Doing Business Guide

Romania

2nd Edition

Boscolo & Partners

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About This Booklet

This booklet has been produced by Boscolo & Partners for the benefit of its clients and associate offices worldwide who are interested in doing business in Romania.

Its main purpose is to provide a broad overview of the various things that should be considered by organisations considering setting-up business in Romania.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in Romania or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

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Contents

Introduction

Country Profile

Population

Population: 19,042,936 (settled population) as at 2 February 2012, putting Romania in ninth place in Europe. A further 910,264 ethnic Romanians and persons originally from Romania live abroad.

Density: 79.88 inhabitants/km^2.

Distribution by age range: Ages 0–14, 16.2%; 15–64, 69.4%; ≥65, 14%.

Urban population: 52.8%.

Ethnic groups: 88.6% Romanians; 6.5% Hungarians; 0.19% Germans; 4.71% Roma and others.

Languages: 91% of the population indicate Romanian as their mother tongue; 6.5% Magyar; 1.1% Romani (gypsy dialect); 0.3 Ukrainian; 0.2% German.

Religion: 86.8% Orthodox; 4.7% Roman Catholic; 3.2% Reformed; 1.5% Pentecostal; 0.9% Greek Catholic; 0.3% Uniate; 0.3% Muslim.

Time zone: GMT +2.

Culture: Latin. Romanian is a Romance language, related to Italian.

Geography

Area: 237,500 km^2 (total); 230,340 km^2 (excluding inland water bodies).

Position: Southeastern Europe, on the Black Sea.

Bordering countries: Hungary (to the west and north-west), Ukraine (to the east and north), Republic of Moldova (to the east and north-east), Bulgaria (to the south) and Serbia (to the south-west and west). Also borders the Black Sea (to the south-east).

Border: Approx. 3,175 km, around one-third of which is on land and two-thirds formed by rivers (the Tisa, the Prut and the Danube) and the Black Sea.

Climate: Moderate – continental.

Capital: Bucharest, with a population of over 2,000,000. Together, the cities of Romania are home to more than half of the country's population, with 25 cities having in excess of 100,000 inhabitants, representing 57.6% of the urban population. The cities of Timişoara, Constanta, Braşov, Craiova, Cluj-Napoca and Iaşi have more than 300,000 inhabitants. The average population of a province is 500,000.

Structure

Status: Semi-presidential republic.

Head of state: President Traian Băsescu (b. 1951), in office since December 2004 and re-elected in December 2010 for a further 5 years.

Head of government: Prime Minister Victor Ponta (b. 1972), in office since May 2012, with a number of government reshuffles.

Administrative divisions: 41 counties (Judets), 1 municipality (Bucharest), 313 cities and 2,618 communes with 13,090 villages.

International organisations: Member state of the UN (since 1955); member of UNESCO (since 1956), the Council of Europe (since 1993), NATO (since 2004) and the European Union (since 2007).

Transport

Rail network: 11,382 km, of which around 4,000 km is electrified.

Road network: Romania has approximately 200,000 km of public roadway, of which 313 km is motorway, 14,700 km is A-roads and 36,000 km main roads, with the remainder being made up of local roads. Many of the A-roads used by international traffic have been modernised or are undergoing modernisation.

Airports: There are 17 altogether; the main airport is Bucharest Otopeni, which handles 75% of international traffic.

Main ports: Ships with up to a maximum depth of 7 m can navigate downriver of the Port of Braila (to the east), while the Danube can accommodate ships with a maximum depth of 2.5 m. Transportation by ship between the seaport of Constanţa, (in the south-west) and Rotterdam follows the Danube–Black Sea canal and the Rhine–Main–Danube Canal. Romania has 35 ports: three seaports, six sea-river ports and 26 river ports. The main port is Constanţa, which handles around 60% of foreign commercial traffic.

It should be pointed out that Romania sits at the junction of three European transport corridors of the future:

- Berlin – Prague – Budapest – Arad – Bucharest – Constanţa – Istanbul/Thessaloniki (corridor 4) (road traffic and rail)
- Constanţa – Basarabi – Danube – Rhine (corridor 7) (river corridor)
- Helsinki – Moscow/Kiev – Odessa – Bucharest/Constanţa – Alessandria (corridor 9 at the planning phase; road traffic and rail).

Demographics

Average life expectancy at birth: Men 69.8; women 77.4.

Births: 10.69 per 1,000 inhabitants.

Deaths: 11.69 per 1,000 inhabitants.

Natural growth: -0.11%.

Infant mortality rate: 14 per 1,000 live births.

Education

Compulsory education: Age 7–14 years.

Literacy: 97.3%.

Graduates: 1.37 million (7% of the total).

Economy and Markets

Overview

Seven years after the entry into the European Union (EU), and after an initial period that witnessed a considerable amount of foreign investment in the country, Romania is still feeling considerable effects of the recession that has taken its toll on the area and its markets.

In contrast to the position at the end of 2012, there has been an upturn in direct foreign investment (DFI). In 2013, the DFI increased by 26.3% compared with 2012, amounting to €2.7 billion in real terms. A relative negative aspect was unemployment, which reached 7.3% in 2013 compared with 7.0% in 2012.

