SWITZERLAND GLOBAL ENTERPRISE

Romania
Tax provisions

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Bucharest, February 2018

GENERAL OVERVIEW

In the last few years, the Romanian tax and legal environment has generally improved, which ranks Romania on the 36 place in the World Bank's "Annual Report 2017".
Transparency and predictability of the regulatory framework are furthered with the new Tax Code applicable starting 1 January 2018. Improving transparency remains a top priority for the authorities as this will very likely enhance trust among current and future investors.
Addressing corruption and fraud in public procurement is a constant preoccupation of the relevant state bodies and positive results are now showing. Moreover, the civil society is more and more aware about these topics and the voice of the citizens is heard loud and clear when necessary.
Under the Constitution, private property is guaranteed and protected by the Romanian state. Foreign nationals and stateless persons may obtain ownership right for land under conditions resulting from Romania's accession to the EU or by virtue of domestic laws and other international treaties to which Romania is a party.
All statutory provisions of civil, commercial, criminal, administrative and tax matters are enacted by Parliament. International treaties are binding only if ratified by Parliament.
Since signing the association treaty with the EU in 1993, Romania has adopted several regulations issued by EU bodies in domestic legislation. In 1994, Romania ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and agreed to enforce its provisions, including the right of individual petition, and recognized the competence of the European Court of Human Rights.
As an EU member state, Romania has to directly apply certain EU regulations without the need to have them adopted in the domestic legislation.

Reform of judiciary.

Justice is an essential factor of social stability and stability of the country. In fulfilling this role, the reform of a fundamental system of society, such as the judiciary, implies not only the institutional restructuring itself, but also the reformation of the mentalities that underlie the functioning of the current system, as well as the costs that society must assume.

Justice reform is a recognized need, and measures have been taking place since the early 1990s, but since 2001 has become a priority under the Government's Governing Program and the Action Plan of the current Government. Although unquestionable progress has been made in modernizing the judiciary, in the context of accelerating the process of European integration, it is imperative to have a coherent approach of the reform strategy of the entire judiciary system, which in turn will coordinate with reforms of other social domains.
In this respect, the Judiciary Reform Strategy includes the objectives needed to modernize the judiciary, accompanied by concrete implementation measures, for which deadlines have been set and financial implications have been assessed. The objectives and measures have been developed according to an overall vision for all components of the judiciary, according to their importance and needs. The major goal of this strategy is to strengthen the independence of the judiciary and the status of the magistrate, as well as to increase the efficiency of the justice act, in order to meet the needs of the citizens and to ensure the compatibility of the Romanian judiciary with those of the Member States of the European Union.
Therefore, in the implementation of the Judiciary Reform Strategy, the need to enhance the integration of justice as a public service in society through active collaboration with the public administration and with the different segments of civil society was considered. It also seeks to strengthen and improve the functioning of the rule of law by regaining citizens' trust in the judiciary and respecting the primacy of the law.

CUSTOMS

The EU customs regulations are directly applicable in Romania as from the accession date of Romania to the EU (i.e. 1 January 2007).
The persons who perform activities which are regulated by the customs legislation must register for customs purposes.
Also, the statute of authorized economic operator may be granted upon request under certain conditions. The respective statute concedes certain administrative incentives to its holder.

While Switzerland is not part of the EEA, it remains a member of EFTA. More than 120 sectoral bilateral treaties linking the country with the EU incorporate largely the same provisions as those adopted by the other EEA countries in the fields of the free movement of people, goods, services and capital.

The specific customs duties payable upon releasing the goods into free circulation, are established based on the EU Customs Tariff (adopted for each year by the Commission) and related preferential tariff measures. There is an online EU customs tariff database (TARIC) which comprises the following:
- The combined nomenclature of goods
- The rates and other items of charge normally applicable to goods covered by the combined nomenclature, as regards customs duties and import charges laid down under the common agricultural policy, or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products

- The preferential tariff measures contained in agreements which the European Union has concluded with certain countries or groups of countries and which provide for the granting of preferential tariff treatment
- Preferential tariff measures adopted unilaterally by the European Union in respect of certain countries, groups of countries, or territories
- Autonomous suspensive measures providing for a reduction in, or relief from, import duties chargeable on certain goods
- Other tariff measures provided for by other Union legislation Customs duties are expressed as a percentage of the customs value of goods. Other taxes, duties and levies may be required to be paid upon import in addition to customs duties, such as excise duty, VAT, etc.

