

MOORE STEPHENS



Doing business in Romania 2018

Moore Stephens Europe

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Introduction

The Moore Stephens Europe *Doing Business In* series of guides have been prepared by Moore Stephens member firms in the relevant country in order to provide general information for persons contemplating doing business with or in the country concerned and/or individuals intending to live and work in that country temporarily or permanently.

Doing Business in Romania 2018 has been written for Moore Stephens Europe Ltd by SC Audit One srl, the Moore Stephens member firm in Romania. In addition to background facts about Romania, it includes relevant information on business operations and taxation matters. This Guide is intended to assist organisations that are considering establishing a business in Romania either as a separate entity or as a subsidiary of an existing foreign company. It will also be helpful to anyone planning to come to Romania to work and live there either on secondment or as a permanent life choice.

Unless otherwise noted, the information contained in this Guide is believed to be accurate as at 15 August 2018. However, general publications of this nature cannot be used and are not intended to be used as a substitute for professional guidance specific to the reader's particular circumstances.

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Our member firms' objective is simple: to be viewed as the first point of contact for all our clients' financial, advisory and compliance needs. They achieve this by providing sensible advice and tailored solutions to help their clients' commercial and personal goals. Moore Stephens member firms across the globe share common values: integrity, personal service, quality, knowledge and a global view.

Brussels, November 2018

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1. Romania at a glance

Basic facts

Romania is situated in south-eastern Europe and has a total land area of 238 391 km², being the ninth largest Member State of the European Union by land area. The country is bounded to the north by Ukraine, to the east by Moldova, to the south-east by the Black Sea, to the south by Bulgaria, to the southwest by Serbia, and to the west by Hungary. The Danube River forms much of the country's southern and south-western borders with Bulgaria and Serbia, and the Prut River divides Romania from its north-eastern neighbour, Moldova.

At the 2002 census, Romania had a population of 21.68 million, although the population was estimated at 19.04 million in 2011. Bucharest (*București* in Romanian), the capital and largest city of Romania with a population of approximately 1.7 million, is the commercial and industrial centre of the country. Other major cities include Constanța, the principal Romanian port on the Black Sea; Iași, a cultural and manufacturing centre; Timișoara, a textile, machinery, and chemical-manufacturing centre and Cluj-Napoca, one of the most important academic, cultural, industrial and business centres in Romania.

Ethnic Romanians constitute about 89% of the population. The largest minority groups are Hungarians (7% of the population, settled chiefly in Transylvania); Roma (2%) and Germans, who make up less than 1% of the population. Romania also has communities of Ukrainians, Rusyns, Russians, Serbs, Croats, Turks, Bulgarians, Tatars, and Slovaks.

The modern country of Romania was created in 1859, from the union of the provinces of Moldavia and Wallachia, formerly part of the Ottoman Empire. It became fully independent in 1878. Romania was a kingdom from 1881 to 1947. In 1948, the Communists seized control of Romania and modelled the government and economy after those of the Union of Soviet Socialist Republics (USSR). However, in the 1960s, Romania's Communist leaders began to distance themselves from the USSR and develop their own domestic and foreign policies. Romania's economy grew during the 1960s and 1970s, but by the 1980s most Romanians were suffering from food shortages and other economic hardships. In 1989 Romanians revolted against the repressive dictatorship of Nicolae Ceaușescu, the country's president and Communist Party leader. Ceaușescu was overthrown and executed, and a non-Communist government was installed. The first free multiparty elections took place in Romania in 1990.

Romania acceded to the European Union on 1 January 2007.

The principal religion of Romania is Christianity. The Romanian Orthodox Church is the largest religious organisation in the country, claiming 70% of the people as adherents. Approximately 6% of people, including much of the Hungarian population, are Roman Catholic. Another 6% of the population belong to various Protestant denominations. The country also contains significant numbers of Muslims and Jews.

Romania's official language is Romanian, a Romance language derived mainly from Latin. Minority languages include Hungarian, German, Turkish, Serbo-Croatian, and Romani (the language of the Roma). English and French are taught in many schools and are the most common second languages spoken in Romania.

Romania has a temperate climate with four distinct seasons. Temperatures are generally cooler in the mountains, while the hottest areas in summer are the lowlands of Wallachia, Moldavia, and the Dobruja (*Dobrogea*). The average daily temperature range in Bucharest is -7°C to 1°C in January and 16°C to 30°C in July. Rainfall is heaviest during the months of April, May, June, September, and October. Yearly rainfall averages about 650 mm, ranging from about 500 mm on the plains to about 1020 mm in the mountains. The climate of the Dobruja is extremely dry.

Politics and government

Romania is a semi-presidential parliamentary republic, whose head of state is the President, who is directly elected for a five-year term. That office is currently held by Klaus Werner Iohannis. The executive power is wielded by the Cabinet of Ministers, under Prime Minister Viorica Dăncilă, of the Social Democratic Party (PSD), who has been in office since January 2018. Romania has a bicameral parliament. Its lower house, called the Chamber of Deputies, has 332 seats, of which 18 are reserved for ethnic minorities; the upper house, or Senate, has 137 seats. The governing coalition is formed by the centre-left Social Democratic Party (PSD – the party of the Prime Minister), and The Alliance of Liberals and Democrats (ALDE – a party founded on 19 June 2015 from a merger of the Liberal Reformist Party (PLR) and Conservative Party (PC).



Currency, time zone, weights and measures

The basic monetary unit of Romania is the leu (plural, lei), divided into 100 bani. The ISO 4217 abbreviation of the leu is RON. At the time of going to press (late November 2018), the leu was quoted against the euro and the US dollar at 1 EUR = RON 4.6587 and 1 USD = RON 4.0965.

The time zone of Romania is GMT +2 hours (EEST – Eastern European Standard Time); Romania uses the metric system of measures, and temperature is measured in degrees Celsius.

2. Doing business

Limited-Liability Company (*societatea cu răspundere limitată SRL*)

In this form of company, the shareholders' liability is limited to the amount they have subscribed to the company's share capital. The share capital of an SRL must be at least RON 200, divided into shares with a minimum face value of RON 10 each. An SRL may be formed by a minimum of one shareholder and a maximum of fifty. These shareholders may include individuals and/or legal entities.

A person, either natural or legal, cannot be the sole shareholder of more than one SRL at any one time. If a person intends to form several companies, it is necessary for a minimum of one share to be held by another person or entity. Moreover, an SRL cannot have, as sole shareholder, another limited-liability company that is also owned by a single shareholder.

An SRL is managed by one or more directors who may have full or limited powers and who may be Romanian or foreign nationals. There is no distinction between companies operating with or without foreign share capital.

Joint-Stock Company (*societatea pe acțiuni SA*)

The minimum statutory capital for a joint-stock company is RON 90 000.

Shares must be held by a minimum of two shareholders, individuals and/or legal entities (there is no maximum limit), and can be open to either public or private participation. The minimum face value of one share is RON 0.1.

Pursuant to recent amendments, company shareholders may empower the directors to increase the share capital by a specified amount, provided it does not exceed half of the value of the existing share capital.

Two options have been provided for the management of joint-stock companies: the unitary system and the dual system.

Under the unitary system, the company is managed by one or several directors, always in an odd number, organised as a Board. The Board can assign management of the company to one or several managers. For those companies whose financial statements are subject to audit, such an assignment is compulsory and the minimum number of managers is three.

Under the dual (two-tier) system, the management of the company is carried out by an executive board and a supervisory board. The executive board carries out the day-to-day management of the company and reports to the supervisory board, which exerts permanent control over the executive board and reports to the General Meeting of Shareholders. Directors and other members of the executive board and the supervisory board may not conclude an employment agreement with the company; a management agreement is required instead.

Partnerships

Partnerships as a legal form are seldom used in Romania. The three kinds of partnerships provided by law that lead to the creation of an entity with legal personality are:

- General partnership (*societate în nume colectiv*)
- Limited partnership (*societate în comandită simplă*)
- Partnership limited by shares (*societate în comandită pe acțiuni*)

The partners in a general partnership and the active partners in a limited partnership have unlimited liability with respect to the liabilities of the partnership toward third parties. Among themselves, each partner is individually and collectively responsible for these obligations. A minimum capital is prescribed only for a partnership limited by shares (to wit, RON 90 000). No capital requirements are provided for the other forms of partnership.

Consortia

Domestic legislation allows for the conclusion of a joint-venture agreement (*contract de asociațiune în participațiune*).

Under such an agreement, parties act together for the accomplishment of a common business goal. This form of doing business in Romania does not create a legal entity. Generally, one party is in charge of the bookkeeping for the joint venture.

Societas Europaea (SE)

An SE may be created on registration in any of the EU Member States in accordance with Regulation (EC) No 2157/2001. European law requires Member States to treat an SE as if it were a public limited company formed in accordance with the law of the Member State in which it has its registered office.

By using an SE, businesses operating in several Member States can establish themselves as a single company, rather than following different rules for each country in which they have subsidiaries. SEs are only suitable for large companies.

Entities commonly used by foreign investors

Limited-liability companies are the most popular vehicles for business in Romania because of their simple administrative requirements, greater flexibility compared to other types of companies, and low capital requirements. However, joint-stock companies remain an attractive option for investors planning to list their companies on the stock exchange.

Representative Office

A representative office is usually set up by foreign companies in Romania to carry out non-commercial activities, such as advertising and market research, on behalf of the parent company. Representative offices cannot carry out commercial activities in Romania. In order to register a representative office, company officials should apply to the Ministry of Economy, Commerce and Business Environment and pay an annual fee of the RON equivalent of USD 1200 for the licence. Upon authorisation, the representative office must be also registered with the Ministry of Public Finances, and with the Romanian Chamber of Commerce and pay an annual business tax of RON 18 000.