The gross domestic product (GDP) increased by 1.6% in 2013 compared with the previous year, in real terms.

The structural funds (including the cohesion funds) allocated to Romania as part of the EU budget for the period 2007–13 amount to €19.6 billion, plus national co-financing of around €9 billion. More than 7 years from joining the EU, Romania has a low structural fund and cohesion fund absorption rate: 8.36% of the total financing allocated in the period 2007–13. In real terms, the total amount absorbed is only €1.65 billion (including pre-financing).

However, during 2012 and 2013 the absorption rate has significantly improved, reaching 29.87% at the end of 2013.

Main Macroeconomic Indicators

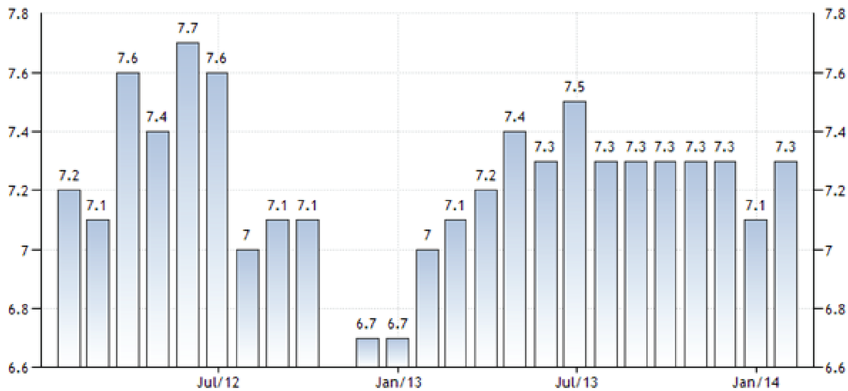
Set out in Table 1 are the main macroeconomic indicators for the period 2009–13. The unprecedented levels of development in the Romanian economy witnessed at the start of the new millennium as a result of domestic demand and private consumption tailed off in the autumn 2008, with the downturn continuing to date: in fact, while in 2009 real GDP rate was at -6.6%, in 2010 was at -1.9%, reaching positive rates in 2011 at 1.5%, in 2012 at 0.7% and in 2013 at 1.6%.

Table 1. Main Macro-economic indicators

	2009	2010	2011	2012	2013
Nominal GDP (€ billion)	115.9	122.00	136.5	132.6	140,1
Real GDP (%)	-6.6	-1.9	1.5	0.7	1.6
Inflation (%)	5.59	6.09	5.3	3.3	4.8
Unemployment rate (%)	7.8	6.9	7.4	7.0	7.3
Exchange rate/€	4.23	4.24	4.21	4.42	4.41
Reference rate (December)	8.00	6.25	6.00	5.25	4.6
DFI (€ million)	4.5	1.8	1.9	2.1	2.7
Public debt/GDP (%)	28.0	30.6	38.4	37.2	36.7

A further indicator is the unemployment rate, which shows a fluctuating trend – in 2009 it was 7.8%, in 2010 6.9%, in 2011 7.4%, in 2012 7% and in 2013 it rise at 7.3% (Figure 1). The number of people out of work at the end of December 2013 was of 529,100.

Figure 1. Unemployment rate in 2012 and 2013



Taxation of Legal Entities

The Romanian Tax Code (Law 571/2003) came into force on 1 January 2004 and governs:

- taxation of legal entities
- taxation of resident and non-resident individuals
- taxation of income earned by non-residents and by representative offices
- VAT
- excise duties
- local taxes
- social security contributions.

The Tax Code has, over the years, been subject to important amendments, with the latest (2007) being of huge significance, linked to Romania's entry into the EU.

In addition, with effect from 1 January 2011, all laws and regulations governing social security contributions for pensions and welfare were brought under the umbrella of the Tax Code. Finally, 2011 has also seen the reintroduction of the tax regime in favour of 'micro-enterprises'. Where taxation is concerned, the provisions of the Code prevail over all other provisions relating to tax, and in the event of conflict the provisions of the Tax Code are the authoritative provisions. However, where a provision of the Code is in breach of an international treaty to which Romania is a party, the provision of that treaty applies.

Taxation Overview

Table 2 gives an overview of the provisions of the Romanian Tax Code.

Table 2. Tax regulations.

Corporation tax: **- ordinary** **- micro-enterprises**	 **16%** **3%**	
Withholding taxes:		
Dividends	0%	Where distributed to an EU or Romanian legal entity holding ≥10% of the capital for ≥1 years as at the date of payment
	16%	In all other cases
Royalties and interest	0%	Where the actual beneficiary is an EU or Romanian legal entity holding ≥25% of the capital for ≥2 years as at the date of payment
	16%	In all other cases
Branch remittance tax	0	
Carrying forward of losses		5 years, for losses incurred up to 2008; 7 years for those incurred as from 2009

Parties Liable for Tax

Romanian businesses are subject to tax on profits arising out of business carried on in Romania, as well as business conducted abroad; so are permanent establishments set up by foreign subjects for the purposes of business conducted in Romania. Public institutions, the National Bank of Romania, legal entities constituted under Romanian law that are classed as micro-enterprises, and charitable foundations/religious organisations are exempt from income tax. Non-profit organisations, trade union organisations and charities are exempt from tax on income arising from contributions and enrolment fees, sponsoring, donations, resources obtained from public funds or financing by way of grants, income earned through events and conferences, etc. Such organisations are also exempt from tax on profits resulting from any trade or business activity carried on up to a maximum of €15,000 p.a. revenue and in any event subject to a limit of 10% of total exempt income.