Customs value of goods

Where the goods to be imported in Romania will be subject to a sale, the customs value should be based generally on the sale price increased with certain other costs that may have been incurred for the imported goods (e.g. insurance, transport, commissions, royalty and license fees).
The cost of (i) transport and insurance of the imported goods, and (ii) loading and handling charges associated with the transport of the imported goods to the place of entering into the customs territory of the Union shall be added to the price actually paid or payable by the importer when declaring the customs value of the goods, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods.

Customs procedures

As provided by the Union Customs Code, e goods may be placed under various customs procedures, as follows:

- Release of goods for free circulation
- Transit
- Customs warehousing
- Inward processing
- Temporary admission
- Outward processing
- Exportation
- Free zone

The release for free circulation confers non-Union goods, the status of Union goods. This means that the customs duties and charges have been paid and, as a result, the goods may freely move within the territory of the European Union from a customs perspective.
The specific customs procedures suspending the payment of the import duties are generally subject to authorization from the customs authorities.
The transit procedure allows the movement of non-Union goods from one point to another within the customs EU territory, without such goods being subject to import duties and other charges or to commercial policy measures for a certain period of time. Certain Union goods meant for export could also be placed under the transit procedure.
A customs warehouse is any place approved by, and under the supervision of, the customs authorities where goods may be stored under certain conditions.

The customs warehousing procedure allows the storage in a customs warehouse of the following:
• non-Union goods, without such goods being subject to import duties or commercial policy measures
• Union goods, where the specific legislation governing certain fields provides that their placement in a customs warehouse attracts the application of measures normally used for export of such goods

The inward processing procedure allows that non-EU goods are processed within the EU customs territory without application of import duties or commercial policy measures.
The temporary admission procedure allows the use in the customs territory of the EU, with total or partial relief from import duties and without them being subject to commercial policy measures, of non-EU goods intended for re-export without having undergone any change except normal depreciation due to their use.
The outward processing allows EU goods to be exported temporarily from the EU customs territory in order to undergo processing operations and the products resulting from those operations to be released for free circulation, with total or partial relief from import duties.
The export allows EU goods to leave the customs territory and entails the application of exit formalities, including commercial policy measures.
Free zones are parts of the customs territory of the EU or premises situated in that territory and separated from the rest of it in which non-EU goods are considered, for the purpose of import duties and commercial policy import measures, as not being on EU customs territory, provided they are not released for free circulation or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations.
Starting 1 May 2016, the above special regimes were aligned and grouped together within four special procedures, namely:
• Transit, including external transit and internal transit
• Storage, including temporary storage, customs warehousing (public and private warehouses) and free zone
• Specific use, namely temporary admission and end-use
• Processing, namely inward processing and outward processing

Since 1 July 2009, all companies established outside of the EU are required to have an EORI number if they wish to lodge a customs declaration on the customs territory of the UE or an Entry/Exit Summary declaration. All U.S. companies should use this number in relation with EU customs. Along with the application for an EORI number, the following documents must also be submitted:

1. the registration document issued by the competent authority of the third country in photocopy;
2. the VAT registration certificate(s) issued by the Competent Authority in the Member States of the European Union, where applicable.
3. documents showing the address of the registered office or the current fiscal domicile, where applicable, if it does not correspond to the one entered in the documents mentioned above issued by the responsible authorities within the Trade registry or by the Chambers of Commerce from the European Union or from the third country, in original or legalized copy, no later than 6 months before the date of submission of the application;
4. a photocopy of the valid passport or other travel document in the case of natural persons.

