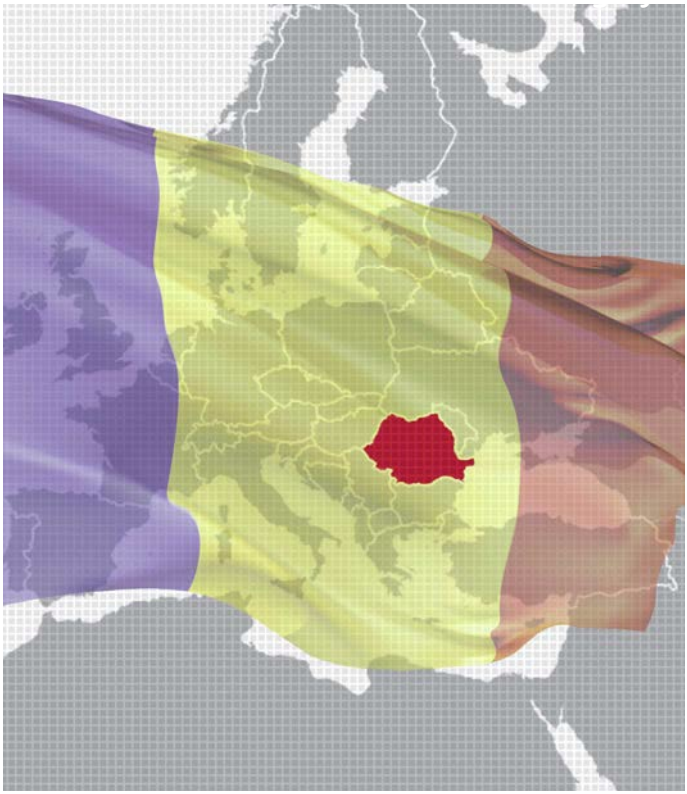
Romania

Tax and Investment Facts

A Glimpse at Taxation and Investment in Romania

2017



Ensight Finance SRL
Romania

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Ensight Finance SRL

Ensight Finance SRL provides tax, accounting and financial business advisory services to resident and non-resident companies doing business in Romania.

The firm provides services ranging from tax advisory and compliance, business regulations from start-ups to liquidations, employment, commercial dealings and re-organisations.

Services rendered by Ensight Finance SRL include the following:

- Tax Advisory
- Accounting & Payroll Services
- Financial Consulting

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1 Ways of Doing Business / Legal Forms of Companies

Romanian legislation defines five forms of legal entities:

- Joint Stock Company (SA);
- Limited Liability Company (SRL);
- General Partnership (SNC);
- Limited Partnership (SCS) and
- Limited Partnership by Shares (SCA).

Foreign companies can also register branches, permanent establishments or representative offices in Romania.

2 Corporate Taxation

Corporate income tax is payable by the following taxpayers: Romanian companies; legal persons set up according to European law and who are registered in Romania; foreign companies with permanent establishments/branches in Romania; foreign companies with their place of effective management in Romania; foreign companies obtaining revenues from real estate located in Romania, from transactions with shares of Romanian companies or from the exploration of natural resources in Romania.

2.1 Applicable Taxes / Tax Rates

The standard corporate income tax rate is 16%.

From January 2017 companies performing activities related to hotel accommodation, restaurants, bars and such like are required to pay a specific tax. The specific tax is calculated based on indicators such as: usable commercial surface, town rank, number of accommodation places, seasonal coefficients. Activities subject to specific tax are not taxable for corporate income tax.

A 1% to 3% micro-company tax on total income is compulsory, instead of corporate income tax, if micro-companies had maximum turnover in the previous year of EUR 500,000, the income from consultancy and management services represents at least 20% of total turnover, the share capital is not owned by the state and if the company is not subject to a dissolution/liquidation procedure.

The micro-company income tax rate is:

- 1% if the micro-company has one or more employees;
- 3% if the micro-company has no employees.

Companies carrying out banking, insurance, capital investment, gambling as well as oil and gas exploration activities cannot apply

for micro-company tax as they are corporate income taxpayers from their date of establishment.