Trusts

Romanian law does not recognise the concept of a trust.

Labour relations and working conditions

Romania's unemployment rate, calculated according to the criteria of the International Labour Office (BIM), in seasonally adjusted form, was estimated in March 2018 at 4.5%. The number of unemployed people (aged 15-74 years) was estimated in March 2018 at 415 000, on a downward trend.

Labour legislation is primarily regulated by the Labour Code (*Codul muncii*). The employment relationship must be governed by a contract of employment, which is generally concluded for an indefinite period, but there are also fixed-term contracts and the recently introduced notion of a day-labourer. In most cases, employers must also conclude a collective employment agreement, which is a written agreement concluded between the employer and the trade union representing the employees. These agreements contain clauses regarding working conditions, wages and other rights and obligations arising from employment relations. A collective employment agreement at company level is mandatory unless the employer has fewer than 21 employees. Employees have the right to join trade unions containing at least 15 members. The maximum working week is 40 hours, which may be extended by up to eight hours of overtime.

Romania has an extensive social security system, providing health insurance, maternity benefits, death grants, unemployment allowance, pension rights, insurance against accidents at work and occupational diseases. Non-contributory benefits include disability and orphan allowances, war widows' and war veterans' benefits, benefits for former political prisoners, war heroes etc.

Work permits, visas etc

EEA and Swiss Confederation citizens working in Romania as employees with a local/secondment contract do not have to obtain a work permit; these individuals have free access to the local labour market. For secondees, a procedure for notifying the competent authorities in this respect has been established.

As a general rule, other foreign nationals working in Romania need to apply for a Romanian work permit (before obtaining their residence permit). A foreign national in this connection is a person not holding Romanian, other EU, other EEA or Swiss Confederation citizenship.

The types of work permit that can be granted to foreign nationals are: authorisation for permanent workers, secondees, seasonal workers, probationary workers, cross-border workers, highly skilled workers, as well as nominal work permits.

In certain circumstances, some categories of foreign nationals can perform work activities without having previously obtained a work permit; these include family members of Romanian citizens and those employed by companies established in the EEA or the Swiss Confederation seconded to Romania.

Work permits

Unless exempted under law from the requirement, in order to conclude a local employment contract with a company in Romania, a foreign national has to first obtain a work permit and a long-stay visa. Foreign individuals become taxable in Romania from the first day, with salary tax and social charges being withheld monthly by the employer through the payroll.

Work permits for highly skilled workers

This type of authorisation can be granted to foreign workers who can demonstrate high professional qualifications etc and can be employed based on a local employment contract while respecting certain salary-related criteria, contract periods etc.

The stay in Romania for holders of such permits is conditional on their holding an EU Blue Card.

Work permit for secondment purposes

Foreign citizens can be seconded to Romania by companies located in third countries based on an employment contract for a total of one year within any five-year period.

In order to be seconded to Romania, the foreign national has first to obtain a work permit for secondees and a long-term visa (except for certain cases provided by law).

Individuals seconded to carry out dependent activities for Romanian companies are required to contribute to the health fund. Health fund contributions of 10% are payable once the right to temporary residence in Romania is extended (i.e. a stay of more than 90 days). Such individuals have also to pay salary tax (i.e. income tax and health fund contributions) on a monthly basis.

3. Finance and investment

Business regulation

Business in Romania is mainly regulated by the Romanian Companies Act (*Legea Societăților*), governing how the different types of company may be incorporated, governed, reorganised and dissolved. In 2008 a new Part was inserted relating to the operation of an SE in Romania.

In Romania there is a specialised institution for the protection of intellectual property – OSIM (State Office for Inventions and Trademarks – *Oficiul de Stat pentru Invenții și Mărci*) – which is concerned with patents, utility models, trademarks, industrial designs etc.

Banking and local finance

Romania's banking system consists of two levels of credit institution. On the one level are the Romanian National Bank and credit institutions. This system was introduced in December 1990, being the first step in the process of banking reform. Credit institutions are classified into five main groups: commercial banks, providing universal banking and investment services; mutual and cooperative banks, which have some restrictions in distribution of loans; savings banks for housing; local credit organisations; and banking companies, which buy resources through loans on the money market.

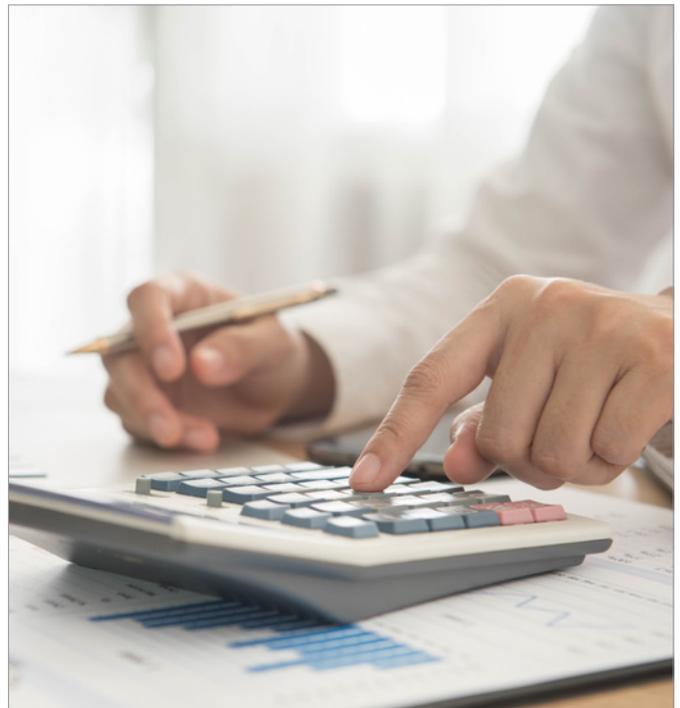
The Romanian market also includes non-banking financial institutions such as mutual assistance funds, pawnbrokers, financial-leasing companies, microfinance and mortgage companies, and companies specialising in commercial financing transactions.

Investment incentives

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-sized enterprises.

For companies, the most relevant operational programmes are:

- The Sectoral Operational Programme 'Increase of Economic Competitiveness' (POS CCE)
- The Regional Operational Programme (POR)
- The Sectoral Operational Programme 'Human Resources Development' (POS DRU)
- The National Programme for Rural Development (PNDR).



4. The accounting and audit environment

Accounting regulations

In recent years, the Romanian accounting system has seen continuous changes designed to improve, simplify and increase the accuracy of accounting transactions by aligning Romanian accounting regulations to EU standards.

The main normative Act governing the accounting system is the Accounting Act 82/1991 (*Legea contabilității*). This Act has been frequently amended by ordinances from the Ministry of Public Finances (MPF) aimed at aligning Romanian accounting standards with EU Directives and International Accounting Standards. The accounting profession is regulated by Government Ordinance 65/1994, as amended.

A wide range of persons, including commercial companies, the branches of foreign companies and public bodies must keep double-entry books of account under the accruals basis, whereas sole proprietorships may use single-entry cash-basis accounting and keep a cash book and an inventory ledger.

With effect from 1 January 2015, the Accounting Regulations and the Accounting Act were amended and the simplified accounting system was abolished. Order No 1802/2014 approving Accounting Regulations on annual financial statements and consolidated annual financial statements complies with the European Directive 2013/34/EU.

From 1 January 2012, credit institutions are required to apply International Financial Reporting Standards (IFRS). In connection with this, there are some specific transitional and ongoing rules for tax purposes.

Audit requirements

Annual financial statements prepared by legal entities in respect of which at least two of the criteria below are exceeded must undergo statutory independent audit:

- Total assets: RON 16 000 000
- Net turnover: RON 32 000 000
- Average number of employees during the year: 50

Annual financial statements prepared by public legal persons, as defined by law, also fall within the scope of the statutory audit.

Annual financial statements prepared by companies whose securities are admitted to trading on a regulated market as defined by the Capital Markets Act are also subject to statutory audit, regardless of their total assets, net turnover or average number of employees.

The applied auditing standards are issued by CAFR (the Romanian Chamber of Auditors – *Camera Auditorilor Financiari din România*) and reflect the International Standards on Auditing issued by the International Federation of Accountants (IFAC).

5. Overview of the tax system

Administration

Tax in Romania is administered by the National Agency for Fiscal Administration (*Agenția Națională de Administrare Fiscală – ANAF*), which is responsible to the Ministry of Public Finances.

Principal taxes

The principal taxes imposed in Romania are:

- Corporate income tax (*impozitul pe profit*)
- Micro-enterprise tax (*impozitul pe veniturile microîntreprinderilor*)
- Personal income tax (*impozitul pe venit*)
- Value added tax (*taxă pe valoarea adăugată*)
- Land tax (*impozitul pe teren*)
- Customs duty (*taxă vamală*)
- Excise duties (*accize*)

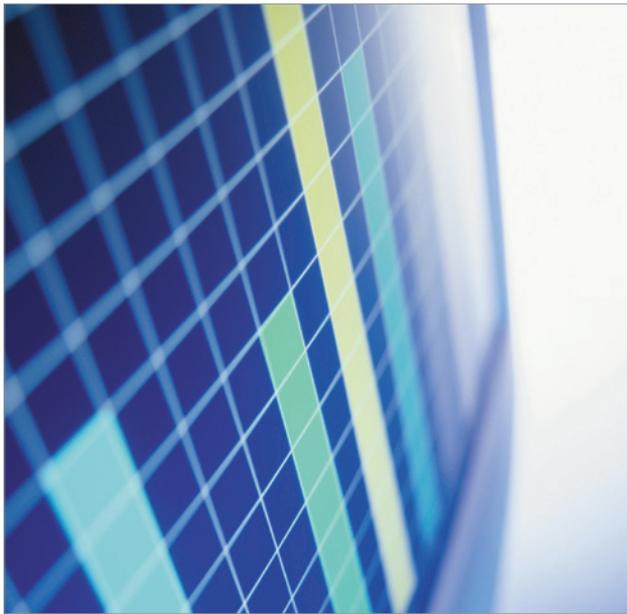
Appeals

Taxpayers are entitled to appeal to the relevant bodies within the tax authorities against either a fiscal administrative act or the tax authorities' failure to issue such an act. The Fiscal Procedures Code (*Codul de procedură fiscală*) regulates the form and content of the appeals to be lodged by taxpayers.