In specific cases, economic operators and other persons which are not established in the customs territory of the Union shall register with the customs authorities responsible for the place where they

first lodge a declaration or apply for a decision.
Once a company has received an EORI number, it can use it in relation with the UE customs authorities to any of the 28 EU member states. There is no single format for the EORI number. Once an operator holds an EORI number he can request the Authorized Economic Operator (AEO) status, which can give quicker access to certain simplified customs procedures.

CURRENCY REGULATIONS

The Regulation establishing the foreign exchange regime fully transposes the provisions of the European Treaty on liberalizing capital movements and setting safeguard measures for foreign exchange operations to be considered in case of substantial changes in domestic liquidity and severe imbalances of the balance of payments. Definition of current and capital transactions, as well as their nomenclature, are harmonized with EU Directives.

The National Bank of Romania (NBR) is the country's central bank which sets and oversees the application of foreign exchange regime. Main regulations include:

- NBR Regulation 6/2012 amending and supplementing NBR Regulation 4/2005 on foreign exchange regime and annulling NBR Norm 4/2005 regarding foreign exchange operations
- NBR Regulation 4/2005 regarding foreign exchange regime
- NBR Norm 3/2005 on the interbank foreign exchange market modified by Norm 10/2007

Regulation 4/2005 issued by the NBR sets the foreign exchange regime in Romania. Since 1998, Romania accepted the obligations laid down in Art. VIII, Sections 2, 3 and 4 of the IMF's Articles of Agreement, namely:

- the authorities' commitment to remove all restrictions on current transactions
- non-introduction of other restrictions in the future
- creation of conditions as favourable as possible for the relaunch of economic reform
- the foreign exchange policy should not be subject to significant alterations

According to provisions of these regulations, residents and non-residents:

- may acquire, hold and use any foreign- and domestic-currency-denominated financial assets ("full retention")
- may open and keep accounts in both foreign and domestic currencies with credit institutions or other similar institutions, as the case may be
- may perform freely and without restrictions current and capital transactions
- non-residents may repatriate and transfer abroad financial assets held in Romania

Buying and selling of foreign currency may be performed by forex market intermediaries only. Buying and selling of foreign currency by resident natural persons via exchange houses and credit institutions is not limited.

All capital transactions have been liberalized as of 1 September 2006. For statistical purposes, capital transactions causing external obligations arising out of commitments longer than one year, other than those of the nature of external public debt, shall be registered with the NBR in "Romania's Register of External Private Debt".

REGISTRATION PROCEDURE FOR PRODUCTS

As in all EU countries certain products from pharmaceuticals and medical equipment, automotive, railway/air/naval transport, electric goods and other sectors have to undergo a registration and/or verification, as the case may be, performed by authorities and laboratories established through specific laws and regulations. Any foreign entity should get the appropriate information prior to initiate distribution or manufacturing of their products in Romania.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Romanian standards, technical rules and labelling regulations are in full compliance with the EU norms and regulations. In each economic (sub)-sector specialized agencies, institutions, laboratories and registries ensure the enforcement and monitoring of the application of such regulatory norms. Foreign investors are urged to get the relevant information for the type of products they intend to sell or produce in Romania.

TAXES

Corporate income tax

Tax year

In Romania, the tax year is the calendar year.

However, taxpayers that have chosen to have a financial year different from the calendar year, also have the possibility to opt for a tax period in line with the financial year. This option is not available for taxpayers that qualify as micro-enterprise income tax payers or taxpayers for which the specific tax for hotels, restaurants and bars is applicable.

Tax payers

The following categories are subject to corporate income tax in Romania:

• Romanian legal entities (except tax transparent legal entities for which each member/participant is subject to tax)

• Romanian permanent establishment(s) of non-resident legal entities

• Non-resident legal entities having the place of effective management in Romania

• Non-resident legal entities that derive income from or in connection with immovable property situated in Romania, or from the sale/transfer of shares held in a Romanian legal entity and

• Legal entities with registered office in Romania, incorporated in accordance with the European legislation

Romanian legal entities, non-resident legal entities having the place of effective management in Romania as well as legal entities having their headquarters in Romania, but incorporated as per the European legislation (i.e. European companies) are subject to tax on their worldwide income.