Companies with share capital of RON 45,000 (equivalent to EUR 10,000) can opt to apply for corporate income tax at 16% even if the micro-company conditions above are fulfilled.

2.2 Resident Companies

Any legal person set up and functioning according to Romanian law is considered a resident company.

2.2.1 Computation of Taxable Income

Taxable income subject to 16% corporate income tax is calculated as the difference between revenues obtained and expenses incurred in performing economic activities during a fiscal year, adjusted for fiscal purposes by deducting non-taxable revenues or similar elements and adding non-deductible expenses (or similar elements).

2.2.2 Taxation of Dividends

Dividends can only be paid out of profits reflected in the yearly financial statements approved by shareholders (no interim dividend distribution allowed).

As a general rule, paid dividends are taxed at a 5% withholding tax rate, or a more favourable double tax treaty rate, if a valid certificate of fiscal residency is available at the payment date. Withholding tax exemption may apply under the EU Parent-Subsidiary Directive, if conditions are met and the required documentation is available at the payment date.

Dividends received by resident companies from Romanian legal entities are non-taxable revenues. Dividends received by resident companies from a foreign legal entity which is a corporate income taxpayer or payer of an assimilated tax, located in a country with which Romania has concluded a double tax treaty, are non-taxable revenues if the Romanian legal entity receiving the dividends owns at least 10% of the share capital of the Romanian company or foreign company paying the dividends for an uninterrupted period of 1 year.

In the case of **dividends paid** by a Romanian company to another Romanian legal entity, 5% of the dividend tax is withheld by the payer from the total amount. This withholding is not applicable if the Romanian company receiving the dividends owns at least 10% of the share capital of the other Romanian company for an uninterrupted period of 1 year as at the dividend payment date.

2.2.3 Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)

Revenues from the valuation/revaluation/transfer/sale of shares owned in a Romanian company or in a foreign company located in a country with which Romania has concluded a double tax treaty (including those outside the EU) are non-taxable revenues if at the date of valuation/revaluation/transfer/sale of shares, the taxpayer owns at least 10% of the share capital for an uninterrupted period of 1 year.

2.2.4 Depreciation / Capital Allowances

Tax depreciation may be different from accounting depreciation. Taxpayers can calculate accounting depreciation based on internal accounting policies and procedures, and tax depreciation for

corporate income tax calculation purposes, based on the fiscal regulation regarding capitalisation rules, methods and depreciation periods.

Depreciable tangible assets have to fulfil the following conditions: the entry value exceeds the threshold defined by law (currently RON 2,500, i.e. approximately EUR 555), the expected useful life is more than one year, and assets are used for business purposes.

2.2.5 Loss Carry Over (including Potential Loss of Tax Loss Carry Forward in case of Restructuring)

Starting in 2009, fiscal losses can be carried forward for 7 years.

The fiscal loss recorded by a taxpayer that ceases to exist due to restructuring (merger, spin-off) can be carried forward by the newly created taxpayer in proportion to the assets transferred. The fiscal loss recorded by a taxpayer that does not cease to exist due to restructuring can be carried forward by the respective taxpayer in proportion to the assets kept. Also, the company which partially took over the assets can carry the fiscal loss forward in proportion to the assets taken over.

2.2.6 Group Taxation

Romanian law does not include Group taxation rules for corporate income tax calculation purposes.

2.2.7 Relief from Double Taxation (Tax Credit / Tax Exemption)

Profits obtained from another country through permanent establishments can be taxed in this other country. If the double tax treaty stipulates tax exemption as a method to avoid double taxation, the respective profits are exempt from corporate income tax in Romania. If the double tax treaty stipulates tax credits as a method to avoid double taxation, the corporate income tax paid in the other country will be deducted from the corporate income tax declared in Romania (limited to corporate income tax due in Romania for the respective profit).

2.2.8 Incentives

The corporate tax relief on reinvested profits is applicable for an unlimited period for the acquisition of technical equipment, computers and software, if several conditions are fulfilled.

Taxpayers performing nothing but innovation and R&D activities are exempt from corporate income tax for the first 10 years of their activity.