As a general rule, the appeal has to be submitted within 45 days of the date of communication of the fiscal administrative act. In some cases, the time-limit for appeals is extended to three months.

If dissatisfied with the decision of the tax authorities, the taxpayer may lodge an appeal with the court within six months of the receipt of the decision. On certain sufficiently serious grounds, the time limit may be extended to one year.

6. Taxes on business



Corporate income tax

Scope and extent

Corporate income tax is charged on the worldwide income and gains of Romanian-resident companies and on the Romanian-source profits of non-resident companies.

Partnerships

Partnerships are taxed at partner level. However, in a partnership between individuals and legal entities, each partner is liable to corporate income tax on the profit share attributable to that partner.

In this chapter, therefore, references to 'companies' should be taken to include references to such partnerships.

Company residence

A company is considered resident if it was incorporated in Romania, has its effective place of management in Romania, or was incorporated under European law but has its registered office (seat) in Romania.

Taxable entities

The following entities are subject to corporate income tax:

- Resident companies
- Foreign companies doing business in Romania through a Romanian permanent establishment
- Foreign companies that have their effective place of management in Romania.
- Foreign companies deriving income from or in connection with transactions in Romanian immovable property or from share transactions in Romanian companies.

The following taxpayers are exempt from the payment of corporate income tax:

- The State Treasury
- Public institutions in respect of public funds
- Romanian legal persons subject to micro-enterprise tax
- Romanian testamentary foundations ('will trusts')
- Churches and other registered religious bodies, in respect of certain income stipulated by law
- Accredited and authorised private education institutions
- Homeowners' and tenants' associations, in respect of income applied to the improvement of facilities and building efficiency, for maintenance and repair of common property
- The guarantee fund for deposits in the banking system, as established according to law
- The fund for compensation of investors, as established according to law
- The National Bank of Romania
- The fund for compensation of private pensions, as established according to law
- Non-profit organisations, trade unions and employers' associations are exempt from the payment of corporate income tax in respect of certain types of income

Taxable income

The taxable profit of a company is calculated as the difference between the income realised from any source and the expenditure incurred in obtaining taxable income throughout the tax year, adjusted for fiscal purposes by deducting non-taxable income and adding non deductible expenditure. Other elements similar to income and expenditure are also to be taken into account when calculating the taxable profit. As from 1 July 2013, consolidation of revenue and expenses pertaining to permanent establishments in Romania of the same foreign legal entity is allowed. One of the permanent establishments must be designated to fulfil reporting obligations to the National Agency for Fiscal Administration.

Transfer-pricing rules must be used to establish the market price for a transfer made between the foreign legal entity and its permanent establishment.

For taxpayers applying International Financial Reporting Standards (IFRS), there are specific computational rules.

The most relevant types of non-taxable income under the Romanian Fiscal Code (*Codul fiscal*) are:

- Dividends received by a Romanian company from another Romanian company
- Dividends received by a Romanian company from a company resident in another EU Member State, provided that the Romanian company has held at least 10% of the shares in the distributing company for an uninterrupted period of at least one year prior to the distribution date (this provision entered into force as from 1 January 2014)
- Income from the reversal or cancellation of provisions / expenses that were previously non-deductible, recovery of expenses that were previously non-deductible and income from the reversal or cancellation of interest and late-payment penalties that were previously non-deductible
- Income from the dissolution of a reserve registered as a result of a participation in kind in the capital of other legal entities
- Certain income of financial institutions arising from a conversion to IFRS
- Non-taxable income expressly provided for under agreements and memoranda
- Earnings from the sale or assignment of securities held in a Romanian company or in a foreign company resident in a state with which Romania has concluded a double tax treaty, provided that, at the date of sale or assignment, the taxpayer has held at least 10% of the securities for an uninterrupted period of at least one year prior to that date (this provision entered into force as from 1 January 2014)
- A liquidation distribution from another Romanian company or foreign company resident in a state with which Romania has concluded a double tax treaty, provided that, at the date of commencement of the liquidation process, the taxpayer has held at least 10% of the share capital of the legal entity for an uninterrupted period of at least one year prior to that date (this provision entered into force as from 1 January 2014)
- Compensation received in accordance with a decision of the European Court of Human Rights.

Corporate income tax is based solely on accounts drawn up under full double-entry accounting; no single-entry accounting is permissible for entities subject to corporate income tax.

Capital gains

Capital gains obtained by Romanian-resident companies are included in ordinary profit and taxed at 16%, if the holding requirements are not met. Capital losses related to the sale of shares are, in general, tax-deductible.

Mergers, spin-offs, transfers of assets and exchanges of shares between two Romanian companies should not give rise to a liability to tax on capital gains.

Deductions

As regards deductibility of expenditure, there are three categories: fully deductible expenditure, expenditure with limited deductibility and wholly non-deductible expenditure.

As a general rule, expenditure is deductible only if it is incurred for the purpose of carrying out business activity.

Expenditure with limited deductibility includes:

- Interest and foreign-exchange losses (see below)
- Accounting for depreciation of assets (limited for tax purposes). The Fiscal Code makes an explicit distinction between accounting depreciation and tax depreciation. For fixed assets, tax depreciation is based on the rules set out by the Fiscal Code and deductibility no longer depends on the level of depreciation recorded in the accounts (see below)
- Entertaining expenses are deductible up to the limit of 2% of the accounting profit, adjusted with the entertaining and corporate income tax. Expenses represented by VAT adjustments for goods offered as gifts that exceed the individual threshold of RON 100 are treated as entertaining expenses for corporate tax purposes.
- Welfare expenses (e.g. gifts to newborns, funeral grants etc) are deductible up to 2% of payroll
- Motor expenses on company cars weighing less than 3500 kg and with fewer than nine passenger seats (including the driver's seat) and used wholly or partly for private purposes. Exceptions to this rule are vehicles used in the following activities: intervention, repair, safety and security, courier services, transporting staff to and from workplaces, TV vans, cars used by sales agents and recruitment agents, paid transportation services and taxi activities, rental, driving schools

The following expenditure is not deductible at all in calculating taxable income:

- The cost of Romanian withholding tax borne on behalf of non-residents
- Interest, fines and penalties due to Romanian or foreign authorities
- Management fees, consultancy fees or fees for assistance or other kinds of services provided on a regular basis, if the beneficiary fails to justify that the services have been actually received and they are connected with the business activity carried out by the company.
- Sponsorships and scholarships. Companies may, however, claim a tax credit for this expenditure, amounting to the lower of 0.5% of turnover and 20% of the corporate income tax due
- Certain expenditure resulting from conversion to IFRS
- Expenditures incurred for the purpose of generating non-taxable income; certain rules apply.

Depreciation

Depreciation of fixed assets for tax purposes is based on the asset's 'fiscal value' and its estimated useful life. The fiscal value is generally the acquisition value or the cost of production and may need to be adjusted for revaluations according to accounting rules. Three depreciation methods are in use: the straight-line method, accelerated depreciation and the reducing-balance method.

As from 1 February 2013, depreciation for passenger vehicles with up to nine seats is limited to RON 1500/month for each vehicle, even if these were acquired before the entry into force of this rule. Car depreciation is fully deductible for several categories of vehicles, including:

- Vehicles used exclusively for emergency, protection and courier services
- Vehicles used by sales and purchasing agents
- Vehicles used for paid passenger transport
- Vehicles rented or granted to third parties under operational leasing contracts

Technical equipment, computers and peripherals may be depreciated by using any of the above depreciation methods. For any other fixed assets only the straight-line or reducing-balance method may be used (except for buildings to which only the straight-line method may be

applied). Starting from 2009, the accelerated depreciation method may also be applied to equipment used in research and development activities. Under the reducing-balance method, the straight-line rate is multiplied by a factor of between 1.5 and 2.5 to arrive at the reducing-balance rate. Under the accelerated depreciation method, up to 50% of the cost must be claimed in the first 12 months and the straight-line method used thereafter on the residue. See further under 'Tax incentives' below.

Dividends, interest and royalties

Dividend payments by a Romanian company to another Romanian company are subject to 5% withholding tax. However, domestic dividends are exempt from withholding tax where the recipient has held 10% or more of the shares of the company making the distribution for an uninterrupted period of at least one year prior to the payment date.

Dividends paid by a Romanian company or a company that has its headquarters in Romania to a company or a permanent establishment of a company resident in another EU Member State are tax-exempt if the non-resident company receiving the dividends:

- Has one of the legal forms listed in the Parent-Subsidiary Directive
- Is liable to a tax equivalent to corporate income tax and
- Has held a minimum of 10% of the shares in the Romanian company for an uninterrupted period of at least two years before the date of the payment.

Interest and royalty payments by Romanian companies to other Romanian companies are not subject to withholding tax but are subject to corporate income tax in the hands of the recipient. Interest and royalties paid to non-resident persons are subject to 16% withholding tax, unless (under application of the EU Interest and Royalties Directive) paid to a beneficial owner that is an associated company resident in the European Union or the European Economic Area or Switzerland. Companies are associated if one has held 25% or more of the shares in the other or the same third company has held 25% or more of the shares in both of them for an uninterrupted period of at least two years prior to the payment.