Associations without corporate status between Romanian legal entities are taxable in Romania separately at the level of each partner. For associations without corporate status between a Romanian legal entity and foreign entities special rules apply.

Romanian permanent establishment(s) of non-resident legal entities and non-resident legal entities that derive income from or in connection with immovable property situated in Romania, or from the sale/transfer of shares held in a Romanian legal entity are subject to tax on their Romanian-sourced income only.

Tax rates

The standard profits tax rate is 16%.

Profits tax payable by companies earning revenues from night bars, nightclubs, discos or casinos including such type of revenues from an association agreement, is computed at the standard 16% rate, provided the tax amount is not less than 5% of the total declared revenue (case in which the taxpayer is liable to pay profits tax computed at 5% of the declared revenue from such activities).

Calculation of taxable profit

The taxable profit is computed as the difference between the revenues from all sources and expenses incurred in a tax year, less non-taxable revenues and other tax deductions, plus non-deductible expenses.

Accounting errors have different tax treatment depending on the way in which they were booked in the year (through retained earnings or profits and loss accounts).

The Romanian Tax Code also provides for special rules that have to be observed by taxpayers applying accounting regulations in accordance with the IFRS.

For the purpose of determining the tax result, taxpayers must prepare and keep a tax evidence registry.

Non-taxable revenues

Key revenues which are considered as non-taxable include, inter-alia:

- Dividends received from a Romanian legal entity
- Dividends received from a foreign legal entity resident in a country with whom Romania has concluded a double tax treaty, if the Romanian legal entity holds minimum 10% of the share capital of the entity distributing the dividends for an uninterrupted period of 1 year ending at the date of dividend payment. In addition, in case of dividends received from an EU resident entity, the dividends represent non-taxable revenue in Romania to the extent that they are not deductible at the level of the EU resident entity
- Gains in the value of the participation titles held in other entities, registered further to the increase of capital in those entities through incorporation of reserves, profits or issue premiums
- Revenues from the reversal of non-deductible expenses and of provisions for which no deduction was allowed
- Non-taxable income, expressly provided by specific regulations
- Revenues from deferred corporate income tax computed and recorded by taxpayers that apply accounting regulations in accordance with the IFRS
- Revenues representing change in the fair value of real estate investments/biological assets upon the subsequent evaluation using the fair value model by taxpayers that apply accounting regulations in accordance with the IFRS
- Income derived from the valuation/revaluation/sale/transfer of shares, provided that the taxpayer is a company (Romanian company or tax resident in a country with whom Romania has concluded a double tax treaty) holding for an uninterrupted period of 1 year at least 10%

from the share capital of the other company (Romanian company or tax resident in a country with whom Romania has concluded a double tax treaty)

- Income from the liquidation of a company, provided that (i) the taxpayer holds for an uninterrupted period of 1 year at least 10% from the share capital of the company that is being liquidated and (ii) that company is a Romanian company or a company which is tax resident in a country with whom Romania has concluded a double tax treaty
- Amounts received further to the refund of the shareholders' contribution share, within a share capital reduction

Deductibility of expenses

Expenses incurred for the purpose of carrying out economic activities, including those regulated by legal norms, as well as fees and contributions due to chambers of commerce and industry, employers' organizations and trade unions are considered deductible for the profits tax computation.