Also, in the case of research and development costs, 50% of the additional deduction of R&D expenses is granted for corporate income tax calculation purposes and the possibility to apply accelerated depreciation for the assets used in R&D activity.

Special incentives are granted to encourage individual business angels to invest in micro companies and small-sized companies in Romania, if certain conditions are fulfilled. These incentives refer to: exemption from dividend tax for the first 3 years from the purchase of shares (up to the equivalent of the invested amount); exemption from tax on capital gains from the transfer of ownership rights after the 3 years mentioned.

2.3 Non Resident Companies

Any foreign legal entity not registered in Romania is considered non-resident.

2.3.1 Concept of Permanent Establishment / Doing Business

The tax law states that a permanent establishment involves a management seat, a branch, an office, a plant, a shop, a workshop, or natural resource extraction sites. The permanent establishment is a place where a non-resident carries out part or all of its business, either directly or by means of a dependent agent. Only profits attributable to the respective permanent establishment are taxed, using the arm's length principle in relation to the parent company.

2.3.2 Withholding Taxes

Income earned by non-residents from Romania such as dividends, interest, royalties, commission fees, supply of management and consultancy services, income derived from the supply of services in Romania (except for international transport services and related services) are subject to withholding tax (WHT) in Romania.

Standard WHT rates are as follows: 5% for dividend tax and 16% for other revenues. A special WHT rate of 50% is applicable for artificial transactions in which payments are made in countries with which Romania has not concluded a treaty for the exchange of information.

More favourable double tax treaty rates are applicable for the income mentioned above earned by non-residents from Romania, if a valid certificate of fiscal residency is available at the payment date.

The Interest & Royalties EU Directive (exemption, subject to at least 25% ownership for an uninterrupted period of 2 years) and the Parent-Subsidiary EU Directive (exemption, subject to at least 10% ownership for an uninterrupted period of 1 year) are applicable in Romania if the required documentation is available.

2.3.3 Capital Gains

The income earned by non-residents from the transfer of real estate ownership or of any legal right related to real estate located in Romania, income from the exploration of natural resources in Romania, as well as income from the sale of participation titles owned in a Romanian legal person are subject to corporate income tax in Romania. Revenues from the valuation/revaluation/transfer/sale of shares owned in a Romanian company are non-taxable revenues if, at the date of valuation/revaluation/transfer/sale of shares, the taxpayer owns at least 10% of the share capital for an uninterrupted period of 1 year. The rule is not applicable in the case of similar revenues if the shares of the Romanian company are owned by companies resident in countries with which Romania did not conclude double tax treaties.

2.4 Tax Compliance

Romanian law requires taxpayers to declare and pay corporate income tax quarterly, or micro-company tax quarterly, depending on the case.

Corporate income tax is due by the 25th of the first month of the following quarter, except for annual corporate income tax which is due by 25 March of the following year (with several exceptions). Taxpayers can opt for a yearly corporate income tax calculation, in which case they are obliged to make quarterly advance payments amounting to ¼ of the corporate income tax declared in the previous year, updated with the consumer price index.

3 Double Taxation Agreements

If a taxpayer is resident in a country with which Romania has concluded a double tax treaty (DTT), the tax rate applicable to the income obtained by the respective taxpayer from Romania will be the most favourable rate between the rate stipulated by local legislation and the rate stipulated by the DTT, provided that a certificate of fiscal residency is provided.

If the taxpayer is also an EU resident, the provisions of EU directives are applicable, provided that the required conditions are fulfilled and proper documentation is available.

4 Transfer Pricing

The arm's length principle is applicable to all transactions with related parties, including those between a foreign legal entity and its Romanian permanent establishment. Also, related-party transactions carried out between two Romanian companies are subject to a transfer pricing analysis.

