduct the activity for which the taxpayer is authorised or those used under rental or leasing contracts;
- Bad debts expenses in excess of the deductible provision (see below);
- Expenses recorded without "justifying" documents;
- Expenses in favour of shareholders, other than those related to goods or services provided by the shareholders at market value;
- Expenses incurred from fixed assets impairments (i.e. losses in value defined as provisory adjustments by the accounting regulations transposing European Accounting Directives).
- Book value of participation titles, expenses related to transactions with securities on Romanian capital markets, exchange rate losses incurred on such securities (generally, all expenses connected to transactions realised during fiscal year 2009 on a market authorised and supervised by the National Commission of Movable Assets are non-deductible).

## Provisions and reserves

Amounts used for setting up or increasing reserves or provisions are deductible as follows:

- Setting up or increasing the legal reserve fund to a limit of 5% of the yearly accounting profit before tax (with adjustments) until it reaches 20% of the share capital.
- Provisions for doubtful debts recorded after 1 January 2006 are deductible up to the limit of 30%, if the related receivables meet the following conditions simultaneously:
  - booked after 1 January 2004
  - not collected for a period exceeding 270 days from the due date
  - not guaranteed by another person
  - due by a person not affiliated with the taxpayer
  - included in the taxable income of the taxpayer.
- Bad debt provisions are fully tax deductible if all the following conditions are met:
  - receivables are booked after 1 January 2007

- the debtor is a company declared bankrupt by a court ruling
  - receivables are not guaranteed by another person
  - the debtor is not a related party
  - receivables were included in the taxable income of the taxpayer.
- Provisions for receivables recorded before 1 January 2004 are deductible within the limit stipulated by the Fiscal Code for provisions established for receivables recorded after 1 January 2006. In addition, two conditions have to be met: bankruptcy proceedings against the debtor have to be opened and no tax deductible provisions have been previously set up for such receivables.
  - Specific provisions established by credit institutions, non-banking financial institutions and other similar entities.
  - Technical reserves set up by insurance and reinsurance companies, in accordance with their regulatory legal framework except for the equalisation reserve.
  - Risk provisions for transactions carried out on financial markets, in accordance with the rules issued by the National Commission of Movable Assets.

The reduction or cancellation of any provision or reserve deducted from the taxable profit, due to changing the destination of the provision or reserve, distribution towards shareholders in any form, liquidation, spin off, merger or any other reason, is included in the taxable revenues and taxed accordingly. The reconstruction of the legal reserve is also non-deductible.

## Accounting and fiscal depreciation

- The Fiscal Code makes an explicit distinction between accounting and fiscal depreciation. For fixed assets, fiscal depreciation is to be calculated based on the rules set out by the Fiscal Code and deductibility no longer depends on the level of depreciation recorded in the accounts.
- Fiscal depreciation should be calculated based on the asset's fiscal value and useful life for tax purposes, by applying one of the permitted depreciation methods:
  - (i) straight-line method,
  - (ii) accelerated depreciation and
  - (iii) reducing balance method.
- Technical equipment, computers and peripherals can be depreciated by using any of the above depreciation methods. For any other fixed assets (except for buildings for which only the straight line method can be applied), only the straight line or degressive method can be used. From 2009, the accelerated depreciation method may also be applied to equipment used in research and development activities.
- If the fair value determined upon the revaluation of the fixed assets drops below the entry value (i.e. acquisition cost, production cost, market value of the fixed assets acquired for free or contributed to the share capital) the non-depreciated fiscal value of fixed assets is computed based on the entry value.
- The same applies for revaluation of land should it result in a decrease in value to below the entry value. Thus, the new value recognised for fiscal purposes would be the entry value.

## Thin capitalisation rules

- The deductibility of interest expenses and net foreign exchange losses related to loans is limited under the two criteria below, except for interest and forex related to loans contracted from parties which are credit institutions, non-banking financial institutions or other entities that grant credit according to the law, and except for the interest related to bonds traded on a regulatory market:

- "The safe harbour rule" limits the deductibility of interest on loans to a maximum of 7% for loans denominated in foreign currency\* and to the National Bank of Romania's reference interest rate for RON loans. Interest exceeding this limit is tax non-deductible and cannot be carried forward in future periods.

\* This upper limit for interest rates is to be updated by Government Decisions. The rate stated above is valid from fiscal year 2007.

- "Thin capitalisation rule". The deductibility of interest expenses and net foreign exchange losses related to loans granted for more than one year is further subject to the debt-to-equity ratio test. Debt included in the calculation of the debt-to-equity ratio is represented by all loans with a maturity period of over one year. The equity includes share capital, share / merger premiums, reserves, retained earnings, current year earnings and other equity elements. Both debt and equity are calculated as the average of values existing at the beginning and at the end of the period for which profit tax is calculated.

If the debt-to-equity ratio is higher than 3:1 or if the company's equity is negative, expenses incurred from interest charges and net losses from foreign exchange differences on loans with a maturity exceeding one year as debt are fully non-deductible. However, non-deductible expenses so determined may be carried forward to subsequent fiscal years and become fully tax deductible in the year the debt-to-equity ratio becomes lower than or equal to 3:1.

## Transfer pricing

- Transactions between related parties should observe the arm's length principle. If transfer prices are not set at arm's length, the Romanian Tax Authorities have the right to adjust the taxpayer's revenues or expenses, so as to reflect the market value.
- Traditional transfer pricing methods (comparable uncontrolled prices, cost plus and resale price methods), as well as any other methods that are in line with the OECD Transfer Pricing Guidelines (i.e. transactional net margin and profit split methods) may be used for setting transfer prices.
- Domestic legislation expressly stipulates that when applying transfer pricing rules, the Romanian tax authorities also consider the OECD Transfer Pricing Guidelines.

## Transfer pricing documentation

- Taxpayers engaged in related-party transactions have to prepare and make their transfer pricing documentation file available upon the written request of the Romanian Tax Authorities.
- The content of the transfer pricing documentation file was approved by order of the president of the National Agency for Tax Administration. The 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 presenting the transfer pricing documentation file will not exceed three calendar months, with the possibility of a single extension equal to the period initially established.
- Failure to present the transfer pricing documentation file or presenting an incomplete file following two consecutive requests may trigger estimation of transfer prices by the tax authorities, based on generally available information, as the arithmetic mean of three transactions considered similar.
- Transfer pricing audit activity has significantly increased during the past year and requests for presenting the transfer pricing documentation file have started to become common practice. We are aware of recent cases where the Romanian tax authorities have adjusted the taxable result of a local taxpayer in accordance with the applicable regulations.

## Advance Pricing Agreement

- Taxpayers engaged in transactions with related parties can request the issuance of an APA from the National Agency for Tax Administration. They also have the possibility to schedule a pre-filing meeting to discuss the feasibility of the APA.
- The request for an APA is filed together with the relevant documentation and payment evidence of the fee (ranging between EUR 10,000 and EUR 20,000). The required documentation is based on the EUTPD and suggests up-front the content of the APA.
- The term provided by the Fiscal Procedural Code for issuance of an APA is 12 months for unilateral APAs and 18 months for bilateral and multilateral APAs. The APA is issued for a period of up to five years. In exceptional cases, it may be issued for a longer period for long-term agreements.
- APAs are applicable and binding on the tax authorities as long as there are no material changes in the critical assumptions. In this view, the beneficiaries are obliged to submit an annual report on the compliance with the terms and conditions of the agreement.
- If taxpayers do not agree with the content of the APA, they can notify the National Agency for Tax Administration within 15 days. In this case, the agreement does not produce any legal effects.

## Advance Tax Ruling

- Companies may request an Advance Tax Ruling be issued by the National Agency for Fiscal Administration, subject to a fee of EUR 1,000.
- The taxpayer may propose the content of the Advance Tax Ruling in the request submitted. If the taxpayer does not agree with the Advance Tax Ruling, it may notify the issuing authority within 15 days; in this case, the tax ruling does not have legal effect.
- Advance Tax Rulings are applicable and mandatory against tax authorities only if their terms and conditions have been observed by the taxpayers.

## Fiscal relief

- Unilateral relief is provided by way of an ordinary credit for income taxes paid abroad which cannot exceed the profit tax calculated by applying the Romanian profit rate (i.e. 16%) to the taxable profits obtained abroad. The Romanian company should have available documentation attesting to the taxes being paid abroad.
- Underlying foreign corporate income tax is not creditable against Romanian income tax, except for corporate income tax calculated by foreign permanent establishments or branches.