Group taxation

Groups of companies are not recognised for tax purposes in Romania. Members of a group must submit separate tax returns, and losses incurred by members of a group cannot be offset against profits obtained by other group members.

Losses

Tax losses incurred in taxable periods beginning in 2009 and thereafter may be carried forward for a maximum of seven years, and are set off against subsequent profits on a FIFO (first in, first out) basis. Previous losses could be carried forward for no more than five years. There is no carry-back of losses.

The carry-forward of fiscal losses from the transferor to the transferee in the event of mergers, divisions or spin-offs is available as from 1 October 2012.

The losses incurred by a permanent establishment of a Romanian company located in a state outside the European Economic Area not having a double tax treaty with Romania may only be deducted for tax purposes from the income derived by that permanent establishment abroad. These losses may be carried forward for no more than five years.

For foreign legal persons, losses may only be carried forward to the extent that they derive from income and expenditure attributable to their permanent establishment in Romania, and only for a period of seven years.

Withholding taxes

Non-resident companies

As has been noted, non-resident companies without a permanent establishment are subject to tax in Romania on Romanian-source income, and this tax is largely collected by means of final withholding from that income.

The following types of income are subject to withholding tax at 16% (unless an applicable double tax treaty applies to reduce or eliminate that rate):

- Interest
- Royalties
- Income from services performed in Romania
- Income obtained from management and consultancy services, irrespective of where the services are performed
- Commissions
- Income derived from liquidation of a Romanian legal entity

As from 1 January 2016, dividends are subject to withholding tax at 5% (unless an applicable double tax treaty applies to reduce or eliminate that rate).

An increased withholding tax rate of 50% will be applied for income paid to a country with which Romania has not signed an information exchange agreement or tax treaty providing for information exchange, if the transactions concerned are considered to be artificial. This category includes revenue from services, dividends, interest, commissions, royalties and the supply of independent personal services.

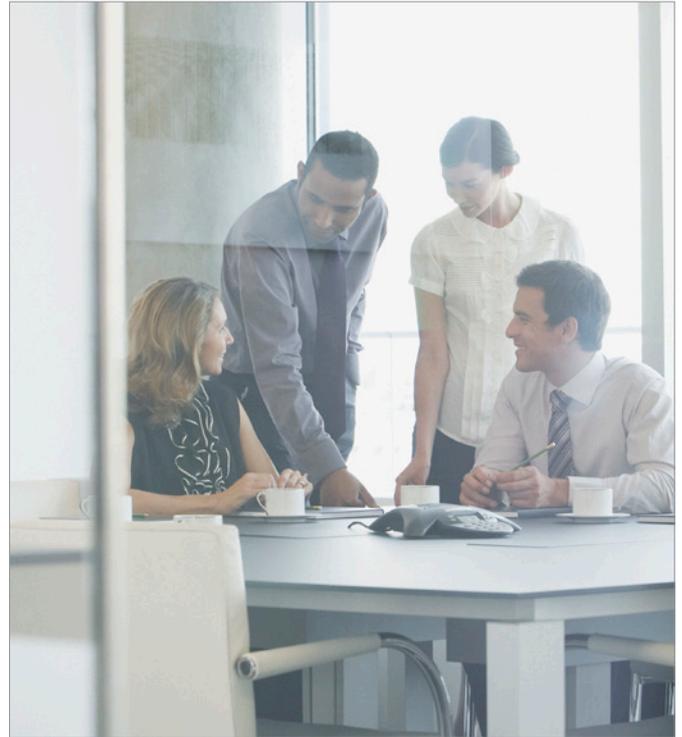
Dividends

Romania has fully implemented the EU Parent-Subsidiary Directive as from 1 January 2011. Consequently, for dividends paid by a Romanian company to a company resident in another EU Member State, an exemption from withholding tax is granted provided that the non-resident company has held at least 10% of the share capital of the Romanian company for a continuous period of at least one year prior to the date of payment of the dividend and is a company in the form prescribed by the Directive and fully subject to a corporate income tax.

Interest and royalties

Romania has also fully implemented the EU Interest and Royalties Directive as from 1 January 2011. Consequently, for interest and royalties paid by a Romanian company to a company resident in another EU Member State, an exemption on withholding tax is granted provided that the non-resident company has held at least 25% of the share capital of the Romanian company or vice versa or the same third company has held the 25% in both companies for a continuous period of at least two years prior to the date of payment of the interest or royalties, and all the relevant companies satisfy the requirements of the Directive as to legal form and liability to a corporate income tax.

In order for exemption to apply, non-residents are required to present a certificate of tax residence and a declaration stating compliance with the necessary requirements required by the European Directives.



Interest limitation rules

With effect from 1 January 2018, the former thin capitalisation rules have been replaced by the general interest-limitation rule from Article 4 of the EU Anti-Avoidance Directive (2016/1164/EU), from now on – ATAD. As Romania has transposed Article 4, a company, other than a stand-alone entity (see below), whose net borrowing costs (i.e. the excess of interest expense over interest and equivalent income) exceed EUR 200 000 may not deduct in any one year more of the excess than is represented by 10% of a base amount broadly equivalent to EBITDA. The base is arrived at by subtracting non-taxable revenue from the accounting profit and adding back corporate income tax, excess borrowing costs, depreciation and amortisation. Any balance of interest expense that may not be deducted in the current year under this rule may be carried forward indefinitely for deduction in subsequent years, subject to the same restrictions.

A stand-alone company, defined as a company that is not part of a consolidated group for financial-accounting purposes and has no associated enterprise or permanent establishment, is not subject to the interest-limitation rule.

General anti-abuse rule

Romania has also introduced the general anti-abuse rule ('GAAR') of Article 6 ATAD to provide that, for the purposes of calculating a company's liability to corporate tax, the tax authorities will ignore any arrangement or series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.

An arrangement or a series of arrangements will be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons that reflect economic reality.

The GAAR has effect from 1 January 2018.

Exit tax

Also with effect from 1 January 2018, Romania has introduced an exit tax on companies transferring their residence out of Romania, in line with Article 5 ATAD.

According to the rule, a company is subject to corporate income tax at 16% on an amount equal to the market value of the transferred assets, at the time of exit of the assets, less their cost for tax purposes, in any of the following circumstances:

- Where the company transfers assets from its head office in Romania to its permanent establishment in another Member State or in a third country in so far as Romania no longer has the right to tax the transferred assets due to the transfer
- Where the company transfers assets from its permanent establishment in Romania to its head office or another permanent establishment in another Member State or in a third country in so far as Romania no longer has the right to tax the transferred assets due to the transfer
- Where the company transfers its tax residence to another Member State or to a third country, except for those assets that remain effectively connected with a permanent establishment in Romania or
- Where the company transfers the business carried on by its permanent establishment from Romania to another Member State or to a third country in so far as Romania no longer has the right to tax the transferred assets due to the transfer.

If the difference between the market value of the transferred assets, at the time of exit of the assets, and their value for tax purposes results in a loss, it will be offset against gains of a similar nature.

A company is given the right to defer the payment of exit tax, by paying it in instalments over five years, under conditions included in the Fiscal Procedures Code, in any of the following circumstances:

- Where the company transfers assets from its head office in Romania to its permanent establishment in another Member State or in a third country that is party to the EEA Agreement in so far as Romania no longer has the right to tax the transferred assets due to the transfer;

- Where the company transfers assets from its permanent establishment in Romania to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement in so far as Romania no longer has the right to tax the transferred assets due to the transfer;
- Where the company transfers its tax residence from Romania to another Member State or to a third country that is party to the EEA Agreement, except for those assets which remain effectively connected with a permanent establishment in Romania; or
- Where the company transfers the business carried on in Romania by its permanent establishment to another Member State or a third country that is party to the EEA Agreement in so far as Romania no longer has the right to tax the transferred assets due to the transfer.

Deferred payment is discontinued and the tax debt crystallises in specific cases provided by law. In the case of transfer of assets, tax residence or the business carried on by a permanent establishment from another Member State to Romania, the value established by the Member State of the taxpayer or of the permanent establishment is the starting value of the assets for tax purposes, unless this does not reflect the market value.

The market value is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

Country-by-Country ('CbC') Reporting

A parent company or any other reporting entity resident in Romania which is part of a multinational group must submit a CbC report for each reporting year within 12 months of the last day of the group's reporting tax year. The reporting obligation applies to groups with annual worldwide consolidated revenues exceeding EUR 750 million. The first CbC report must be submitted for the tax year of the group commencing after 31 December 2015 and ending no later than 18 months later.

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 may adjust the taxpayer's income or expenditure, so as to reflect the market value.

Transactions with Romanian affiliated companies as well as transactions with non-resident related parties fall within the scope of the investigations regarding compliance with transfer-pricing legislation.

Traditional transfer-pricing methods (comparable uncontrolled price, 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.

Taxpayers engaged in transactions with related parties can request an Advance Pricing Agreement (APA) from the National Agency for Tax Administration.

Controlled foreign company (CFC) rules

Following the implementation of EU Directive 2016/1164, certain CFC rules have been entered into force in Romania. Thus, as from 1 January 2018, Romanian payers of corporate income tax that control a foreign company have to include certain income of the controlled foreign company in their taxable base.

According to the Romanian legislation, an entity that cumulatively meets the following criteria is deemed to be a controlled foreign company:

- The taxpayer by itself, or together with its associated enterprises, directly or indirectly holds more than 50% of the foreign entity's capital or is entitled to receive more than 50% of the profit of the foreign entity; and
- The corporate income tax actually paid on its profit by the foreign entity or permanent establishment is lower than the difference between the corporate income tax that would have been determined on the entity or permanent establishment under Romanian law and the corporate income tax actually paid on its profit by the foreign entity or permanent establishment.