From 2016, Romanian taxpayers are required to prepare transfer pricing documentation as follows to document the observance of the arm's length principle for transactions performed with affiliates:

- Major taxpayers obtaining/paying interest from/to affiliates of more than EUR 200,000 per year, or receiving/rendering services from/to affiliates of more than EUR 250,000 per year, or in the case of acquisitions/sales of goods from/to affiliates of more than EUR 350,000 per year, should prepare transfer pricing documentation beforehand. Mid-sized or small companies should prepare this documentation upon the tax authority's request.
- Taxpayers obtaining/paying interest from/to affiliates below EUR 50,000 per year, or receiving/rendering services from/to affiliates below EUR 50,000 per year, or in the case of acquisitions/sales of goods from/to affiliates below EUR 100,000 per year, are not required to prepare transfer pricing documentation.
- For transactions with affiliates in between the minimum and maximum materiality thresholds above, transfer pricing documentation must be prepared upon the tax authority's request.

5 Anti-avoidance Measures

In Romania, anti-avoidance controls are performed by the National Agency of Fiscal Administration.

5.1 General Anti-avoidance Rule

Romanian tax authorities might not take a transaction without economic substance into consideration, and might adjust its tax effects. However, tax authorities are required to justify and prove this action.

The Romanian Fiscal Code also includes provisions related to "artificial cross-border transactions", transactions without economic substance, made for tax avoidance purposes or to obtain certain fiscal advantages. For these artificial cross-border transactions, the most favourable provisions of the double tax treaties are not applicable.

5.2 Inactive Taxpayers

Taxpayers declared inactive who carry out economic activities during their period of inactivity are subject to taxation, but during the respective period they may not deduct expenses and they cannot deduct VAT for acquisitions made. Moreover, beneficiaries who acquire goods and/or services from inactive taxpayers may not deduct expenses and cannot deduct VAT for acquisitions, except for acquisitions made under enforcement or bankruptcy procedures.

Taxpayers declared inactive may deduct the VAT on acquisitions completed within this period after they re-register for VAT purposes. Also, taxpayers who acquire goods/services from taxpayers declared inactive may deduct the VAT on acquisitions completed within this period after the registration of the suppliers for VAT purposes.

5.3 Taxpayers with Cancelled VAT Numbers

Taxpayers whose VAT number has been cancelled by the tax authorities cannot deduct VAT for acquisitions made, but are obliged to collect and pay VAT. Moreover, beneficiaries who acquire goods and/or services from taxpayers with cancelled VAT numbers cannot deduct VAT for acquisitions, except for acquisitions made under enforcement or bankruptcy procedures.

After VAT registration such persons can deduct the VAT for acquisitions completed during the period in which their VAT registration code was inactive by reporting the VAT amount in their first VAT return after re-registration.

Beneficiaries are able to deduct the VAT amount related to purchases during the period when the supplier's VAT code was inactive, after the supplier re-registration.

5.4 Thin Capitalisation Rules

Interest expenses for inter-company loans are deductible for corporate income tax calculation purposes, provided that the debt-to-equity ratio is lower than, or equal to three. If the equity is negative or the debt-to-equity ratio is higher than three, interest expenses are non-deductible in the given year, but can be carried forward indefinitely to subsequent years, and deducted when the conditions are met. The debt-to-equity ratio is computed as the ratio between related-party loans with a maturity exceeding one year and owner's equity, by considering their average book values at the beginning and at the end of the year. In particular, the exchange rate losses referring to related-party loans are also subject to the debt-equity ratio limitation above.

5.5 Abuse of Law

In the event of an abuse of law, the transactions involved should be redefined to establish the situation prevailing for this abuse. The tax authorities are allowed to cancel VAT deducted whenever it is found that the right to deduct has been exercised abusively. To invoke the abuse of law, two conditions must be fulfilled cumulatively:

- the transactions concerned, notwithstanding the formal application of the conditions laid down in law, would guarantee tax advantages that defeat the purpose of those legal provisions
- it must be proven, objectively, that the essential aim of the transactions concerned is to obtain a tax advantage.

6 Taxation of Individuals / Social Security Contributions

Individuals who are Romanian tax residents are subject to income tax on their worldwide income.

Individuals who are non-residents of Romania for tax purposes are subject to tax in Romania only on their income earned in Romania.