## Fiscal losses

- Companies are allowed to carry forward fiscal losses as declared in the yearly profit tax returns for a period of seven years based on a FIFO method. The seven-year period only applies starting with 2009's tax loss (for tax losses from previous years, the carry forward period remains five years).
- No related adjustment for inflation is allowed.
- For foreign legal persons, this rule (i.e. carry forward of losses) applies only to revenues and expenses attributable to their permanent establishment in Romania, and only for a period of five years.

## Dividends, interest, royalties paid to resident companies

- Dividend payments by a Romanian company to another Romanian company are subject to 10% dividend tax.
- As of 1 January 2007, the provisions of the Parent-Subsidiary Directive are applicable. Consequently, the dividends received by a Romanian company from another Romanian company are not taxed if the beneficiary has held at least 10% of the Romanian company's shares for a continuous period of at least two years by the date of dividends payment.
- 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 develop the company's registered object of activity.
- Interest and royalty payments by Romanian companies to other Romanian companies are taxable income in the hands of the beneficiary with ordinary corporate income tax.

## Consolidation

- There is no tax consolidation or group taxation in Romania. Members of a group must file separate tax returns. Losses incurred by members of a group cannot be offset against profits made by other group members.

## Capital Gains

- Capital gains obtained by Romanian resident companies are included in ordinary profit and taxed at 16%. 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.

# 2.3 Corporate Tax for Foreign Entities

## General principles

- Foreign entities (legal entities but also any foreign entities, including mutual investment funds in movable assets without legal personality, that are not registered in Romania according to the law) are generally subject to Romanian tax on the income derived from Romania.
- The extent to which a foreign entity is subject to Romanian taxation depends on its activities undertaken in, or related to, Romania.
- A foreign entity can be subject to taxation by establishing a branch, creating a permanent establishment, representative office or by becoming subject to withholding tax on the Romania-sourced income.

## Branch of a foreign entity

- Branches have to be registered with the Romanian Tax Authorities.
- The registration, filing and payment requirements are similar to those for a Romanian company.
- A branch is considered to have the same legal personality as the parent company and, therefore,

is not a separate legal entity (no own share capital, separate name, etc.).

- The branch's object of activity cannot be more extensive than that of the parent company.
- Funds distribution to the head office country are not regarded as dividend distribution, therefore, no withholding tax liability should arise. However, as with limited liability companies, profits are transferred at year-end, after the head office approves the branch's financial statements.

## Permanent establishment

- A Permanent Establishment is not necessarily a legal entity, but it is taxable in Romania.
- Thus, a Permanent Establishment is defined as being the place through which the activity of a non-resident is conducted, fully or partially, directly or through a dependent agent. Once a Permanent Establishment is created, Romania has the right to tax the profits of the foreign enterprise derived from the activity performed on its territory.
- The Romanian legislation explicitly states three conditions that should be met simultaneously in order to trigger a Permanent Establishment:
  - a place of business must exist (e.g. premises, machinery or equipment);
  - the place of business must be fixed (i.e. must be established at a distinct place with a certain degree of permanence);
  - the activity should be carried out through this fixed place of business (i.e. there are people dependent on the enterprise and conducting its business in the state where it is located).
- The registration, filing and payment requirements are similar to those for a Romanian company.

## Representative Offices

- A Representative Office can only undertake auxiliary or preparatory activities. A Representative Office cannot trade in its own name and cannot engage in any commercial activities.
- There is a flat tax of EUR 4,000 per fiscal year on representative offices, payable in RON using the exchange rate valid on the payment date.
- The tax is payable in two equal instalments, by 20 June and by 20 December.
- In situations where a Representative Office is set up or closed down during the year, the tax due for that year is pro-rated for the months the Representative Office is operational in that fiscal year.

## Withholding Tax

- Non-resident companies are subject to the following withholding taxes:  
16% on other revenues derived from Romania, such as:
  - Interest
  - Royalties
  - Revenues from services performed in Romania
  - Dividends
  - Revenues obtained from management and consultancy services, irrespective of where the services are performed
  - Commissions
  - Revenues derived from liquidation of a Romanian legal entity.

- There are certain specific provisions and exceptions to the above rates, as follows:
  - The withholding tax rate applicable to dividends received from Romania by non-residents from EU and EFTA member state companies - 10%.
  - As Romania is an EU member state, the provisions of the Parent Subsidiary Directive are apply. Thus, dividends paid by Romanian companies to companies resident in one of the EU and EFTA member states are exempt from WHT if the dividend beneficiary has held a minimum of 10% of the shares of the Romanian company for a continuous period of at least two years by the date of dividends payment.
  - Romania has implemented the Interest and Royalties Directive with a transitional period for the application of this Directive until 2010. During the period between the accession date of 1 January 2007 and 31 December 2010, 10% WHT applies on payments of interest and royalties made by Romanian companies to companies resident in EU and EFTA member states and holding at least 25% of the share capital of the Romanian company for a continuous period of at least two years prior to the date of payment of interest / royalties. Such payments are WHT exempt from 1 January 2011, under the same conditions as stated above.
  - The withholding tax rate applicable for income from interest on time deposits, demand deposits/ current accounts created certificates of deposits and saving instruments purchased before 1 January 2007 is that valid at the moment of creation / purchase.
  - Withholding tax for gambling proceeds obtained by non-residents – 20%.

## Revenues not subject to withholding tax

The following categories of income derived from Romania by non-residents are exempt from withholding tax:

- Bonds issued and / or guaranteed by the Romanian government
- Revenues derived from interest on demand deposits / current accounts, as well as interest from term deposits and / or other types of saving instruments
- Revenues from consultancy, technical assistance and similar services financed by means of non-reimbursable funds and loans granted to the Romanian state, or loans guaranteed by the Romanian state, provided that the interest rate for such loans is below 3% per annum
- Revenues from international transportation and accessory services
- Prizes paid from public funds
- Income obtained from a partnership constituted in Romania by a non-resident company. Such income is taxed with corporate income tax.

## Capital Gains

- 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 16%. However, the more favourable provisions of the Double Tax Treaty apply in certain conditions.
- The following income is not taxable in Romania:
  - income of mutual investment funds without legal personality from the transfer of value titles owned directly or indirectly in a Romanian legal entity
  - income obtained on foreign capital markets from the transfer of value titles issued by Romanian residents
- During fiscal year 2009, income obtained by non-resident companies 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

- Mergers, spin-offs, transfers of assets and exchanges of shares between a Romanian company and a company resident in another EU Member State should not trigger capital gains tax.

## Elimination of double taxation

- If more favourable, the withholding tax rates under the Double Tax Treaties concluded between Romania and the country of residence of the payment beneficiary may be applied if the non-resident makes its tax residency certificate available to the Romanian payer of income. Please find attached appendix 1 including the list of countries with which Romania has Double Tax Treaties. Please find attached appendix 2 including withholding tax rates for companies in some representative Double Tax Treaties.
- The tax residency certificate must be made available by the non-resident at the moment of payment, in order to benefit from treaty protection. Otherwise, domestic withholding taxes apply and a refund can be requested if the tax residence certificate is made available during the five-year statute of limitation period.
- The tax residency certificate should stipulate that the foreign beneficiary was tax resident during the year(s) the Romanian income was obtained. The tax residency certificate valid for the year for which the payments are made is also valid during the first 60 days of the following year provided the residency conditions have not changed.

## 2.4 Corporate tax compliance

### General aspects

- Tax returns have to be submitted on a quarterly basis along with the appropriate tax payment, by the twenty-fifth of the month following the end of the quarter.
- Annual profit tax returns have to be filed with the Romanian tax authorities by 15 April the following year.
- Romanian banks and branches of foreign banks apply the profit tax system with advance payments made on a quarterly basis. Other profit tax payers (with some exceptions) are to apply this system from 2010.

### Non-resident companies

- Non-resident companies deriving income 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. Non-residents may appoint a tax agent to fulfil this requirement. However, if the payer of the income is a Romanian company or a permanent establishment, the obligation to pay and declare the profit tax rests with it.
- For capital gains tax declaration and payment, the Romanian legislation requires the following tax returns to be submitted:
  - quarterly statements, from the twenty-fifth of the month following the quarter in which the non-resident first earned capital gains taxable in Romania; annual profit tax return.
- The quarterly statements and annual return have to be submitted during the entire period of time the non-resident is registered with the Romanian tax authorities, even if it no longer carries out transactions generating taxable revenues in Romania.

## Late-payment penalty

- There is currently a single type of late-payment penalty of 0.1 % per day of delay.