The taxable base of the taxpayer will include certain non-distributed income of the CFC as follows: interest, royalties, dividends, income from insurance etc.



Tax incentives

Accelerated depreciation

According to the Romanian 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 asset's fiscal value may be deducted during the first year of usage, while the rest of the asset's value can be depreciated using the straight-line method over its remaining useful life.

Research and development

Special tax incentives are provided for expenses related to research and development activities; namely, companies can benefit from an additional deduction of 50% of the eligible expenses from research and development activities performed by them.

Tax incentives are granted for research and development activities that are carried out for the purposes of generating research results that can be exploited by the taxpayer. These activities may be carried on in Romania, as well as in Member States of the European Union or European Economic Area.

Research and development activities eligible for tax deduction should be activities of applied research and/or technological development, relevant to industrial or commercial activities carried out by the taxpayer.

Tax exemption for reinvested profits

Profits invested in new technological equipment (machinery, tools and working plant), computers and peripheral equipment, cash registers and machinery, control and invoicing machinery and devices, as well as in software and the right to use computer software, manufactured and/or acquired (including assets leased under a finance lease) and used for the purpose of carrying out business activity, are exempt from corporate income tax.

Technological equipment that is eligible for this incentive is that included in subgroup 2.1 of the Catalogue regarding the classification and the useful life of fixed assets. In order to benefit from this incentive, the items listed above must be used by the taxpayer for business purposes for more than half of their useful life, but for no longer than five years. If the items listed above are used for less than half of their useful life, the corporate income tax liability is recalculated. Consequently, interest and penalties for delay will be due from the taxpayer. The technological equipment to which this tax incentive applies may not be depreciated by using the accelerated method.

Micro-enterprise tax

See under 'Simplified tax régimes' below.

Industrial parks

Industrial parks are classified based on the activity performed (greenfield industrial park, agropark, technological, innovative etc.) and the authorisation method (industrial platform and existing industrial platform).

Romanian or foreign private legal entities may be park operators. As from 13 July 2013, industrial parks have to have a minimum of five hectares of land to be owned, used or administered as such by the founder, park operator or park residents for a minimum period of 10 years. 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:

- Exemption from land fees related to the industrial park land and various other fees
- Exemption from building tax on industrial park buildings
- Exemption, subject to local-authority approval, from local taxes
- Any other benefits that may be granted by local authorities in accordance with the law

Taxation of foreign operations

Partial unilateral double tax relief is provided by way of a credit for income taxes paid abroad, which cannot exceed the corporate income tax calculated by applying the Romanian rate (i.e. 16%) to taxable profits obtained abroad. The Romanian company should have available documentation attesting to the payment of the foreign tax.

Underlying foreign corporate income tax is not creditable against Romanian income tax, except for corporate income tax attributable to foreign permanent establishments or branches.

Tax credits may be obtained in Romania for taxes paid to a foreign state only if the double tax treaty concluded between Romania and the foreign state applies, and only if documentation is available proving that the taxes were paid in the foreign state concerned.

Tax rate

The standard corporate income tax rate is 16%.

The corporate tax due by nightclubs and gambling activities is the higher of 5% of the revenues obtained and 16% of the taxable profit.

Non-profit organisations, trade unions and employers' associations are exempt from the payment of corporate income tax on income derived from economic activities that do not exceed the RON equivalent of EUR 15 000 per year, but no more than 10% of the organisation's total income may qualify for exemption under this rule.

Simplified taxation

Micro-enterprise tax

The new micro-enterprise income tax régime is mandatory as from 1 February 2013.

Small companies are required to pay tax under the micro-enterprise régime if the following conditions are satisfied at the end of the previous year:

- Their annual income is lower than the RON equivalent of EUR 1 000 000
- Their shares are not held by the State or local authorities
- They are not undergoing liquidation, and are registered with the Trade Register or with the Court

The tax base for micro-enterprise tax is income derived from any source, excepting certain income stipulated by the Romanian Fiscal Code. The applicable tax rate is 3% if the company has no employees; otherwise the tax rate is 1%. Payment of the tax and filing of the returns is made quarterly, by the 25th of the month following the end of the quarter for which the tax is calculated.

Micro-enterprises cease to be subject to this régime from the fiscal year following the year in which they first fail to meet any of the conditions mentioned above, except where the income threshold is exceeded.

If during a fiscal year, a micro-enterprise exceeds the EUR 1 000 000 income threshold, it must pay profit tax under the ordinary rules on income and expenditure from the beginning of the quarter when the EUR 1 000 000 limit was exceeded. Calculation and payment of corporate tax starts with the quarter when the EUR 1 000 000 limit was exceeded.

As from 1 April 2018, a micro-enterprise may opt for the application of the profit tax regime if the company has a subscribed share capital of RON 45 000 and at least two employees.

Assessment procedure

A procedure for assessment by default of tax liabilities subject to self-assessment or withholding is applied for every fiscal obligation in the taxpayer's fiscal liabilities records, for each fiscal period for which tax returns were not submitted.

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

Returns and payments

Taxpayers (except for banks, non-profit organisations and taxpayers deriving most of their income from agriculture) have to declare and pay corporate income tax quarterly, by the 25th day of the first month following the first three calendar quarters, on the basis of current taxable income. The balance of tax has to be paid by 25 March of the following year.

Banks and branches of foreign banks in Romania pay quarterly instalments based on the previous year's inflation-adjusted final liability. From 1 January 2014, all other companies (except those specifically mentioned by law) may opt to do likewise. For the 2018 fiscal year, the consumer price index for updating advance-payment amounts for annual profit tax purposes is 103.1%.

Non-profit organisations and taxpayers obtaining income mainly from agricultural activities are exempt from making quarterly payments but must declare and pay the full liability for the previous year no later than 25 February.

The interest rate for late payment of tax is 0.02% for each day of delay. As from 1 January 2018, the late-payment penalty is 0.01% for each day of delay.

The late-payment penalty does not remove the obligation to pay late-payment interest. Starting with 1 January 2016, a non-declaration (or non-reporting) penalty of 0.08% per day of delay may be applied if the taxpayer does not report the tax liabilities or the tax liabilities are wrongly reported.

The taxpayer has a right to request a reimbursement in a period of five years starting with 1 January of the year following that in which the right to compensation or restitution arose. The taxpayer may claim interest on the amount unpaid within the legal term. If the refundable tax is not reimbursed within the legal term (i.e. 45 days), taxable persons are entitled to claim interest, currently set at 0.02% per day of delay.

Appeals

See Chapter 5.

Value added tax

Taxable entities

Any person supplying taxable goods or services in the course of business on a regular basis is considered a taxable person. The term 'business' refers to all independently performed activities by producers, traders and suppliers of services.

In addition, any private individual who receives an intra-EU supply of a new means of transport or a person who sells immovable property on a sufficiently regular basis is also deemed a taxable person.

A taxable person is considered to be established in Romania if he has established his main place of business in Romania or has a fixed establishment in Romania.

A taxable person whose main place of business is outside Romania has a fixed establishment in Romania if that person has sufficient technical and human resources in Romania to be able to make taxable deliveries of goods and/or services on a regular basis.

Taxable activities

Operations fall within the scope of VAT if the following conditions are fulfilled:

- They represent a supply of goods or services in return for a consideration
- The deemed place of supply is in Romania
- They are performed by taxable persons
- They result from economic activities

The import of goods, intra-EU acquisitions of goods and operations deemed as intra-EU acquisitions of goods are also within the scope of VAT.

The place of supply for goods and services is determined based on the same territoriality rules as those included in EU Directive 112/2006/EC as amended.

Exempt supplies

The rules follow the Directive closely. Thus, exemption with the right to deduct input VAT on related purchases ('zero-rating') applies to:

- The supply of goods shipped or transported outside the European Union
- Public transport and related services
- Intra-EU supplies of goods
- International transport of passengers
- Goods placed in free zones and free warehouses
- The supply of goods to a bonded warehouse, a VAT warehouse and related services

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

Exemption without the right to deduct input VAT on related purchases ('true exemption') applies to e.g.:

- A range of activities including banking, finance and insurance
- Medical, welfare and educational activities, if performed by licensed entities
- Rental and leasing operations involving immovable property, as well as the supply of old buildings
- The supply of land except building land

However, an option to tax may be exercised in respect of the last two mentioned supplies by submitting a written notification to the relevant tax office.

Standard, reduced and zero rates

The standard rate of VAT is 24%. All supplies are chargeable at this rate unless they are exempt or chargeable at one of the reduced rates.

9% reduced rate

This applies, *inter alia*, to:

- Drinking water; water for irrigation in agriculture
- Medicines for human and veterinary use
- Accommodation in hotels, guest houses etc
- Prostheses and orthopaedic products
- Bread, wheat and flour
- Food and drink (except alcoholic drinks) for human and animal consumption
- Live animals and birds from domestic species
- Seeds, plants and ingredients used in preparing food
- Products used to complete or replace foods
- Restaurant and catering services, except alcoholic drinks
- Draught beer served as part of restaurant and catering services

5% reduced rate

The reduced VAT rate of 5% applies, *inter alia*, to:

- Social housing for welfare purposes, 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
- Residential accommodation with a floor area of no more than 120 m² and a value of no more than RON 450 000
- Cinema tickets, admission to museums, historical monuments, botanical and zoological gardens, fairs and exhibitions
- Books, newspapers and periodicals
- Educational manuals

Simplification measures for domestic supplies

For transactions between taxable persons registered for VAT purposes in Romania involving certain kinds of goods and services, VAT is not actually paid, but only shown by the purchaser in the VAT return as both output and input tax (an internal reverse charge).