Key expenses which are partially deductible include, inter-alia:

- Provision expenses and contribution to reserve funds within specified limits
- Entertainment expenses (and related VAT, if the case) up to 2% of the accounting profit to which profits tax and protocol expenses (and related VAT, if the case) are added
- Social expenses (e.g. birth, death, incurable disease support, expenses aimed at the proper functioning of certain units of taxpayers, e.g. kindergartens, canteens, sports clubs, schools, expenses provided in the collective labor agreement, as well as gifts in cash or in kind granted to e.g. underage children, certain employees, the cost for the supplies for treatment and rest of own employees and their family, etc.) currently up to 5% of the total salary fund
- Expenses for meal and vacation vouchers, granted according to the law
- Perishables and losses resulted from manipulation/storage, according to the law
- Technological losses included in the taxpayer's own consumption norm
- Exceeding borrowing costs within specific limits
- Depreciation within specific limits
- 50% of expenses (except depreciation) related to vehicles owned or used by the taxpayer which are not exclusively used for the economic activity and have a maximum weight of 3,500 kg and not more than 9 seats, including driver seat (except for certain situations specifically mentioned by the law, for vehicles used for e.g. paid transportation services, security services, repairs, sales and procurement activities)
- Expenses for the operation, maintenance or repair, excluding fuel expenses related to cars used by management and administrative personnel, limited to one car per person and observing the 50% deductibility limitation
- Expenses representing the value of disposed receivables are deductible only within a threshold of 30% of their value

Key expenses which are non-deductible include, inter-alia:

- Romanian and foreign profits tax (a tax credit is allowed for taxes paid in other countries) and tax not withheld at source
- Sponsorship expenses (a tax credit is allowed for sponsorship expenses on meeting certain conditions)
- Late payment interest, penalties, and fines paid to Romanian or foreign authorities (except certain specific cases)
- Expenses with inventory or fixed assets that are missing from stock or that are damaged and are non-imputable, including the corresponding VAT as applicable (unless certain specific exceptions apply).
- Any expenses made in favor of shareholders or associates, other than those generated by payments for goods provided or services rendered at the market value
- Insurance premiums that are not related to the taxpayer's assets or its business scope, except for those relating to rented or leased assets or assets used as collateral for a business-related

loan

- Expenses with benefits granted to employees by means of equity instruments with share/cash settlements provided that the benefits are not taxed at individual level
- Expenses related to non-taxable income
- Service expenses, including management and consultancy expenses, rendered by a person located in a country with whom Romania has not concluded a tax treaty, in case the transactions are deemed as being artificial
- Expenses related to the decrease in the value of fixed assets/intangible assets upon revaluation
- Losses recorded when writing off uncollected bad or litigious receivables, for the part that is not covered by a provision, except for certain cases (e.g. bankruptcy of the debtor based on a final court decision, liquidation of the debtor with no successor, conclusion of insurance contracts, etc.)
- Expenses with taxes and charges due to non-government organizations or professional associations related to the business carried on by taxpayers and which exceed the RON equivalent of EUR 4,000 per annum
- Expenses with the change of fair value of real estate investments, in the event that, after a subsequent evaluation, a decrease in their value is booked by taxpayers that apply accounting regulations in accordance with the IFRS
- Expenses recorded in relation to an inactive taxpayer (with certain exceptions)
- Expenses from the valuation/revaluation of shares, in case the taxpayer is a company (Romanian company or tax resident in a country with whom Romania has concluded a double tax treaty) holding for an uninterrupted period of 1 year at least 10% from the share capital of the other company (Romanian company or tax resident in a country with whom Romania has concluded a double tax treaty)
- Expenses with interest, recorded as per the accounting regulations in accordance with the International Financial Reporting Standards, in case of fixed assets / intangible assets / stock acquired based on deferred payment contracts and
- Expenses with the amortization/ depreciation of fixed assets booked by taxpayers that apply accounting regulations in accordance with the IFRS, at the moment of transfer from the category of fixed assets held for the purpose of sale to the category of fixed assets held for the purpose of own activity

Tax losses

Tax losses may be carried forward for the following 7 consecutive years and are not updated for inflation purposes.

Tax losses recorded by entities that cease to exist as a result of a split or merger may be carried forward at the level of the new taxpayers or taxpayers that take over the patrimony of the merged or spun-off entity.

The carry-back of losses is not permitted.

Dividends

Starting 1 January 2016, the dividend tax rate is 5%.