# 2.5 Investment 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% of the eligible expenses from research and development activities performed by them. Moreover, accelerated depreciation may be applied for devices and equipment used in research and development activity.
- This incentive is applicable provided 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 science and technology parks

- No property tax is due for buildings and constructions located in an Industrial Park. Land within Industrial Parks is also exempt from land tax.
- The incentives granted for the set up and development of industrial parks include:
  - lower taxes on tangible assets and land used by the park;
  - exemption from 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 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

- Companies can opt for the micro-company regime if several criteria are met:
  - annual turnover up to EUR 100,000
  - 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.
- If a micro-company fails to meet one of the criteria presented above during a year, it becomes a profit tax payer from the next year. However, by way of exception, if during a fiscal year a micro-company derives revenues higher than EUR 100,000 or the percentage of income derived from management and consultancy services equals or exceeds 50% of the turnover, the micro-company becomes a profit tax payer from the quarter in which one of the two limits are met.

## Employment incentives for special categories

- For employment of recent graduates, employers 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. Employers benefiting from this incentive are obliged to keep this employment relationship for at least three years.

- Moreover, employer may also be exempt for these 12 months from paying the unemployment contribution due for these graduates. In addition, grants amounting to the social security contributions for two years for recent graduates are available if they are still employed by the company for two additional years after the first three years pass.
- The same incentives apply for the employment of recent graduates with disabilities, except 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 contributions 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. Employers benefiting from this incentive have the obligation to keep this employment relationship for at least two 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.

## State aid\*

*\*Section provided by D&B David si Baias, the correspondent law firm of PricewaterhouseCoopers in Romania*

- 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 all of its state aid clearance powers to the European Commission since 1 January 2007.
- 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 schemes available for large investments

- The Law regarding investment stimulation establishes the general framework applicable to state aid that can be granted for the encouragement of certain types of investment.
- As a general rule, if the investment also benefited from non-reimbursable financing (either EU or from other sources) it is not 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 newly-created jobs;
  - Subsidised 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 production diversification or a 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 from state aid based on the Law, the investments should contribute to the achievement of one of the following objectives:
  - development and regional cohesion;
  - environment protection and rehabilitation;
  - increasing energy efficiency, production and use of energy from renewable resources;
  - encouragement of research and development and innovation processes;
  - employment and workforce training.
  
- 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 from this incentive, an investment must meet one of the following criteria:
  - be localised in regions with a low levels of economic development;
  - be localised 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 programmes.
  
- The investor itself must meet some criteria. The investor must be a legal entity performing investments in Romania and meeting all the following criteria:
  - it does not have debts to the state budget;
  - it has not requested that the Ministry of Economy and Finance perform payment of outstanding debts under internal / external loans guaranteed by the state or by the risk fund;
  - it has not benefited 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, if the 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 principle approval by the competent authority.

## Special investment scheme for investments over EURO 50 million

- To benefit from this state aid scheme, companies have to fulfil the following criteria:
  - the value of the initial investment is above EUR 30 million
  - create at least 300 new jobs.
- In addition, companies have to prove that the state aid so obtained has a “stimulative 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 absolute value of non-reimbursable funds available is subject to state aid intensity limitations and capped at EUR 22.5 million for the Ilfov region and EUR 28.12 million for the rest of the country.
- The Romanian authorities estimate that on average 14 projects will benefit from this fund each year. The annual average budget allocated for this scheme is EUR 200 million.

## Special investment scheme for investments over EURO 100 million

- This state aid scheme is issued based on national procedures and state aid policies 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, have registered offices, perform activities in Romania and have to plan investments which fulfil all 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, except the primary production of the agricultural products in annex 1 to the Treaty establishing the European Community, fishery, coal industry, steel industry, transport, maritime ship building and synthetic fibres.
- Incentives under this State aid scheme are available in the form of non-reimbursable funds, subject to a double cap limitation:
  - the maximum amount granted as state aid is determined 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 for investments below EUR 50 million and for those exceeding EUR 50 million, but these also depend on whether the investment is in Bucharest or in other territories within Romania.
  - the maximum absolute value, established based on the budgeted funds (i.e. the same entity can benefit from up to EUR 30 million for investments in the Bucharest – Ilfov region and EUR 37.5 million 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;
  - keep the initial investment for a certain period of time after finalisation (i.e. five years for large enterprises);
  - contribute at least 25% of the investment costs.

## 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 the European Social Fund, European Regional Development Fund and 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 in new skills, or help develop existing businesses).
- The implementation of these European funds is usually done by programmes which set allocation priorities and give information about the type of projects financed. 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 with the main objective to increase Romanian companies’ productivity. The main type of investments funded are:
    - Productive capacity: The target beneficiaries are both existing enterprises that need to modernise and develop their products and technological processes and new enterprises, especially from the processing industry and construction sector that need qualified and integrated support by a proper development of business environment.
    - Research and development: Companies could get EU funds for industrial research and pre-competitive 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. In 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.

- 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 cost-cutting 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.
- Energy: The Programme also finances projects aimed at improving end-user energy efficiency and promotes specific types of investments in installations / equipment of industrial operators in order to achieve energy savings, based on energy balance. Investments in installations to reduce industrial users’ energy consumption 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 supports the restructuring and modernising agricultural and forestry products processing and marketing sectors, while observing the principles of sustainable development. Promoting the investments in agricultural holdings, both in the vegetable 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 Programme priority.
- 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 of developing human capital and increasing employee competitiveness, by linking education and lifelong learning with the labour market. One priority of the Operational Programme is to promote entrepreneurial culture, flexibility and adaptability by supporting skilled, trained and adaptable labour force and enterprises. The programme supports 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 improving quality and productivity at work. The actions also cover support for enterprises on specific training, with a focus on new technologies and organisational 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 impact.

## The Competitiveness and Innovation Framework Programme 2007 - 2013 Programme

- The Competitiveness and Innovation Framework Programme (CIP) aims to encourage competitiveness in European enterprises. With small and medium-sized enterprises as its main target, the programme supports innovation activities (including eco-innovation), provides better access to finance and delivers business support services in the regions. It encourages a better take-up and use of information and communications technologies (ICT) and helps 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. The 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 actions to move us towards a more energy intelligent Europe. The programme finances 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 and television production. Support is also 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.
- PwC can offer comprehensive advisory services related to investment incentives, tax relief, EU grants, and other forms of state aid and non-reimbursable funds. This advice and support is available to both new multinational investors and to established Romanian companies. Thanks to our many years of experience and the broad network of contacts at our disposal, we can offer you far-reaching analyses and knowledge of existing financing opportunities as well as important support with the application preparation and project implementation.

# 2.6 Local Taxes and Other Taxes

## Local taxes include:

- Building tax
- Land tax
- Means of transport tax
- Registration, licensing, certifications, authorisation issuance taxes
- Tax on means of promotion and advertising
- Tax on revenues from public performances
- Hotel occupancy tax

For the local taxes mentioned above, except for the subcategory of tax for large, heavy load transporter vehicles, Local Councils can increase tax rates by up to 20% over the statutory cap.

## Building Tax

- For buildings owned by individuals, the tax rate is 0.1% and is levied on the taxable value of the building, determined depending on the surface, zoning and locality rankings. Various adjustments to the taxable base are provided for dwellings, older buildings, etc. The tax increases depending on the number of buildings owned.
- For buildings owned by companies, the building tax rate is set by the Local Council at between 0.25% and 1.5% of the entry value of the building, adjusted with the value of reconstruction, consolidation, modernisation, modification and extension works and the revaluation, if the case. If the building has not been revaluated in the previous three years, the tax rate is increased by Local Council to between 5% and 10%. The taxable value of fully depreciated buildings is reduced by 15%.
- Building tax is paid twice a year, by 31 March and 30 September, in equal instalments. As a general rule, if the building tax due for the entire year is paid in advance by 31 March, a reduction of up to 10% may be granted by the local council.

## Land Tax

- Owners of land are subject to land tax established at a fixed amount per square metre, depending on the rank of the locality where the land is located and the area and / or category of land use, in accordance with the classification made by the local council.
- Companies are not subject to land tax on land where buildings are sited.
- Similar to building tax, land tax is paid twice a year, in equal instalments, by 31 March and 30 September. A 10% reduction is granted for full advance payment of this tax by 31 March.

## Other Taxes

### Health Tax

- Providers of advertising services for tobacco products and alcohol pay a 12% health tax. The tax is applied to the value of cashed advertising revenues.
- A health tax is also due by producers and importers of tobacco products, as follows: cigarettes: EUR 10/1,000 pieces cigars: EUR 10/1,000 pieces tobacco: EUR 13/kg.
- Producers and importers of alcoholic drinks, other than beer, wine, other fermented drinks and intermediate products, are also liable to pay a health tax of EUR 200/hectolitre of alcohol or EUR 2/litre of pure alcohol.
- Other taxes include contributions from legal persons for disabled unemployed people, gambling tax, etc.