This reverse-charge mechanism applies, inter alia, to transactions involving:

- Building and land, as of 1 January 2016, if certain conditions are met
- Mobile phones, integrated circuit devices, game consoles, PC tablets and laptops, as of 1 January 2016, if certain conditions are met
- Waste materials or wood materials
- Wheat, spelt, rye, barley, corn, soya beans, rapeseed, sunflower and sugar beet
- The transfer of greenhouse-gas emission certificates
- The supply of energy to taxable persons
- Green certificates

Registration

The annual turnover threshold for VAT registration is the RON equivalent as at 1 January 2007 of EUR 65 000 (As from 1 April 2018, the threshold for VAT registration is of EUR 88 500 (i.e. RON 300 000)).

Businesses with a turnover below this threshold may register voluntarily.

A taxable person who is already registered for VAT purposes whose turnover in the preceding year did not exceed the turnover threshold may apply to deregister between the first and tenth day of each month following the return period used (month or quarter).

For companies established under the Romanian Companies Act, VAT registration is cancelled if the main shareholder (or where applicable, the sole shareholder) has previously committed criminal offences relating to tax.

With effect from 1 February 2015, a new VAT registration procedure entered into force. A specific form (088) was been introduced for the evaluation of the intention and capacity to carry out economic activities that imply taxable operations. A great deal of information is required and certain documents had to be attached to the form 088, making VAT registration a challenging or, sometimes impossible process. The form 088 has been eliminated starting with 1 February 2017, but the procedure for evaluation of the intention and capacity to carry out economic activities is still valid.

VAT registration is also cancelled for taxable persons who:

- Have not submitted their VAT returns for a period of six months or two consecutive calendar quarters or
- Have submitted blank VAT returns for a period of six months or two consecutive calendar quarters

Returns and payment

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

Taxpayers on a quarterly return period are required to switch to a monthly period if during the previous calendar year they made a taxable intra-Community acquisition in Romania.

VAT returns should be submitted to the tax authorities by the 25th day of the month following the end of the return period; the VAT is due on the same date. By derogation, the VAT returns for November have to be submitted by the 21st of December.

Inputs and outputs must be entered on an invoice basis, regardless of whether payment has been made on those invoices or not. As from 14 March 2013, inputs for values below EUR 100 may be recorded on cash-register receipts satisfying the requirements for simplified invoices and including the supplier's VAT registration number.

There is an optional cash basis for accounting for VAT for those taxable persons whose turnover in the previous year did not exceed RON 2.25 million. Under the cash-accounting system, output tax need not be recorded until the return period in which payment is received. By the same token, input tax may not be deducted until payment has been made to the supplier.

Taxable persons who opt for the cash-accounting system must apply it at least until the end of the calendar year in which they opted for it, except where their turnover in that year exceeds the threshold of RON 2.25 million.

Taxable persons not registered for VAT purposes are required to pay VAT and to submit a special VAT return on B2B services supplied by persons not established in Romania, which have a deemed place of supply in Romania. These obligations must be carried out by the 25th day of the month following that in which the services were supplied.

A recapitulative statement for all intra-Community taxable transactions carried out with taxable persons established in other Member States must normally be submitted monthly, not later than the 30th day of the month following that in which the intra-Community supply takes place.

Taxable persons must also submit an information statement of domestic transactions with other taxable persons, based on invoices or cash-register receipts satisfying the requirements for simplified invoices and including the supplier's VAT registration number. The statements have to be submitted together with the VAT return, by the 25th day of the month following the return period.

If a taxable person has an excess of inputs over outputs for a return period, the VAT refund box on the VAT return must be ticked to claim the refund. Alternatively, the balance can be carried forward against VAT liabilities reported in subsequent returns. The refund claims must be processed by the tax office within 45 days of being submitted.

Refunds will be made automatically if the taxable person is classified as 'low risk' by the tax authorities. Refunds to 'medium risk' taxpayers will be made subject to an examination of the relevant documents, but 'high risk' taxable persons will first have to undergo a tax audit.

In respect of returns filed for March 2014 and subsequent periods, returns with a credit position of less than RON 45 000 and filed by taxpayers that do not have defaults registered on their fiscal record and are not judged by the tax authorities to fall into a 'high risk' category are classified as 'low risk' and are eligible for a VAT refund within five days of filing the return.

If the tax due is not reimbursed within the legal term (i.e. 45 days), taxable persons are entitled to claim interest, currently set at 0.02% per day of delay.

7. Personal taxation

Income tax

Territoriality and residence

Individuals who are resident in Romania for tax purposes are liable to income tax on their worldwide income, whereas non-residents are taxable only on their Romanian-source income. Individuals who arrive in Romania from abroad have to complete a residence questionnaire within 30 days once their stay in the country has exceeded 183 days. The answers on the questionnaire will assist the tax authorities to determine the individual's residence status.

Changes have been made recently in the rules for determining individuals' residence status in Romania for tax purposes and in the reporting requirements for individuals both entering and leaving Romania.

Under the Romanian Fiscal Code, an individual is considered to be resident in Romania if any of the following four criteria is satisfied:

- The individual's permanent place of abode is in Romania
- The individual's centre of vital interests is in Romania
- The individual is physically present for more than 183 days during any 12 consecutive months ending in the current calendar year
- The individual is a Romanian national working abroad as a civil servant or otherwise on behalf of the Romanian government

As from 1 January 2012, the following rules apply to incoming individuals. For those who have proof of residence in a treaty-partner country, the rules under that treaty will determine when and if that individual becomes resident in Romania. Those rules look to permanent place of abode, centre of vital interests, habitual abode and nationality. All other individuals will become resident in Romania once their stay exceeds 183 days or their centre of vital interests becomes or is located in Romania.

An important change also applying since 1 January 2012 is that incoming individuals become liable to worldwide taxation from 1 January in the year following that in which they become resident. Previously, liability to worldwide taxation did not begin until the third year after that in which they became resident.

Similar rules apply to individuals leaving Romania, who must complete the questionnaire and submit it at least 30 days before departure. The tax authorities will then determine when and if the individual ceases to be resident in Romania. Residents moving to a jurisdiction without a tax treaty with Romania will remain taxable in Romania on their worldwide income for three years following their departure.

Persons liable

The following persons are subject to Romanian income tax:

- Resident persons
- Non-resident persons who carry out an independent activity through a permanent establishment in Romania
- Non-resident persons who carry out a dependent activity in Romania
- Non-resident persons who earn some other specified types of income derived in Romania

Partnerships

Partnerships are taxed at partner level. However, in a partnership between individuals and legal entities, each partner is liable to corporate income tax on the profit share attributable to that partner.

Structure of income tax

Income tax is charged on the following heads of income:

- Income from dependent services (employment)
- Income from pensions
- Income from independent services, including income from freelance activities and the liberal professions
- Income from intellectual property rights

- Income from commercial activities
- Rental income
- Income from agricultural activities
- Income from forestry and fishing, as of 1 February 2013
- Income from prizes and games of chance
- Income from investments
- Income from dealing in land

The main categories of tax-exempt income and gains are:

- Allowances and benefits paid from state social-security funds
- Salaries and pensions paid to seriously disabled individuals
- Educational grants for persons following a recognised course of study
- Sponsorship and donations
- Proceeds of sale of chattels (personal movable property), except where liable to tax on capital gains (e.g. shares)



The family unit

In Romania, there is no joint assessment of married couples. Each individual is assessed separately to income tax, regardless of his or her marital status. This applies equally to minor children. Family responsibilities and the existence of dependants is recognised in the system of personal allowances (see below).

Taxation of employment income

Taxable income from employment consists of salaries and wages, and most other forms of remuneration or benefits associated with employment. Salary is defined as income in cash and / or in kind received by individuals based on employment agreements.

Other types of remuneration treated as taxable include remuneration paid according to non-competition clauses and benefits such as meal vouchers, gift vouchers, childcare vouchers, holiday vouchers, amounts representing compensation payments (including termination payments), and the private use of company cars and telephones. Moreover, directors' and managers' remuneration is also normally treated as employment income.

Valuation of key benefits

The benefit of the private use of a motor vehicle provided by the employer is valued for tax purposes at 1.7% per month (equivalent to an annual rate of 20.4%) of the book value of the vehicle. In the case of leased vehicles, the benefit is valued at 1.7% per month of the rental payment. Travel from home to work is not regarded as private use.

Other benefits are generally valued at their cost to the employer or their market value.

Deductions

An employee's gross salary is reduced by the following items before deduction of income tax:

- Mandatory state social-security contributions
- Personal allowances
- Contributions to voluntary pension funds administered by authorised entities established in EU Member States or the European Economic Area, up to the RON equivalent of EUR 400 annually
- Trade-union subscriptions

Individuals with more than one employment receive personal allowances in respect of the main employment only.

Salary withholding tax

Tax is withheld by the employer from gross salary as reduced above at the flat rate of 10%. The flat rate was 16% before 1 January 2018. The employer accounts for the tax and employee social security contributions deducted monthly, and pays these over monthly together with employer social security contributions.

Employers from states that are not subject to the EU social security regulations or that have not concluded social security agreements with Romania (see Appendix 1) and which have not concluded agreements with their employees for reporting and paying social security contributions are required, starting 1 February 2013, to report, withhold and pay social security contributions due in Romania, either through a representative or an authorised person.