Romanian legal entities distributing/paying dividends to their shareholders, Romanian legal entities, must withhold, declare and pay dividend tax by the 25th of the month following the distribution/ payment of dividend. In case of dividends distributed, which were not effectively paid by the end of the tax year, the dividend tax must be paid by 25th of the first month following the tax year end.

Dividends paid by a Romanian legal entity are exempt from dividend tax in the following cases:

• the recipient of the dividends (a Romanian legal entity) holds minimum 10% of the share capital of the Romanian legal entity distributing the dividends for an uninterrupted period of 1 year ending at the date of dividend payment and

• dividends are distributed to voluntary pension funds or to private pension funds, as well as to public administration bodies exercising the rights and obligations arising from the quality of state shareholder of the respective Romanian legal entity

For the tax treatment of dividends distributed/paid by Romanian legal entities to their non-resident shareholders, please see section Withholding tax below.

Other tax regimes

Micro-enterprise taxation regime

A newly set-up Romanian company (with certain exceptions) or an already incorporated Romanian company meeting certain conditions as of 31 December of the previous year (as listed below) is considered as a micro-enterprise income tax payer and is subject to tax on revenues derived (not subject to 16% profits tax on the taxable profit):

• the annual income level did not exceed EUR 1,000,000

• the share capital was not held by State/local authorities and

• it was not undergoing dissolution, followed by liquidation, registered in the trade registry or courts of law, as per the law.

The tax rates for the micro-enterprises are as follows:

- 3% for micro-enterprises having no employees

- 1% for micro-enterprises having 1 or more employees.

If, during the year, the condition regarding the annual income is not met anymore, the system for taxation of micro-enterprises should no longer apply and the company would become liable to pay profits tax from the beginning of the quarter when the threshold was exceeded.

Specific tax for hotels, restaurants and bars

From 1 January 2017, Romanian companies that undertake accommodation activities, restaurants/catering activities and bars/related drink serving activities (based on having as main or secondary NACE code one of the NACE codes related to such activities) and which do not qualify as micro-enterprise tax payers are subject to a specific tax, instead of profits tax. The amount of the specific tax due is computed based on specific formulas that include a fixed amount and other variables (i.e. depending on location, capacity, area and seasonality).

Withholding taxes

Withholding tax (WHT) is applicable on a number of payments made by Romanian tax residents to non-resident recipients.

Types of payments which are subject to withholding tax are presented in the table below.

Type of payment	WHT Rate* (%)
Royalties (see explanations below)	0/16
Interest (see explanations below)	0/16
Commissions	16
Dividends	0/5
Various services **	16
Gambling income	1
Other types of income (see explanations below)	16

** For certain types of income, the tax rate is increased to 50% in case such income is paid to an account from a country with whom Romania did not conclude a legal instrument for the exchange of information and the transaction is deemed as artificial.*

*** Covers all services rendered in Romania (except international transport) and management and consultancy services rendered worldwide.*

Interest and royalties

Generally, royalty and interest income (including interest capitalization or interest on current accounts, term deposits, deposit certificates, etc.) derived by non-residents is subject to 16% WHT in Romania (or subject to a tax rate available under a tax treaty, if more favorable).

Furthermore, under Interest & Royalties Directive implemented in the Romanian tax law, interest and royalty income derived from Romania by entities resident in another EU Member State is exempt from Romanian WHT, provided, inter-alia, that the beneficial owner of the interest income holds at least 25% of the value/number of the participation titles in the Romanian company paying the interest or royalty, for an uninterrupted period of at least 2 years ending at the moment when the interest or royalty is paid.

Dividends

Dividends paid to legal entities resident in another EU Member State are exempt from WHT in Romania, provided that some conditions are met, including the condition that the non-resident shareholder owns a minimum 10% of the share capital of the Romanian legal entity for an uninterrupted one year period ending at the date of dividend payment.

Unless such conditions are met, a 5% WHT rate applies to dividends paid to non-resident legal entities (or a tax rate available under a tax treaty, if more favorable).