# Chapter 3

## Indirect Taxation

### 3.1 Value Added Tax (VAT)

#### Scope of VAT

##### Concepts

- Operations which fulfil the following conditions fall within the scope of VAT:
  - They represent a supply of goods / services in return for a consideration or an operation treated as such
  - The deemed place of supply is in Romania
  - They are performed by taxable persons
  - They result from economic activities.
- The import of goods, intra-community acquisitions of goods and operations deemed as intra-community acquisitions of goods are also within the scope of VAT.
- A taxable person is any person conducting economic activities anywhere in an independent manner, irrespective of the purpose or result of those activities.
- In addition, any private individual who performs a supply of a new means of transport (i.e. which was either supplied no longer than six months after the date of first entry into service or has not travelled more than 6,000 kilometres) or a person who sells real-estate property for the purpose of obtaining revenue on a continuous basis is also deemed a taxable person.

##### Intra-community trade

- Romanian companies performing transactions involving goods with companies within the EU deal with such operations as intra-community supplies and intra-community acquisitions.
- Intra-community supplies from Romania are VAT-exempt with deduction right, provided that certain conditions are fulfilled, whereas intra-community acquisitions in Romania are subject to VAT under the reverse charge mechanism.
- Special regimes apply for transactions with new means of transport, excisable products and for distance sales.
- Taxable persons not registered for VAT purposes in Romania (e.g. private individuals, public institutions) and which purchase new transportation vehicles have to submit a special VAT return and pay the VAT before registering these vehicles in Romania

## Reporting requirements

- The compliance requirements (i.e. Intrastat, Recapitulative Statement) in force since 1 January 2007 for intra-community trade in goods are maintained. The Biannual Statement regarding acquisitions / supplies of goods performed on Romanian territory is also maintained.

## Import of goods

- VAT on imported goods continues to be paid in customs until 1 January 2012, save for taxable persons registered for VAT purposes that obtain an import VAT deferment certificate from the customs authorities. For these, the VAT is not paid in customs, but shown in the VAT return as both input and output VAT.
- Importers holding a single customs authorisation for simplified customs procedures issued in another Member State pay the VAT due on imports of goods into Romania based on an import declaration for VAT and excise duties.
- The taxable amount for VAT purposes for imported goods is the customs value, to which is added customs duties, excise duties (if any) and ancillary expenses, such as commissions, packing, transport and insurance costs occurring subsequent to the entry of goods into Romania until their first destination.

## Outside VAT Scope

### Transfer of business

- Any type of partial or total transfer of assets (i.e. transfer of a going concern, irrespective of its form) forming an autonomous business unit capable of carrying out an economic activity independently is not considered supply of goods if the recipient is a taxable person. In addition, the recipient is regarded as the assignor's successor for purposes of adjustment of the VAT deduction right.

## Territoriality Rules

- The rules for establishing the place of supply for goods and services (and therefore the place of VAT taxation) are fully aligned with the Recast of the EU 6th VAT Directive (112/2006/CEE Directive).
- The supply of gas / electricity to a specialist trader is VAT-able where the trader is established.

## Services provided by offshore entities

- Services provided by offshore entities to Romanian companies with deemed place of supply in Romania are subject to Romanian VAT.
- The reverse charge mechanism applies for services performed by offshore entities and with their place of supply where the beneficiary is established or has a fixed establishment (e.g. consultancy, marketing services, telecommunications and electronically-supplied services). This is possible provided the suppliers are not established in Romania for VAT purposes. Under the VAT reverse charge mechanism, VAT is not actually paid, but only shown in the VAT return as both input and output tax, provided the beneficiary is registered for VAT purposes.
- Under certain conditions, the reverse charge mechanism also applies for other types of supplies of services (e.g. work on movable goods, intra-community transport of goods, services ancillary to intra-community transport of goods), if such services are provided by offshore entities to Romanian

beneficiaries which communicate their Romanian VAT registration number to the suppliers or if the services have their place of supply in Romania.

- The beneficiary is not required to issue self-invoices for the services received, unless the invoice issued by the offshore supplier has not been received by the fifteenth day of the month following that in which the tax is due.

## VAT Chargeability

- Invoices for domestic supplies must be issued no later than the fifteenth day of the month following that in which the supply of goods occurs. The output VAT should still be reported in the month of supply.
- The chargeability for ICS occurs on the date when the invoice is issued, but no later than the fifteenth of the month following that when the ICS is performed. Since 1 January 2008, advance payments for ICS have had to be included in VAT reporting.

## Taxable Amount

- Taxable persons registered for VAT purposes are allowed to adjust the output VAT if the value of the goods or services supplied cannot be cashed in because of the declared bankruptcy of the client. The initial output VAT can also be adjusted for price increases or discounts and for returns of goods.

## Taxable Regimes

### Standard rate

- The standard VAT rate is 19% is levied for all supplies of goods and services, including imports, which do not qualify for an exemption (with or without credit) or for VAT reduced rate.

### Reduced rate

- The reduced VAT rate of 9% and is levied on medicines for human and veterinarian use, books, newspapers and periodicals, accommodation in hotels or in areas 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.
- The reduced VAT rate of 5% applies to housing delivered as part of welfare policy, 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. In addition, homes with no more than 120 square metres and a value of maximum RON 380,000 also qualify for the reduced 5% VAT rate.

### Exemption with credit

- There are also operations that are exempt with credit (i.e. deduction right) for input VAT:
  - export of goods, transport and related services
  - intra-community supply of goods
  - international transport of passengers
  - certain operations performed in free trade zones and free warehouses
  - supply of goods to a bonded warehouse, a VAT warehouse and related services
  - supply of foreign goods, which are placed under suspensive customs regimes

- supply of services in connection with goods placed under customs suspensive regimes
- supply of goods and services to diplomatic missions, international organisations and NATO forces.

## Exemption without credit

- VAT exemption applies to a range of activities including banking, finance and insurance. However, some financial services are also subject to 19% VAT (e.g. factoring, debt collection, managing and depositing certain equity papers).
- The VAT exemption also applies for medical, welfare and educational activities, if performed by licensed entities.
- Rental and leasing operations involving immovable goods, as well as the supply of old buildings (i.e. any building which has not been so transformed that its structure, nature and even its destination have been modified, or in the absence of such criteria, when the cost, exclusive of tax, of the transformations is less than 50% of the building's open market value, minus the land value, after such a transformation) and of non-constructible land plots, are VAT exempt. However, the option to tax these operations is available. The option is exercised by submitting a written notification to the relevant tax office. The submission with delay of the notification will not impair an applicant's right to opt for the VAT taxation regime.

## VAT Deduction

- Input VAT related to expenses incurred from set-up transactions can be retroactively deducted when all requirements for VAT deductibility are fulfilled, within a maximum period of five years.
- The VAT deduction right can also be based on electronically issued invoices.
- Import VAT can also be deducted based on the import declaration for VAT and excise duties submitted by companies with a single customs authorisation for simplified customs procedures issued in another Member State.
- The VAT wrongly stated on an invoice cannot be deducted by the beneficiary if the transaction for which the invoice was issued is exempt from VAT without credit

## VAT payers with mixed regime

- If a taxable person registered for VAT purposes performs both taxable and exempt operations without deduction right, the 'input VAT' can be recovered according to the following criteria:
  - directly attributable to VAT-able transactions - fully deductible directly
  - attributable to exempt transactions - fully non-deductible related to both
  - VAT-able and exempt transactions - subject to pro-rata.
- The pro-rata does not include the value of sales of capital goods, or the value of other operations performed on an occasional basis (e.g. leasing, rental of immovable goods).
- The pro-rata is rounded up to the next unit in favour of the tax able person (e.g. from 4.1% to 5%).

## Non-deductible input VAT

- VAT related to goods and services that are not purchased for business purposes is non-deductible, as is VAT related to the purchase of alcoholic beverages and cigarettes.

## VAT deduction for capital goods

- Changing the original destination of capital goods (e.g. a fixed asset or movable goods), by using this asset for operations entitled to deduction in a different proportion than that originally established entails the adjustment of the deductible right during only one period.

## VAT Registration Threshold

- The revenue threshold for VAT registration is the RON equivalent of EUR 35,000.
- When calculating the threshold, revenues derived from VAT exempt without deductions right operations are also taken into consideration.