Example 1 salary tax calculation

(a) Gross salary		12 000
(b) Pension fund contribution ⁽¹⁾	3000	
(c) Health insurance ⁽²⁾	1200	
(d) Unemployment fund ⁽³⁾	-	
(e) Contributions to private pension funds ⁽⁴⁾	150	
(f) Taxable income		7650
(g) Income tax @ 10%		765
(h) Net salary		6885

⁽¹⁾ 25% of gross salary

⁽²⁾ 10% of gross salary

⁽³⁾ Eliminated as from 1 January 2018

⁽⁴⁾ Exempt from salary tax up to a maximum of EUR 400 = RON 1800 per year

Taxation of personal business income

With few exceptions, personal business income is taxable on a cash-accounting basis under a single-entry bookkeeping system.

Net income from independent activities is computed as the difference between gross turnover and business-related expenses.

In the case of certain professional income, payers must deduct 10% interim withholding tax, credited against the year's liability to income tax.

Losses of a business may be carried forward against future business income, for a maximum of seven further tax years. There is no set-off against other income and no carry-back of losses.

Taxation of investment income

Dividends are taxed at a flat 5% final withholding tax. Interest on Romanian national and local-government bonds is tax-free. Other interest is taxed at a flat rate 10% final withholding tax.

Gross annual income from rents 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 from rents is established by deducting a lump-sum 25% expense allowance from the gross income; alternatively, taxpayers may choose to deduct actual expenses. Net rental income is taxed at 10%.

Capital gains

Capital gains from the private disposal of movable tangible property are generally exempt, but there are some exceptions.

Capital gains from the transfer of shares and securities are taxable. In the case of listed securities, tax is payable in advance on a quarterly basis. It is incumbent on the taxpayer to calculate, declare and pay the tax, again at a rate of 10%. Gains from the transfer of unlisted securities are calculated and paid on a one-by-one basis as they arise. The obligation to calculate and pay lies in this case with the person responsible for paying over the proceeds of disposal, usually the broker.

Net annual losses resulting from the transfer of listed securities can be carried forward for up to seven consecutive tax years.

A 10% tax is applied on gains obtained by shareholders from the liquidation of a company. The company concerned is required to calculate, withhold and pay the tax.

Gains from the disposal of immovable property are subject to property transfer tax (see Chapter 8).

On capital gains, foreign individuals are generally subject to the same tax treatment as Romanian individuals. Depending on the details of the transaction, the taxpayer has the obligation to compute, withhold and pay the capital gain tax from the sale of shares. To fulfil this requirement, non-residents may appoint a Romanian fiscal representative or a tax agent.

Allowances and deductions

Deductions and credits

Taxpayers may redirect up to 3.5% of their annual income tax to nominated charities.

Allowances

Employees (but not taxpayers in general) are entitled to a limited number of personal allowances, but these vary according to income levels as well as personal circumstances, and are withdrawn entirely at a relatively low income level.

Employees with a gross salary not greater than RON 1950 per month are entitled to a personal allowance of a monthly maximum RON 510 plus RON 160 for each dependant. In case the number of dependants is at least four, the monthly allowance is of RON 800 for the dependants.

Employees earning more than RON 1950 but no more than EUR 3600 per month are entitled to a decreasing amount of allowances.

Employees earning over RON 3600 per month cease to be entitled to any allowances; nor are personal allowances available to taxpayers not having employee status.

Dependants for these purposes are a spouse, children or other family members, relatives of the taxpayer or of the taxpayer's spouse to the second degree inclusively, with monthly incomes, taxable or non-taxable, of less than RON 510.

If a person is supported by two or more taxpayers, the amount representing the personal deduction is granted to one taxpayer only, as the parties agree.

Tax rates

Virtually all taxable income and gains are taxed at a single, flat rate of 10%.

With effect from 1 January 2015, the following rates apply to income from gambling activities that is not subject to income tax withheld at source:

- 1% for amounts not exceeding the equivalent of EUR 66 750
- RON 667.50 + 16% for the amount exceeding RON 66 750 for amounts between RON 66 750 and RON 445 000
- RON 61 187.50 + 25% for the amount exceeding RON 445 000.

No tax has to be paid for income derived from participating in casino games, poker clubs, slot machines or purchasing lottery tickets under the non-taxable amount of RON 66 750 for each gross prize received.

Returns and payments

With certain exceptions, taxpayers have to file an annual income tax return with the tax authorities by 15 March of the following year. A single return for personal income tax and social security liabilities due by individuals has been implemented starting 2018. By derogation, the submission deadline for the return related to the income obtained in 2017 was 31 July 2018. Taxpayers whose sole source of income throughout the entire tax year is from employment do not need to file returns, as their tax liabilities should have been settled by payroll deduction.

Expatriates employed abroad but performing an activity in Romania should file monthly tax returns and pay monthly tax in Romania by the 25th of the following month if certain conditions are met.

Non-filing of tax returns by the respective deadline may attract fines from RON 500 to RON 1000 for individuals.

The late-payment interest and penalties applicable for individuals are the same as for companies.

Additionally, for failure to withhold or failure to pay taxes withheld at source (taxes on salary income, dividend income and non-residents' income), a fine ranging between RON 1000 and RON 6000 may be applied.

Appeals

See Chapter 5.

Inheritance and gift tax(es)

Romania does not levy a tax on inheritances or gifts, but if the administration of an estate lasts for more than two years, a penalty tax of 1% of the estate is charged.

There is no tax on lifetime gifts.

Wealth tax

There is no wealth tax.

8. Other taxes

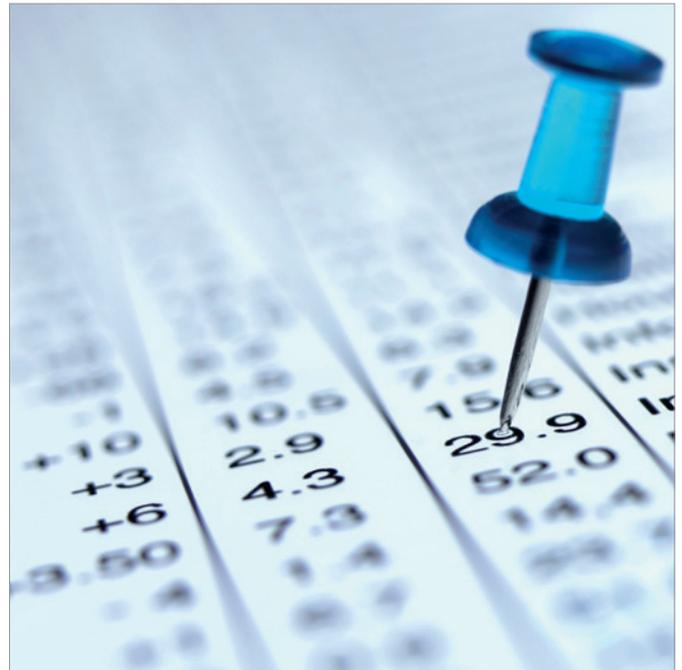
Immovable property tax

The calculation of tax due differs as between residential and non-residential buildings and as between built and non-developed land:

- Residential buildings: the tax rate will be set between 0.08% and 0.2%; in the case of individuals, the tax rate is applied to the taxable value as determined by specific tables provided by the Romanian Fiscal Code; in the case of legal entities, the tax rate is applied to the value resulted from a specific appraisal.
- Non-residential buildings: the tax rate will be set between 0.2% and 1.3%. In the case of a building used for agricultural purposes, the tax rate is 0.4%.

If a building has not been revalued within the last three years, the tax rate is 5%.

Owners of land are subject to land tax established at a fixed amount per square metre, depending on the nature 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 authority.



Both building tax and land tax fall due twice a year, in equal instalments, on 31 March and 30 September. A tax reduction of up to 10% is granted to individuals for full advance payment of this tax by 31 March.

The penalty for the late payment of tax liabilities due to local authorities is as follows: late payment charges of 2% are due, computed to the amount of outstanding tax liabilities, assessed for each month or fraction of the month, starting the day immediately following the deadline and up to their settlement.

Immovable-property transfer tax

Income from the transfer of immovable property owned by individuals is taxed by applying the rate of 3% to the taxable value. The taxable value is calculated by subtracting the non-taxable amount of RON 450 000 from the value of the transaction.

No tax is due for ownership of estates acquired under special laws, for gifts 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).

Tax due for transfer of ownership is withheld by the public notary and calculated at the taxable value determined based on the value declared by 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 Public Notaries, the Romanian Tax Office is notified by the Public Notary. The tax is to be remitted by the 25th of the month following that when the income was withheld.

Other significant taxes

For certain activities (e.g. selling ferrous and non-ferrous waste, dangerous substances, activities that generate polluting emissions, releasing packaging materials / tyres on the market) companies have to pay contributions and taxes to the Environmental Fund.

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 due on 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 in compliance with the air-emissions methodologies approved by the environmental authorities.

With effect from 1 January 2011 a RON 2/litre tax was introduced for industrial oils and lubricants placed on the market; the tax applied to the difference between the annual administrative obligations and the administrative quantities of used oil.

With effect from 1 January 2014, the tax is charged at a rate of RON 0.30/kg, on economic operators who introduce such products onto the national market and it has to be distinctly mentioned on all sales invoices for the entire chain, up to the final consumer. The measurement unit for oils is the kilogram. If the unit of measurement is expressed in litres, conversion is necessary, using the density of the type of oil or an average density of 0.9 kg/l.

9. Social security contributions

Employee and employer contributions

Thresholds and rates

As of 1 January 2018, the liability for social contributions has been almost entirely transferred from the employer to the employee. Furthermore, several contributions have been eliminated as it is shown in the Table 1. Contribution rates are as shown in Table 1.