Other types of income

The following income derived by non-residents is also subject to WHT in Romania:

- Income from commissions
- Income from sports and entertainment activities
- Remuneration received by foreign legal entities acting as administrator, founder or member of the Board of a Romanian legal entity
- Income from independent activities (e.g. doctors, lawyers, architects, etc.), in certain conditions
- Income from prizes
- Income from liquidation of a Romanian legal entity or from the reduction of its share capital, other than income derived from reimbursement of the capital contribution and
- Income from the transfer of the patrimony from the fiduciary to the non-resident beneficiary, within a trust (Ro “fiducie”) operation

Income not subject to WHT

Key types of income derived by non-residents that are not subject to WHT in Romania, include, inter-alia:

- Interest income from corporate bonds, if the interest is not paid to a related party and the bonds are issued based on a prospect approved by the relevant regulatory authority
- Income derived by non-resident collective placement bodies without corporate status and other assimilated entities, recognized as such by the relevant foreign authority, from the transfer of securities, respectively shares held, directly or indirectly, in a Romanian legal entity
- Income derived on foreign capital markets from transfer of securities issued by Romanian residents or shares held in a Romanian legal entity
- Interest on public debt instruments (in local and foreign currency) and interest related to instruments issued by the National Bank of Romania for monetary policy purposes
- Interest/dividends paid to pension funds, as defined according to the legislation of the EU Member States or of the of the European Economic Area States provided that there is in place a legal instrument for exchange of information purposes
- Income from transactions with derivative instruments used for carrying out operations for the management of risks associated to public government debt, income from trading State bonds and bonds issued by local authorities (in local and foreign currency, on the domestic or foreign capital markets), income from trading securities issued by NBR, etc.

Claiming tax treaties and EU Directives benefits

Romania has an extensive treaty network, with more than 85 signed agreements for the avoidance of double taxation, with favorable WHT rates.

In order to apply the more beneficial provisions of a tax treaty, the non-resident income beneficiary has to provide upon payment of the income a certificate of tax residence issued by the relevant foreign authority, valid for the date when the income was derived.

For applying the provisions of the EU Directives, the income beneficiary tax resident in EU should provide the Romanian company, in addition to a valid tax residency certificate, also with an attestation that the conditions required for the application of the European Union Directives were cumulatively fulfilled.

The WHT paid in excess may be refunded to the non-resident beneficiary of income, upon request.

Representative offices

Representative offices in Romania of non-resident legal entities are taxed on a yearly basis at a lump sum of RON 18,000, which is payable all at once by the end of February.

The representative offices are required to keep accounting books under Romanian law.

Transfer pricing

Transfer pricing (TP) deals with determination of the prices charged between associated companies belonging to the same group (intra-group pricing arrangements). Domestic and cross-border transactions between related parties must be carried out at arm's length. Taxpayers engaged in intercompany transactions have to prepare and present a local TP documentation file at the tax authorities' request.

The content of this file is broadly aligned with the content of the Master file and Local file under Action 13 of the OECD BEPS project (Base Erosion and Profit Shifting).

The deadlines for presenting the TP documentation file to the tax authorities depend on specific thresholds and category of taxpayer, as follows:

- Large taxpayers are required to prepare annual TP documentation for intercompany transactions exceeding the following thresholds (per transaction flow): EUR 200,000 for interest paid/received for financial services, EUR 250,000 for services provided/received, EUR 350,000 for acquisitions/sales of tangible or intangible assets. The annual TP documentation should be prepared by the date of the submission of the annual corporate income tax return. Such TP documentation may be requested during or outside a tax audit and has to be provided to the Romanian tax authorities only upon their request, within 10 days from the request date, but not earlier than 10 days from the deadline set for its preparation;
- Small and medium taxpayers as well as large taxpayers which perform intercompany transactions that do not exceed the above mentioned thresholds are required to prepare and present TP documentation for intercompany transactions exceeding the following thresholds (per transaction flow): EUR 50,000 for interest received/paid for financial services, EUR 50,000 for services provided/received, EUR 100,000 for acquisitions/sales of tangible or intangible assets. The TP documentation should be prepared and provided to the Romanian tax authorities only upon their request during a tax audit, within 30 to 60 days (with the possibility of a single extension of at most 30 days).