## VAT Registration

- The Romanian VAT registration system includes:
  - Standard VAT registration of companies established in Romania
  - Special VAT registration of Romanian companies for intra-community acquisitions (e.g. public institutions)
  - VAT registration of foreign companies through appointment of a VAT Fiscal Representative
  - Direct VAT registration of non-resident EU companies.
- A Romanian company may be required to register for VAT purposes in a number of other EU Member States where it performs certain operations (e.g. import of goods from outside the EU, intra-community acquisitions).

## VAT establishment

- A taxable person is established in Romania if the following conditions are all met:
  - the taxable person has corporate headquarters, a branch, a factory, a workshop, an agency, an office, a purchase or sales office, a depot or any other fixed structure, except for construction sites, in Romania;
  - the structure is managed by a person authorised to engage the taxable person in relationships with clients and suppliers;
  - the person authorised to engage the taxable person in relationships with clients and suppliers is authorised to perform both incoming and outgoing transactions of the taxable person;
  - the object of the structure's activity is the supply of goods or services.

## VAT Consolidation

- Under specific conditions, it is possible for certain companies to form a single taxable person for VAT purposes.

## Simplification Measures

- For sale-purchase transactions between taxable persons registered for VAT purposes in Romania that involve waste materials, wood, secondary raw materials or goods / services supplied by / to bankrupt entities, VAT is not actually paid, but only shown by the purchaser in the VAT return as both output and input tax.

## VAT Compliance

### Fiscal period

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

### Invoicing

- Companies are not required to use standard pre-printed fiscal invoices. Instead, they can issue invoices containing the minimum information required by law.
- Taxable persons are also allowed to issue summary invoices or invoices on behalf of the supplier, and to issue and store invoices electronically. From a VAT perspective, the signing and stamping of invoices is no longer mandatory.

### Ledgers and returns

- Taxable persons must keep complete and detailed records for calculation of VAT liabilities.
- VAT returns should be submitted to the tax authorities by the twenty-fifth of the month following the end of the fiscal period; the VAT is due by the same date. The VAT return should be submitted using an electronic carrier (floppy disk).
- Taxable persons not registered for VAT purposes are required to pay VAT and to submit a special VAT return on services rendered by non-residents, which have a deemed place of supply in Romania. These obligations must be fulfilled by the twenty-fifth of the month following that when the services are supplied.
- Taxable persons are required to file quarterly summarised declarations for intra-community supplies and intra-community acquisitions as well as twice yearly statements for acquisitions / supplies of goods and services performed on Romanian territory.

### VAT Refund

- If a company is in a VAT refundable position, it must tick the VAT refund box on the VAT return to claim the refund. Alternatively, the balance can be carried forward against VAT liabilities reported in future returns. The refund claims must be processed by the tax office within 45 days of being submitted.
- Large taxpayers (as classified by law) are entitled to refund on request, with a subsequent inspection (i.e. a "fast refund"). Other taxpayers may be entitled to a "fast refund" (i.e. without a prior inspection) but only after a complex risk analysis.
- If the VAT is not reimbursed within the legal term (i.e. 45 days), taxable persons are entitled to claim interest currently set at 0.1% per day of delay.

### Refund to non-residents

- Taxable persons established in the EU and taxable persons established outside the EU (under reciprocity conditions) are entitled to VAT reimbursement from Romania if certain conditions are fulfilled.

## 3.2 Customs and International Trade

### Customs Value

- The customs value is determined and declared by importers in accordance with the provisions of the WTO Customs Valuation Agreement (i.e. the Agreement pertaining to the implementation of Article VII of the GATT Agreement).
- For chain transactions with goods intended for import, the customs value may be determined, under certain conditions, based on the price in any of the transactions in the chain ("first sale principle"). This way, the customs value can be determined based on a price lower than that paid/payable by the importer (e.g. based on the price of the first transaction in the chain).
- The customs value can be modified within 12 months of the acceptance of the customs declaration for the release of the goods for free circulation, in specific cases (e.g. in the case of defective goods).
- Under specific conditions, determining customs value upon import is possible, even if certain elements that need to be added to the customs value are not quantifiable on the importation date (e.g. licence fees, royalties) or are missing.
- The customs authorities may inspect the customs value either during the customs clearance or during a post-import audit (the customs authorities are entitled to perform such an audit during a five-year period following the date of import).
- It is also possible to amend or invalidate the customs declaration, as follows:
  - amendment of the customs declaration before the customs clearance is obtained invalidation of the customs declaration within 90 days of the customs clearance being obtained
  - amendment after the customs clearance is obtained can be performed at the request of the traders within three years of the customs clearance date.

### Customs Duties

- The customs duties are those specified in the EU Common Customs Tariff.
- Customs duties are expressed as a percentage applied to the customs value (i.e. ad valorem taxes), or as a fixed amount applied to a specific quantity (i.e. specific taxes).
- Agricultural products (i.e. products from chapters 1 - 24) are subject to specific taxation.
- There are cases (e.g. meat) where the customs duty rate is established with regard to the CIF or the entry price of the products. In other cases, the customs duty rate is established by adding to the ad valorem tax additional duties such as agricultural components (EA), for sugar (AD S/Z) and for flour (AD F/M).

### The representation in Customs

- Legal entities established in non-EU states can declare goods by indirect representation. The indirect representation can be used for customs regimes as transit or temporary importation.
- Moreover, legal entities established in non-EU states can occasionally declare goods on their own through direct representation provided that the customs authorities consider this to be justified

## Amendments regarding simplified Customs clearance procedures

- Customs brokers can be authorised to use the local customs clearance procedure or to submit simplified customs declarations for the companies they represent (either directly or indirectly). Any legal person established in the EU can act as an indirect representative, for a sole person, using the simplified customs clearance procedures.

## Authorised Economic Operator

- Operators that obtain Authorised Economic Operator status benefit from simplifications regarding customs inspection, obtaining customs authorisations and performing customs formalities.
- Moreover, through the AEO certificate the holder is recognised by the customs authorities as a reliable person, giving comfort as regards observance of the safety and security standards.

## Binding Origin Information (BOI) / Binding Tariff Information (BTI)

- Companies can obtain rulings from the Romanian customs authorities on the tariff classification of imported goods that are binding for the customs authorities for a six-year period, whenever goods identical to those described in the BTI are imported.
- A similar type of ruling can also be obtained regarding the origin of goods. The BOI is valid for a three-year period.

## Temporary Import Relief

### Inward Processing Relief (IPR)

- If raw materials, components or accessories are imported into the EU (including Romania) for processing and the end products are subsequently re-exported out of the EU, customs duty relief is available through IPR. Processing covers the full assemblage and manufacturing process. Under this regime, importers can opt either for a duty suspension system (no payment is due for the import duties) or for a duty drawback system (the import duties are to be paid upon the import of raw materials, but they can be reimbursed upon export of the end products). If the compensatory products are released for free circulation in the EU, compensatory interest is due.

### Outward Processing Relief (OPR)

- The OPR customs regime allows the exported raw materials to be processed outside the EU and the resulting end products re-imported with partial or full customs duty relief. This regime also applies for goods or equipment sent for repair and / or modernisation.

### Bonded Warehouse (BWH)

- The BWH customs regime allows the temporary suspension of payment of import duties on non-EU goods stored in warehouses until they are taken out of the warehouse. Goods owned by foreign entities and goods initially purchased by the Romanian titleholder of the BWH authorisation can be placed under BWH customs regime.
- EU agricultural products intended for export can also be stored in a BWH before leaving Community territory.

## Temporary Admission (TA)

- Goods that are introduced into Romania for temporary use and subsequently returned to the non-EU owner are granted total or partial relief from customs import duties. Total relief means no payment is requested by the customs authorities in connection with the customs import duties, VAT and excise duties, if applicable. However, a guarantee is required to secure payment of the import debt. Partial relief means the customs authorities levy a monthly portion of 3% of the customs duty and the importer should provide a bond for the balance. If the goods are subsequently released for free circulation in the EU, compensatory interest is due.

## Free warehouse (FWH)

- Non-EU goods may be stored for an unlimited period of time in a FWH, with payment of the customs duties being suspended. Moreover, no guarantee is required to secure payment of the import debt and the customs formalities have been simplified.

## Security required for suspensive / economic customs regimes

- Suspensive / economic customs regimes require a guarantee to be lodged for the import debt that might arise. However, there are a few cases where exoneration from guaranteeing the import debt can be granted by the customs authorities, such as for goods placed under the IPR regime.

## Trade Measures

- For some agricultural products, the EU generally imposes specific measures, for instance values or quantitative quotas on imports from other countries. It is mandatory to obtain an import licence before importing such products.
- Moreover, import / export licences from relevant authorities are also required for commodities regarded as potentially hazardous to human health or to the environment (such as some chemical products, certain types of waste and scrap), for commodities the end-use of which is controlled (such as explosives) or for dual use (i.e. both civil and military) products.