6.1 Residency Rules

To be considered a Romanian fiscal resident, at least one of the following conditions must be met:

- The individual has his domicile in Romania;
- The individual's centre of vital interests is located in Romania;
- The individual is present in Romania for a period or periods exceeding 183 days on aggregate during any period of 12 consecutive months ending in the calendar year concerned;
- The individual is a Romanian citizen working abroad as an employee of Romania in another state.

All non-resident natural persons who spend more than 183 days in Romania within any twelve-month period ending in the fiscal year concerned must submit a special questionnaire, together with relevant documentation, no later than 30 days after the end of the 183-day period. Tax authorities examine the documentation, the fulfilment of residence conditions for each situation, and, by taking into account the provisions of the Double Tax Treaty or the Fiscal Code as applicable, they determine if the given individuals have full tax liability in Romania for their worldwide income or whether they are taxable only on the income earned in Romania. Notification regarding the fiscal residence status of the individuals needs to be issued within 30 days of submitting the questionnaire.

Upon the termination of an assignment in Romania, individuals should notify the tax authorities. A questionnaire needs to be filed with the authorities at least 30 days before leaving the country. Within 15 days of submission the tax authorities will notify the individual whether they will remain fully taxable in Romania for their worldwide income and also whether they will be kept in/ removed from the tax records.

6.2 Income Liable for Tax

Income liable for tax includes employment income, freelance income, rental income, investment income, retirement income, revenues from agriculture, prizes and gambling income, income from real estate transfers, and other income defined by law.

6.3 Allowable Deductions

For employment income, Romanian tax residents can avail of a personal deduction, depending on the level of the individual's gross monthly income (only for gross salaries less than EUR 660) and the number of dependent persons.

Also, employees' contributions to voluntary pension plans are deductible for income tax purposes up to EUR 400 per year. A similar deduction limited at EUR 400 per year is applicable for individual contributions to voluntary health insurance.

6.4 Non-taxable Income

Individuals hired based on employment contracts by companies whose main activity is software development can be exempted from tax on income provided that the conditions set forth in specific legislation in force are met.

Also, employees/assignees carrying out eligible activities of research and development can benefit from tax on income exemption provided that the conditions set forth in specific legislation in force are met.

Income such as the daily allowance granted to employees/administrators during business travel is not taxable up to a limit of EUR 9/day for trips in Romania and EUR 87.50/day for trips outside Romania.

6.5 Tax Rates

Income is taxed with a flat tax rate of 16%.

6.6 Tax Compliance

Payroll tax returns (Form 112) are submitted by the employer on a monthly basis, by the 25th of the following month.

In the case of secondment agreements, foreign individuals must submit tax returns to the tax authorities (Form 224) on a monthly basis, by the 25th of the following month.

Romanian residents obtaining rental income, freelancer income, capital gains from the sale of securities, or income from intellectual property rights must file an annual tax return (Form 200 or 201) by 25 May each year, for the previous year.

6.7 Social Security Contributions

Employers are obliged to calculate, withhold and pay monthly social taxes and contributions on employment revenues.

Social security contributions in Romania are as follows:

2017 Contributions	Employer taxes	Employee withholdings
Social security contribution	15.8% for normal working conditions; 20.8% for specific working conditions; 25.8% for special (hard) working conditions.	10.5%
Health insurance contribution (contribution base is the gross salary)	5.2%	5.5%
Unemployment fund (contribution base is the gross salary)	0.5%	0.5%
Medical leave contribution (contribution base is the gross salary)	0.85% The contribution base is capped at 12 times the minimum monthly gross salary (EUR 320 for 2017) multiplied by the number of employees	

2017 Contributions	Employer taxes	Employee withholdings
Work accident fund (contribution base is the gross salary)	0.15% - 0.85% depending on the CAEN code for main activity	
Contribution Guarantee Fund	0.25%	
Contribution for non-employment of disabled persons (only in case of more than 50 employees)	4 x 50% of the minimum gross salary for every 100 employees	

If foreign individuals seconded to Romania can present a valid A1 certificate for the period of their assignment in Romania, they are exempted from paying social security contributions in Romania. For lack of such a certificate, foreign individuals are automatically subjects of the Romanian social security system. As in the case of local companies, non-Romanian employers are obliged to calculate, withhold and pay monthly social contributions, therefore they must register in Romania for social security purposes. Alternatively, the individual may take over the responsibility for declaring and paying Romanian social security contributions, based on an agreement concluded with the employer in this respect. Individuals must register and submit monthly tax return "112" on behalf of their employer.