Table 1

Type of contribution	Paid by employer (%)	Paid by employee (%)	Total (%)
Pension fund insurance (for normal working conditions)	-	25	25
Pension fund insurance (for special working conditions)	-	4	4
Pension fund insurance (for particularly heavy working conditions)	-	8	8
Health insurance	-	10	10
Unemployment insurance ¹	-	-	-
Contribution for medical leave and indemnity ¹	-	-	-
Accidents at work and occupational illness insurance ¹	-	-	-
Employee salaries guarantee fund ¹	-	-	-
Precautionary contribution for work ²	2.25	-	2.25
Total	2.25	47	49.25

¹ Eliminated as of 1 January 2018

² Entered into force as of 1 January 2018

Self-employed contributions

Table 2

Type of contribution	Paid by individuals (%)	Paid by payer of income (%)	Mandatory/optional
Pension fund insurance ¹ (for normal working conditions)	25	25	mandatory/optional
Health insurance ¹	10	10	mandatory/optional
Unemployment insurance ²	-	-	-
Contribution for medical leave and indemnity ²	-	-	-
Accidents at work and occupational illness insurance ²	-	-	-
Total mandatory contribution	35	35	-

¹ The contribution ceiling is capped at 12 times the national minimum gross monthly salary at national level (i.e. 12 x RON 1900 = RON 22 800 in 2018). No further contributions are payable on earnings in excess of this amount.

² Eliminated as of 1 January 2018.

The self-employed must normally pay contributions before the 15 March of the next year for the current year. For payments made before 15 December 2018, a discount of 5% applies.

10. Moore Stephens in Romania

Moore Stephens is represented in Romania by two firms.

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Appendix I: Double tax treaties

Romania has double taxation treaties with the following jurisdictions:

Albania	Indonesia	Russia
Algeria	Iran	San Marino
Armenia	Ireland	Saudi Arabia
Australia	Israel	Serbia ²
Austria	Italy	Singapore
Azerbaijan	Japan	Slovakia
Bangladesh	Jordan	Slovenia
Belarus	Kazakhstan	South Africa
Belgium	Kuwait	South Korea
Bosnia Herzegovina ¹	Latvia	Spain
Bulgaria	Lebanon	Sri Lanka
Canada	Lithuania	Sudan
China	Luxembourg	Sweden
Croatia	Macedonia	Switzerland
Cyprus	Malaysia	Syria
Czech Republic	Malta	Tajikistan
Denmark	Mexico	Thailand
Ecuador	Moldova	Tunisia
Egypt	Montenegro ²	Turkey
Estonia	Morocco	Turkmenistan
Ethiopia	Namibia	Ukraine
Finland	Netherlands	United Arab Emirates
France	Nigeria	United Kingdom
Georgia	North Korea	United States
Germany	Norway	Uzbekistan
Greece	Pakistan	Uruguay
Hong Kong	Philippines	Vietnam
Hungary	Poland	Zambia
Iceland	Portugal	
India	Qatar	

¹ Treaty with the former Federal Socialist Republic of Yugoslavia

² Treaty with the former Federal Republic of Yugoslavia (Serbia and Montenegro).

Treaty has also been concluded with Costa Rica, but this is not yet in force.

Withholding tax rates under the above treaties are as shown in the table below.

	Interest (%)	Dividends (%)	Royalties (%)	Commissions (%)
Non-Treaty	16	5	16	16
EU-Parent-Subsidiary Directive	-	0 ¹	-	-
EU-Interest and Royalties Directive	0 ¹	-	0 ¹	-
Albania	10	10/15	15	15
Algeria	15	15	15	-
Armenia	10	5/10	10	15
Australia	10	5/15	10	-
Austria	0/3	0/5	3	-
Azerbaijan	8	5/10	10	-
Bangladesh	10	10/15	10	-
Belarus	10	10	15	-
Belgium	10	5/15	5	5
Bosnia Herzegovina	7	5/10	5	-
Bulgaria	5	5	5	-
Canada	10	5/15	5/10	-
China	3	3	3	-
Croatia	10	5	10	-
Cyprus	10	10	5	5
Czech Republic	7	10	10	-
Denmark	10	10/15	10	4
Ecuador	10	15	10	10
Egypt	15	10	15	15
Estonia	10	10	10	2
Ethiopia	15	10	15	-
Finland	5	5	2.5/5	-
France	10	10	10	-
Georgia	10	8	5	5
Germany	0/3	5/15	3	-
Greece	10	25/45	5/7	5
Hong Kong	3	3/5	3	-
Hungary	15	5/15	10	5
Iceland	3	5/10	5	-
India	10	10	10	-
Indonesia	12.5	12.5/15	12.5/15	10
Iran	8	10	10	-
Ireland	3	3	3	-
Israel	10/5	15	10	-

	Interest (%)	Dividends (%)	Royalties (%)	Commissions (%)
Italy	5	0/5	5	-
Japan	10	10	15/10	-
Jordan	12.5	15	15	-
Kazakhstan	10	10	10	10
Kuwait	1	1	20	-
Latvia	10	10	10	2
Lebanon	5	5	5	-
Lithuania	10	10	10	2
Luxembourg	0/10	5/15	10	5
Macedonia	10	5	10	-
Malaysia	15	10	12	according to domestic legislation
Malta	5	5/30	5	10
Mexico	10	15	15	-
Moldova	10	10	10/15	-
Montenegro	10	10	10	10
Morocco	10	10	10	10
Namibia	15	15	15	-
Netherlands	0/3	0/5/15	0/3	-
Nigeria	12.5	12.5	12.5	according to domestic legislation
North Korea	10	10	10	-
Norway	5	5/10	5	-
Pakistan	10	10	12.5	10
Philippines	10/15	10/15	10/15/25	-
Poland	10	5/15	10	10
Portugal	10	10/15	10	-
Qatar	3	3	5	3
Russian Federation	15	15	10	-
San Marino	3	0/5/10	3	-
Serbia	10	10	10	10
Singapore	5	5	5	-
Slovakia	10	10	10/15	-
Slovenia	5	5	5	-
South Africa	15	15	15	-
South Korea	0/10	7/10	7/10	10
Spain	10	10/15	10	5
Sri Lanka	10	12.5	10	10
Sudan	5	5/10	5	-

	Interest (%)	Dividends (%)	Royalties (%)	Commissions (%)
Sweden	10	10	10	10
Switzerland	10	10	0	-
Syria	10	5/10	12	-
Tajikistan	5	5/10	10	-
Thailand	10/20/25	15/20	15	10
Tunisia	10	12	12	4
Turkey	10	15	10	0
Turkmenistan	10	10	15	-
Ukraine	10	10/15	10/15	-
United Arab Emirates	3	3	3	-
United Kingdom	10	10/15	15/10	12.5
United States	10	10	15/10	-
Uruguay	10	5/10	10	-
Uzbekistan	10	10	10	-
Vietnam	10	15	15	-
Zambia	10	10	15	-

¹ If certain conditions are satisfied

Estate tax treaties

Romania has no double tax treaties for taxes on inheritances or gifts.

Treaties on administrative assistance

Within the European Union, mutual administrative assistance is governed by the Directives on exchange of information (2011/16/EU) as amended, together with its implementing Regulation (Regulation (EU) No 1156/2012), and the recovery of claims (10/24/EC). As regards VAT, the same function is performed by Council Regulation (EU) No 904/2010. Outside the European Union, Romania has to date concluded only a single agreement on exchange of information, that with Guernsey.

Social security agreements

The interaction of national social security systems within the European Economic Area is governed by EU Regulations which also extend, by agreement (and with some differences), to Switzerland. Romania has pre-existing bilateral agreements with some of these states. These have largely been superseded by the EU regulations, but may be applied where, occasionally, they give a more beneficial result. The following non-EEA countries have social security agreements with Romania, the terms of which differ from case to case.

Albania	Libya	Peru
Algeria	Macedonia	Russia ¹
Armenia ¹	Moldova	South Korea
Canada	Morocco	Turkey
Israel	North Korea	

¹ Agreement concluded with the former USSR

Appendix 2: Moore Stephens around the world

Moore Stephens member firms may be found in 106 countries and territories around the world, with correspondent firms in another ten.

Albania	Ecuador	Liechtenstein*	Saudi Arabia
Argentina	Egypt	Lithuania	Serbia
Australia	El Salvador*	Luxembourg	Seychelles
Austria	Finland	Macedonia	Sierra Leone
Azerbaijan	France	Malaysia	Singapore
Bahamas	Germany	Malta	Slovakia
Bahrain	Ghana*	Mauritius	South Africa
Bangladesh	Gibraltar	Mexico	South Korea
Belgium	Greece	Moldova	Spain
Belize	Guatemala	Monaco	Sri Lanka*
Bermuda	Guernsey	Mongolia*	Suriname
Bolivia	Honduras	Morocco	Sweden
Brazil	Hong Kong	Nepal*	Switzerland
British Virgin Islands	Hungary	Netherlands	Taiwan
Bulgaria	India	New Zealand	Tajikistan*
Burundi	Indonesia	Nicaragua	Thailand
Cambodia*	Iraq	Nigeria	Tunisia
Canada	Ireland	Norway	Turkey
Cayman Islands	Isle of Man	Oman	Uganda
Chile	Israel	Pakistan	Ukraine
China	Italy	Panama*	United Arab Emirates
Colombia	Japan	Paraguay	United Kingdom
DR Congo	Jersey	Peru	United States
Costa Rica	Jordan	Philippines	Uruguay
Croatia	Kazakhstan	Poland	Venezuela
Cyprus	Kenya	Portugal	Vietnam
Czech Republic	Kuwait	Qatar	Yemen
Denmark	Latvia	Romania	Zambia
Dominican Republic	Lebanon	Russia	Zimbabwe*

*denotes a correspondent firm only

For more detail, see www.moorestephens.com under 'Locations'.

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