# 3.3 Excise duties

## Harmonised Excisable Products

### Scope

- The following products are subject to harmonised excise duties: alcoholic beverages, tobacco products and energy products (e.g. unleaded petrol, electricity, coal).

### Chargeability

- Excise duties are due when the products are released for consumption (e.g. imported into Romania, taken out of an excise duty suspension regime) or when losses or shortages of excisable products occur.

## Excise duty suspension arrangements

- Excisable products can be produced, transformed, held and received under a duty suspension arrangement only in a tax warehouse, which should have prior approval from the tax authorities.
- Such excisable products can also be received from within the EU under excise duty suspension arrangements by registered / non-registered traders.
- From 1 January 2007, Romanian tax warehouse keepers are deemed authorised for the intra-community movement of excisable products under excise duty suspension arrangements.
- Excisable products can also circulate under duty suspension arrangements after being released for free circulation by the holder of a single authorisation for a simplified customs clearance procedure.
- The movement of these excisable products under a duty suspension arrangement has to be made based on the accompanying administrative document (AAD).
- Since July 2008, economic operators performing operations with excisable products under duty suspension arrangements should use the RO-DAI electronic application to fill in and submit the AAD to the tax authorities. This application prepares the implementation of the Excise Movement Control System (EMCS) at the EU level and tracks the circulation of excisable products under duty suspension arrangements.
- The production, holding and movement of excisable products under duty suspension arrangements are subject to a guarantee.

## Exemptions

- Ethyl alcohol and other alcoholic products are exempt from the payment of excise duties if they are denatured, used in nutritional, pharmaceuticals or cosmetics industry.
- The excise duty exemption for alcohol products and energy products can in some cases be granted directly based on an end-user licence or indirectly through reimbursement/compensation.
- Some energy products subject to movement control can be purchased to be used for the purposes excepted from excise duty, provided that an end-user authorisation is obtained and the payment of excise duties is secured.

## Excise duty reimbursement

- In some cases, traders can claim a refund of the excise duties paid (e.g. excise duty paid for goods released for consumption in Romania, but intended for consumption in other Member States; excise duties paid for goods released for consumption and then returned to the production tax warehouse for recycling, reprocessing or destruction; excise duties paid for goods acquired from the EU or imported and then returned to the suppliers).

## Special legal requirements

- Before being released for consumption in Romania, spirit-based beverages and tobacco products have to be marked with duty stamps. The responsibility for such marking lies with the tax warehouse keepers, registered / non-registered traders and importers releasing such goods for consumption.
- Companies selling fuel in gas stations have to register with the tax authorities.

## Derogations

- Following the negotiations for EU Accession, Romania was granted several derogations in the field of excise duties. For certain products (e.g. cigarettes, unleaded petrol, diesel, natural gas used for non-commercial purposes, burning oil used for urban heating, electricity for commercial and non-commercial purposes) Romania can apply transitional periods before reaching the minimum excise duty level set within the EU. The minimum excise duty level will be reached gradually.

## Other Excisable Products

### Scope

- The other excisable products are coffee, natural fur products, jewellery, crystal ware, hunting rifles, perfumery, yachts and leisure motor boats and others.
- The excise duty for coffee will be gradually decreased to nil by 2011.

### Chargeability

- Excise duties are due when the actual delivery takes place, or when the products are granted as dividends or as payment in kind, when they are consumed for advertising and publicity purposes, or when they are used for any non-commercial purpose.
- Excise duties are also due when excisable products are received from within the EU or when they are released for free circulation in Romania.
- Importers holding single European authorisations for simplified customs clearance procedures issued in another EU Member State should file a VAT and Excise Duties declaration with the customs authorities if the goods are released for free circulation in Romania.

### Exemptions

- Excise duty exemption applies in this case, provided the excisable products are exported or placed under a suspensive customs regime.
- Exporters of roasted coffee may benefit from the refund of the excise duty paid upon the release for free circulation of green coffee used as raw materials.
- Companies performing intracommunity supplies of roasted coffee may benefit from the refund of the excise duty paid for the acquisition of green coffee used as raw materials.
- Traders purchasing non-harmonised excisable products (e.g. coffee, perfumes, jewellery, fur) are entitled to a refund of the excise duties paid, if the products are exported, supplied to another EU Member State or returned unchanged to the supplier.

## Car Registration Tax

- The specific pollution tax was tripled for some categories of vehicles. A tax exemption was introduced for vehicles registered for the first time in Romania or another EU country. This exemption applies for vehicles with EURO 4 pollution standard, and with a cylinder capacity not exceeding 2000 cm<sup>3</sup>.

## Environmental Fund Contribution

- In certain cases (e.g. packaging waste) the contribution to the Environmental Fund depends on the degree to which companies achieve the recovery / recycling targets stipulated by the relevant legislation on waste management. Thus, for packaging waste, the contribution to the Environmental Fund is currently RON 2 per kilo of packaging introduced onto the market and is owed for the difference between the recovery target stipulated by law and the percentage actually achieved by companies.
- Companies conducting activities that result in the discharge of air-pollutant emissions from fixed sources (e.g. nitrogen oxides, sulphur oxides, persistent organic pollutants, heavy metal emissions, such as lead, cadmium, mercury) have to pay contributions to the Environmental Fund of between RON 0.02 / kg (about EUR 0.0046) and RON 20 / kg (about EUR 4.61).
- Importers and producers of hazardous substances have to remit to the Environmental Fund a contribution of 2% of the value of the substances placed on the market (save for those used in the production of medicines). Companies selling ferrous and non-ferrous waste and companies dealing in wood or wood products also have to make contributions to the Environmental Fund, currently set at 3% and 1%, respectively, of the revenues / sales value.
- Companies that store recoverable waste (i.e. waste resulting from extraction and processing of crude oil, waste resulting from primary processing of wood, waste resulting from alcohol manufacturing, carboniferous slurry, furnace slag, ashes from thermal power plants, pyrites ashes, phosphogypsum, metal slag) on new plots of land have to pay tax to the Environmental Fund. This tax ranges from 0.2 RON (about EUR 0.046) per sq metre to 4 RON (about EUR 0.90) per sq metre and per year, depending on the type of waste stored on the new land.
- Companies have to report and pay these taxes monthly, semi-annually or yearly - depending on the tax concerned - to the Environmental Fund Administration, by submitting a declaration.
- Producers / importers / exporters of electrical and electronic equipment ("EEE") have to register with the National Agency for Environmental Protection. Failure to register can result in the suspension of company activity.
- Producers / importers wishing to place batteries on the market are required to register with the National Agency for Environmental Protection.
- Placement on the market of portable batteries containing more than 0.002% cadmium by weight is prohibited. Distributors are also prohibited from selling batteries originating from unregistered producers.
- Companies which place carrier bags on the market not made of biodegradable materials have to pay a tax ("ecotax") of RON 0.2/ per bag.

## Registration, Evaluation and Authorisation of Chemicals

- Chemical substances and preparations traded on the market must be registered with the Ministry of Environment and Sustainable Development at the National Agency for Dangerous Substances and Chemical Preparations.
- Registration is the only way for producers and importers of chemical substances to be allowed to continue production and import of chemical substances and preparations.

# Chapter 4

## Tax Procedure

### 4.1 Overview

- The Tax Procedure Code, in force since 1 January 2004, unifies the previous legislation regulating tax returns, tax assessments, tax registration, tax audits, collection of budgetary receivables, as well as tax jurisdiction. The main rules and principles of the tax procedure are presented below.

### 4.2 General principles

#### Interpretation of the law

- A Fiscal Central Commission and a Central Commission for Tax Procedures have been set up to render mandatory interpretations of the law.

#### Liability of others

- Shareholders, directors, managers and others may be held liable for the tax obligations of the taxpayer under certain circumstances (e.g. anyone causing the insolvency of the debtor by disposing of the debtor's assets or hiding such assets; anyone acquiring in bad faith the debtor's assets within three years of the debtor's insolvency).

#### Assignment of tax receivables

- The law allows both the assignment of receivables of the taxpayer against the general consolidated budget, as well as the assignment, under certain conditions, of the budget's receivables against taxpayers.

#### Fiscal administrative acts

- Specific rules apply to the preparation and serving of acts issued by the tax authorities the taxpayers.
- The taxpayer may apply for an advance ruling, which will be mandatory for the tax authorities to the extent that (i) the legal provisions based on which the ruling was issued are not amended / repealed and (ii) the taxpayer complies with the ruling. A similar application may be filed for an advance pricing agreement setting out the transfer pricing rules applicable between affiliates.
- Under the law, advance rulings must be issued within 45 days of the application being submitted, while for advance pricing agreements the term is 12 or 18 months, as the case may be. In practice, however, tax authorities process these applications very slowly.