Romanian residents obtaining rental income, freelancer income and income from intellectual property rights must pay health, pension and medical leave contributions, as required, besides the tax on income.

7 Indirect Taxes

Indirect taxes include VAT, excise duties and custom duties.

7.1 Valued Added Tax

From 1 January 2017 the standard VAT rate in Romania was reduced from 20% to 19%.

Reduced VAT rates are applicable as follows:

- 9% for supply of medical devices and medication; hotel accommodation; restaurants and catering services; supply of food, water;
- 5% for access to museums, zoos, fairs, exhibitions, cultural events and cinemas; access to sport events; school manuals, books, newspapers, except for those produced mainly for advertising; sale of social buildings.

The VAT cash accounting system is optional for companies with turnover less than RON 2,250,000 (around EUR 500,000). Under the VAT cash accounting system, the deduction/collection of input/output VAT is made at the time of payment/cashing in the amounts, and not at the date of receipt/issuance of an invoice.

The reverse charge mechanism is applicable for local supplies of the following: ferrous and non-ferrous waste and scrap; residues and other recyclable materials consisting of ferrous and non-ferrous metals; waste and recyclable materials consisting of paper, cardboard, fabric, cables, rubber, plastic, glass and shards of glass; transactions with wooden mass and wooden material; deliveries of cereals, electricity, transfer of green certificates.

From 1 January 2016, Romania introduced a reverse charge mechanism for the local supply of mobile phones, devices that use integrated circuits, laptops, PC tablets and game consoles.

This provision will be in force until 31 December 2018.

Reverse charging is also applicable to local supplies of buildings, parts of buildings and land.

From 1 January 2017, special VAT registration for performing intra-Community transactions is no longer required. The Register of Intra-Community traders has been cancelled.

Also from 1 January 2017, a special VAT regime for farmers (natural persons) was introduced.

7.2 Excise Duties

Harmonised excise duties are applicable for the following: alcohol and alcoholic beverages; processed tobacco; energy products and electricity.

In addition to the harmonised excise duties mentioned above, Romania applies non-harmonised excise duties for the following products: heated tobacco products which, upon heating, emit an aerosol that can be inhaled, without the combustion of tobacco blends; liquids containing nicotine for inhalation by using an electronic device "electronic cigarette".

7.3 Custom Duties

Romania applies EU customs legislation as well as the Common Customs Tariff. The customs value of goods is determined according to the principles of EU customs legislation, at the price effectively paid or to be paid for the goods.

8 Property Taxes

Property taxes are payable by the owners of buildings, land and vehicles and are paid to local authorities. Local taxes are assessed yearly and are payable in two equal instalments during the year, by 31 March and 30 September.

Other local taxes are payable for outdoor advertising, and tax for obtaining different authorisations.

8.1 Taxable Base

The tax on buildings is assessed differently according to the building's purpose – i.e. building used for residential purposes (domicile) or for non-residential purposes (for business purposes).

The taxable value for a residential building is established based on its location, surface and ageing. The taxable value for non-residential buildings stems from valuation reports issued by authorised appraisers, every 5 years in the case of natural persons, and every 3 years in the case of legal persons.

The tax on land is computed based on a fixed amount per square metre, depending on the area where the land is located, whereas the tax on vehicles depends on the type of vehicle and engine cylinder capacity.

8.2 Tax Rates

The rates for tax on residential buildings owned by natural or legal persons are between 0.08% and 0.2%, applicable on the taxable value of buildings.

For non-residential buildings owned by natural or legal persons the tax rates are in the range of 0.2% - 1.3%. If the taxable base is not updated through valuation reports according to the law, the tax rate is increased up to 2% for natural persons and 5% for legal persons.

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