The TP documentation needs to be presented in Romanian language.

Value Added Tax

The regular VAT percentage is of 19% applicable for any taxable supplies of goods and/or services, except the one who does not meet the criteria for a discharge or for the VAT reduced quota. The reduced VAT quota is of 9% and 5% and applies for certain supplies of services and/or distribution of goods.

Romania introduced the VAT split payment mechanism in 2018. The mechanism involved special accounts for transfer of VAT funds and a system of restrictions and sanctions related to such funds.

A tax rebate of 5% of the profit tax/income of micro-enterprises is available to taxpayers that elect to apply the VAT split payment mechanism.

Import of goods

Goods brought from outside the Community and introduced into the EU territory in Romania are considered to be imports and fall within the scope of VAT, with certain exceptions (i.e., entry of goods under a qualifying customs duty suspension procedure).

Regime of deductions

A taxable person is allowed to deduct input VAT incurred on the purchases of goods or services, provided that the goods or services purchased will be used to perform operations allowing VAT deduction and it holds a correct invoice. VAT deduction is allowed also based on invoices sent by electronic means which comply with certain conditions.

Companies performing both taxable transactions and exempt transactions without credit shall deduct VAT based on the direct allocation method and pro rata mechanism. By exception, for purchases intended for investments, which are foreseen to be used both for transactions allowing VAT deduction and transactions which do not give rise to VAT deduction right, taxable persons are allowed to fully deduct input VAT incurred during the investment process and subsequently adjust the deducted VAT, observing the rules provided by the Tax Code. By way of exception from the above rules, a 50% cap shall apply to the right to deduct the input VAT related to the purchase, intra-Community acquisition, import, rental or leasing of motor road vehicles and the tax related to expenses borne in respect of vehicles owned or used by the taxable person, provided that such vehicles are not used exclusively for business purposes, except motor road vehicles having a maximum authorized weight of more than 3,500 kg and more than 9 passenger seats, driver's seat included.

However, there are certain exceptions when the VAT is fully deductible (vehicles used by sales and procurement agents , used for paid passenger transport including taxi, the ones used for supply of services against consideration, for interventions, security and protection, etc.). In case such vehicles are acquired with the view of further being object to leasing contracts a VAT deduction on lease installments is, in principle, allowed at the level of the lessor.

Social Security Contributions

Romanian citizens domiciled in Romania are considered to be Romanian tax residents and are taxed in Romania on their worldwide income. Foreigners and Romanian individuals without a Romanian domicile may be subject to taxation in Romania on worldwide income under certain circumstances.

Individuals liable to income tax fall into the following two categories:

• Residents, Romanian individuals domiciled in Romania for income obtained from any source, both from Romania and abroad, and residents other than Romanian individuals domiciled in Romania.

• Non-residents, who either:
- Carry out independent activities through a permanent establishment in Romania, for the net income attributable to the permanent establishment, or
- Carry out dependent activities in Romania, for the net income from such dependent activities, or
- Earn other types of income

Social security charges at the individual level

1. Social Security Contribution (pension) - 25% of the monthly gross income
2. Health fund contribution - 10% of the monthly gross income

Agreements for double taxation prevention

Citizens of the EU countries and Switzerland (as of 1 June 2009) benefit from coverage of medical expenses incurred on Romanian territory, as well as exemption from the social charges based on certificates of coverage issued according to the EU regulations on social security.

Also, certain exemptions may be applicable in case of non-EU citizens, if there is a Social Security Treaty in place between their home country and Romania and a certificate of coverage is obtained from them.

SOURCE: EY Romania external sources (BMI, EMIS), “Doing Business in Romania” – EY Romania market brochure. Oxford Economics, The Official Gazette (Monitorul Oficial).

Date:	22nd February 2018
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