#### Fiscal domicile

- The concept of fiscal domicile is defined, with application to both individuals and legal persons. This concept is essential in defining both the tax jurisdiction and tax registration obligations.

## Other rules

- Any request by the taxpayer must be processed and answered by the tax authorities within 45 days, unless they require additional documents to be provided, in which case the period is extended by the amount of time necessary for the taxpayer to provide the requested documents.

## 4.3 Specific Tax Procedures

### Tax Registration

- The groups required to perform tax registration are, according to the Code, any persons or entities that are subject to a fiscal legal relationship. Registration with the tax authorities must be made within 30 days of the date the circumstances which gave rise to the obligation occurred.

### Tax Assessment

- The limitation period within which the tax authorities are entitled to assess additional tax liabilities is five years as of 1 January of the year following that in which the taxable event occurred.

### Tax Inspection

- Tax inspections can be carried out in respect of all legal persons, irrespective of their organisation form that are bound to determine, withhold and pay taxes, duties, contributions and other amounts owed to the general consolidated budget.
- Prior to the beginning of a tax inspection, the tax authorities must notify the taxpayer in writing, save for the cases explicitly laid down in the Tax Procedure Code.
- The tax authorities may not inspect the same taxes for a period previously inspected, unless additional data is obtained, of which the tax inspectors were unaware when carrying the first inspection, or computation errors were made.
- Tax inspections are generally carried out at the taxpayer's business premises and may not exceed three months. For large taxpayers that have secondary offices, the tax inspections may not exceed six months. The tax authorities may suspend the tax inspection if they deem it necessary for the clarification of the taxpayer's tax status.
- Before finalisation of the tax inspection, the tax authorities are bound to inform the taxpayer of their findings and the tax consequences and allow the taxpayer to express its point of view. Upon finalisation of the tax inspection, the authorities conclude a tax inspection report, based on which the tax assessment is made. The tax inspection report is communicated to the taxpayer along with the tax assessment.

### Collection of Budgetary Receivables

- Detailed rules apply to payment methods, payment deadlines, as well as treatment of partial payments.
- The offset between the taxpayer's receivables against the budget and the budgetary receivables prevails over reimbursement. The offset is allowed for liabilities to or from different budgets, provided that a certain offset order is observed.

- For 2008, the late-payment penalties were 0.1% per day. The level of late-payment penalties may vary by annual budgetary laws.
- The taxpayers' right to apply for the offset or reimbursement of tax receivables is subject to limitation within five years as of 1 January of the year following that in which the right to offset or reimbursement arose.

## Enforcement of Budgetary Receivables

- If the debtor fails to discharge its tax obligations, the tax authorities may proceed to enforcement actions to recover the outstanding receivable, using their own enforcement apparatus.
- Any of the following enforcement procedures may be used:
  - a) enforcement by garnishment;
  - b) seizure of the taxpayer's movable assets;
  - c) seizure of the taxpayer's immovable assets.
- Proceeds of the enforcement procedures are subject to distribution between creditors in accordance with a predetermined order set out in the Tax Procedure Code. Creditors with guarantees (rights "in rem") over the assets subject to enforcement are preferred to the tax authorities, provided that they registered their rights in the relevant public registrars before the tax authorities registered their receivable.
- Any interested parties (including the taxpayer) may challenge an irregular act of enforcement (including the enforcement itself) or the tax executor's refusal to execute an act of enforcement within 15 days of the act or refusal.
- The tax authorities' right to request the enforcement of fiscal claims is limited to five years as of 1 January of the year following that in which the right arose.

## Administrative Complaints

- Taxpayers are entitled to challenge before the relevant bodies within the tax authorities either a fiscal administrative act or the tax authorities' failure to issue such an act.
- The Code regulates the form and content of the challenges to be filed by taxpayers.
- The challenge has to be submitted within 30 days of the date of communication of the administrative fiscal act, under the sanction of nullity.
- If the taxpayer is not satisfied with the solution of the tax authorities, it may file a claim with the court within six months of the solution to the administrative complaint being delivered to it. The deadline may be extended on serious grounds up to one year from the day the solution was issued.

## Suspension of enforcement

There are several legal means for taxpayers to file a court claim aimed at suspending the enforcement of tax liabilities. Depending on the case, the taxpayer may be ordered to provide a cash guarantee of up to 20% of the contested amount.

# Appendices

# Appendix 1

## List of Double Taxation Treaties

Double Taxation Treaties to which Romania is a party:

Albania	Indonesia	Philippines
Algeria	Iran	Poland
Armenia	Ireland	Portugal
Australia	Island*	Qatar
Austria	Israel	Russian Federation
Azerbaijan	Italy	San Marino*
Bangladesh	Japan	Serbia**
Belarus	Jordan	Slovakia
Belgium	Kazakhstan	Slovenia
Bosnia - Herzegovina**	Korea(Republic)	South Africa
Bulgaria	Kuwait	Spain
Canada	Latvia	Sri Lanka
China	Lebanon	Sudan
Costa Rica*	Lithuania	Sweden
Croatia	Luxembourg	Switzerland
Cyprus	Macedonia	Singapore
Czech Republic	Malaysia	Syria
Denmark	Malta	Tajikistan*
Ecuador	Mexico	Thailand
Egypt	Moldova	Tunisia
Estonia	Montenegro**	Turkey
Finland	Morocco	Ukraine
France	Namibia	United Arab Emirates
Georgia	Netherlands	United Kingdon
Germany	Nigeria	United States
Greece	North Korea	Uzbekistan
Hungary	Norway	Vietnam
India	Pakistan	Zambia

## Appendix 2

### Withholding Tax Rates for Companies in Some Representative Double Tax Treaties

Country	Commissions (%)	Dividend (%)	Interest (%)	Rate
Non Treaty	16	16	16	16
EU – Parent-Subsidiary Directive	X	0*	X	X
EU – Interest and Royalties Directive	X	X	10**	10**
Australia	X	5/15	10	10
Austria	X	0/5	0/3	3
Belgium	5	5/15	10	5
Bulgaria	X	10/15	15	15
Canada	X	5/15	10	5/10
Cyprus	5	10	10	5
Czech Republic	X	10	7	10
Denemark	4	10/15	10	10
Estonia	2	10	10	10
Finland	X	5	5	2.5/5
France	X	10	10	10
Germany	X	5/15	0/3	3
Greece	5	25/45	10	5/7
Hungary	5	5/15	15	10
Ireland	X	3	0/3*	3
Israel	X	15	10/15	10
Italy	5	10	10	10
Japan	X	10	10	10/15
Korea	10	7/10	0/10	7/10
Luxembourg	5	5/15	0/10	10
Malta	10	5/30	5	5
Moldova	X	10	10	10/15
Netherlands	X	0/5/15	0	0
Norway	4	10	10	10
Poland	0/10	5/15	10	10
Portugal	X	15	10	10
Russia	X	10/15	15	10
Singapore	X	5	5	5
Slovakia	X	10	10	10/15
South Africa	X	15	15	15
Spain	5	10/15	10	10
Sweden	10	10	10	10
Switzerland	X	10	10	0
Turkey	X	15	10	10
Ukraine	X	10/15	10	10/15
United Kingdom	12.5	10/15	10	10/15
United States	X	10	10	10/15

X - Not stipulated.

\* - not in force yet

\*\* - The treaty concluded with S.F.R. Yugoslavia which entered into force in 1989 applies for Bosnia-Herzegovina, while the treaty with F.R. Yugoslavia which entered into force in 1998 applies for Montenegro and Serbia.

## Appendix 3

### Changes to the Fiscal Code and the Fiscal Procedure Code applicable from 1 May 2009.

On April 14 Government Emergency Ordinance No 34 / 2009 ("Ordinance") was published. This appendix summarizes the most important changes introduced by the Ordinance to the Fiscal Code and the Fiscal Procedure Code.

New provisions	Applicability																
<p data-bbox="85 391 537 414"><b>Profit tax and micro-companies turnover tax</b></p> <p data-bbox="85 443 695 467">The concept of "minimum tax" is introduced, as described below.</p> <p data-bbox="85 496 280 520"><b>General framework</b></p> <p data-bbox="85 549 788 622">Profit tax payers (Romanian companies as well as foreign companies operating in Romania through permanent establishments) as well as micro-companies are obliged to pay this minimum tax.</p> <p data-bbox="85 651 788 750">The minimum tax is due if the profit tax or the micro-company's turnover tax are lower than the minimum tax, which is determined based on the revenues reported on 31 December of the previous year, using the following thresholds:</p> <table border="1" data-bbox="85 783 725 1082"><thead><tr><th>Total annual revenue (RON)</th><th>Annual minimum tax (RON)</th></tr></thead><tbody><tr><td>0 – 52,000</td><td>2,200</td></tr><tr><td>52,001 – 215,000</td><td>4,300</td></tr><tr><td>215,001 – 430,000</td><td>6,500</td></tr><tr><td>430,001 – 4,300,000</td><td>8,600</td></tr><tr><td>4,300,001 – 21,500,000</td><td>11,000</td></tr><tr><td>21,500,001 – 129,000,000</td><td>22,000</td></tr><tr><td>Over 129,000,001</td><td>43,000</td></tr></tbody></table> <p data-bbox="85 1106 788 1179">Certain categories of revenues are expressly excluded by the law for assessing the threshold. However, revenues from dividends received from Romanian or foreign companies are not excluded.</p> <p data-bbox="85 1208 537 1232"><b>Specific provisions and transitory measures</b></p> <ul data-bbox="85 1260 788 1463" style="list-style-type: none"><li>▪ Newly created Romanian banks and Romanian branches of foreign banks have to perform advance payments in the first year of RON 2,200, recalculated for the respective taxable period. Where losses were registered, banks have to make advance payments amounting to a quarter of the minimum annual tax. Banks which benefitted from profit tax exemptions in the previous year but no longer benefit from this incentive in the current year have to determine the advance payments at the level of the profit tax for the previous tax year without</li></ul>	Total annual revenue (RON)	Annual minimum tax (RON)	0 – 52,000	2,200	52,001 – 215,000	4,300	215,001 – 430,000	6,500	430,001 – 4,300,000	8,600	4,300,001 – 21,500,000	11,000	21,500,001 – 129,000,000	22,000	Over 129,000,001	43,000	<p data-bbox="807 443 1020 517">The minimum tax is applicable from 1 May 2009.</p>
Total annual revenue (RON)	Annual minimum tax (RON)																
0 – 52,000	2,200																
52,001 – 215,000	4,300																
215,001 – 430,000	6,500																
430,001 – 4,300,000	8,600																
4,300,001 – 21,500,000	11,000																
21,500,001 – 129,000,000	22,000																
Over 129,000,001	43,000																

<p>taking into account the exemption.</p> <ul style="list-style-type: none"> <li>▪ Regular companies, excluding banks, have to determine the tax liability in the 2nd quarter from whichever is higher between the profit tax and the annual minimum tax calculated for the period 1 May - 30 June 2009.</li> <li>▪ For the 3rd and 4th quarters, the tax payment is determined from whichever is higher between the profit tax and the annual minimum tax, calculated by dividing by 12 and multiplying by the number of months afferent to the quarter.</li> <li>▪ These provisions also apply to micro-companies, but the comparisons have to be made between the micro-companies' turnover tax and the annual minimum tax.</li> </ul>	
<p><b>Deductibility of company vehicle expenses</b></p> <p><i>Vehicle expenses - General rule for fuel expenses</i></p> <ul style="list-style-type: none"> <li>▪ During the period 1 May 2009 to 31 December 2010, fuel expenses for company vehicles used exclusively for passenger transport, weighing under 3,500 kg and having fewer than nine passenger seats (including the driver's seat), are non-deductible for profit tax purposes.</li> </ul> <p>By exception, fuel expenses are deductible for vehicles used in the following activities:</p> <ul style="list-style-type: none"> <li>- intervention, repair, safety and security, courier services, transporting staff to and from the work place, TV vans, cars used by sales agents and recruitment agents;</li> <li>- paid transportation services and taxi activities;</li> <li>- rental and</li> <li>- driver schools.</li> </ul> <p><i>Vehicle expenses – Specific provisions for executives</i></p> <ul style="list-style-type: none"> <li>▪ Operation, maintenance and repair expenses for vehicles used by individuals in company leadership and management positions are deductible within the limits of one vehicle per person.</li> <li>▪ Fuel expenses have been expressly excluded from this category of limited deductibility expenses, so they fall under the general rule mentioned above.</li> </ul>	<p>These provisions apply during the period 1 May 2009 to 31 December 2010.</p>
<p><b>Revaluation reserves</b></p> <ul style="list-style-type: none"> <li>▪ Reserves from revaluation of fixed assets and land, made after 1 January 2004, which are deductible through depreciation or through expenses triggered by assets being sold or written off, are taxable at the same time and for the same amount as the tax depreciation deduction, respectively when the assets are sold or written off.</li> </ul>	<p>These provisions apply from 1 May 2009.</p>

<p><b>Social Fund</b></p> <p>A Social Fund is being set up from the contributions made voluntarily by domestic producers and distributors of natural gas from price increases. This fund is collected and distributed during 2009 for providing social aid to individuals in need.</p> <p>The Ordinance provides that these amounts will not follow the tax treatment of sponsorship (i.e. expenses are non-deductible but a tax credit is given from the profit tax, within the limits set by law). These contributions have limited deductibility but the Ordinance does not clarify the limit.</p>	<p>These provisions apply from 1 May 2009.</p>
<p><b>Individual income tax</b></p> <ul style="list-style-type: none"> <li>▪ <i>During the period 1 May 2009 to 31 December 2010, when determining the net annual income from independent activities, fuel expenses for company cars weighing under 3,500 kg and with fewer than nine passenger seats (including the driver's seat) used exclusively for passenger transport are non-deductible for individual income tax purposes.</i></li> </ul> <p><i>The same exceptions are stipulated as for profit tax above.</i></p>	<p>These provisions apply for the period 1 May 2009 – 31 December 2010.</p>
<p><b>Value Added Tax</b></p> <ul style="list-style-type: none"> <li>▪ During the period 1 May 2009 to 31 December 2010, companies cannot deduct VAT on acquisitions of fuel and of vehicles exclusively used for passenger transport, weighing under 3,500 kg and with fewer than nine passenger seats (including the driver's seat).</li> </ul> <p>The same exceptions apply as mentioned under profit tax and individual income tax above.</p> <p>In addition, VAT is deductible on the acquisitions of fuel and of the following categories of vehicles: cars used for providing services for consideration, including rental to others, the transfer of usage rights under a financial or operational leasing contract, vehicles used for commercial purposes (i.e. for the purpose of resale).</p> <ul style="list-style-type: none"> <li>▪ Subsequent sale of vehicles for which no VAT deduction was allowed at the time of acquisition is VAT exempt.</li> <li>▪ For those taxpayers whose fiscal period is the calendar quarter, the fiscal period becomes the calendar month if they perform a taxable intra-Community acquisition in Romania.</li> </ul>	<p>These provisions apply for the period 1 May 2009 – 31 December 2010.</p> <p>These restrictions to the VAT deduction right do not apply to advance payments made before 1 May 2009 for vehicles sold after this date.</p>
<p><b>Excises</b></p> <ul style="list-style-type: none"> <li>▪ Wholesale traders of fuels (e.g. gasoline, diesel, gas) are obliged to register themselves with the fiscal authority. The registration procedure and the conditions for developing their activity are to be established by Order of the National Agency of Fiscal Administration ("the Order"). Non-compliance with this procedure is to be sanctioned with penalties and confiscation of sales revenues.</li> </ul>	<p>These provisions apply from 1 May 2009.</p>

<ul style="list-style-type: none"> <li>▪ Wholesale traders of fuels are obliged to apply the procedure to be issued through the Order within 90 days from the publishing day. Non-compliance with this procedure is to be sanctioned with penalties, confiscation of sales revenues and suspension of activity one to three months.</li> <li>▪ These provisions do not apply to tax warehouse keepers and registered traders authorised for energy products.</li> </ul>	
<p><b>Fiscal Procedure Code</b></p> <ul style="list-style-type: none"> <li>▪ Not submitting the recapitulative statements for intra-community trade in time or submitting them with delay, with incorrect or incomplete figures, represents a minor offence. This is to be sanctioned with a fine of 2% of the total amount of intra-community acquisitions / supplies which were not declared or of the differences resulting from incorrect / incomplete reporting.</li> <li>▪ This fine can be avoided partially or totally by correcting the statement under certain conditions provided by the law.</li> </ul>	<p>These provisions apply from 1 May 2009.</p> <p>Companies correcting the recapitulative statements that have filing deadlines before the entry into force of the Ordinance are not sanctioned if they correct them by 30 May 2009.</p>

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