Determining Taxable Income and the Applicable Tax Rate

The standard rate is 16% applied to taxable income calculated on the basis of the statutory results, which are subject to upward or downward variations in relation, respectively, to any non-deductible cost or non-taxable revenue.

Non-Deductible Costs

The basic principle when establishing whether costs can be deducted or not is the 'pertinence principle': only costs that were incurred in order to earn the taxable revenues are deductible. The law lists a series of costs that cannot be deducted, in whole or in part (see Tables 3 and 4).

Table 3. Partially tax-deductible costs.

Description of costs	Partially deductible
All expenses for vehicles (except for depreciation) used exclusively for passenger transport	All expenses (except for depreciation) and related VAT are 100% deductible if special documentation is provided; otherwise 50% is deductible
Costs of cars, including maintenance and repairs (but not fuel)	Subject to a limit of one car for each senior manager and/or director
Travel allowance for employees and directors	Up to 2.5 times the allowance established for public sector employees
Expenses in relation to entertainment	Subject to a limit of 2% of gross profit
Provision for bad and doubtful debts	Subject to a limit of 30% and only where specific conditions are met; 100% in the event of a court declaration of insolvency
Expenses in relation to services/ consultancy services	Deductible only where there is a written* contract governing the relationship as well as sufficient documentation (e.g. reports, memos, etc.) in order to show that the service was provided; further, the recipient must be able to demonstrate that the service was necessary

Table 3. Partially tax-deductible costs (Continued)

Description of costs	Partially deductible
Provision for legal reserves	Subject to a limit of 5% of the gross profit and up to 20% of the value of the share capital
Write-off of bad debts	Only after conclusion of the insolvency proceedings or the liquidation of the debtor or, in exceptional cases, where the debtor is seriously insolvent
Sponsorships	Subject to a limit of 0.3% of turnover and in any event no more than 20% of profit tax due
Other social and welfare expenses	Subject to a limit of 2% of total salaries

* The recipient has the obligation to register contracts for services provided in Romania by a non-resident party with the Romanian Tax Office.

Table 4. Non-deductible costs.

Description of costs	Non-deductible
Penalties, fines, default interest	In full
Costs incurred in favour of shareholders	In full, except those for goods and services at market value
Lost or damaged assets and related VAT	In full, except for assets destroyed as a result of a natural disaster or otherwise as a result of force majeure, on the conditions established by law, or for those with insurance cover
Income tax	In full

Thin Capitalisation

The Romanian legislator deemed it appropriate to limit the extent to which interest payable on loans can be deducted where the loans are not: loans made directly or indirectly by international development banks or similar organisations, loans guaranteed by the state, loans made by Romanian or foreign banks or by branches of foreign banks, credit cooperatives, leasing companies (for leasing transactions), mortgage companies and other legal entities that grant credit in compliance with the law (Article 23, para. 4 of the Tax Code).

In order to assess the extent to which such costs can be deducted, the legislator takes two aspects into account: the interest rate and the extent of indebtedness on the part of the company.

Interest in relation to 'non-bank' financing is deductible only up to a maximum rate applied, being:

- for loans in foreign currency, interest exceeding the annual rate fixed by way of government decree (6% for the financial year 2013) is non-deductible;
- for loans in RON, interest exceeding the annual rate communicated periodically by the National Bank of Romania (3.50% in February 2014) is non-deductible.

Romanian tax law also states that interest can be deducted only where the debt/equity ratio is ≤3. Where the extent of indebtedness is in excess of this figure, interests are entirely non-deductible. The same applies in relation to net losses from exchange rate differences.

The degree of indebtedness is calculated as the ratio between the borrowed capital that has to be paid in a period longer than 1 year and equity, established as the average of the values existing at the beginning of the year and at the end of the tax period.

Interest and loss from exchange rate differences that are not deducted can be carried forward for tax purposes to future financial years without being subject to any particular time limit, and deducted when the requirements set out above are met.

Taxation of Dividends

With effect from 1 January 2007, the term 'dividend' took on a wider definition: under the new law, it also includes payments made to shareholders where goods and/or services are acquired at a price higher than the market price, and the amount paid by the company for goods or services for personal use of shareholders.

Again in the wake of amendments required as a result of joining the EU, where dividends are paid to Romanian legal entities or legal entities resident in the EU, WHT (withholding tax) is no longer applicable if the legal entity in receipt of the dividends has owned ≥10% of the share capital for 1 consecutive year as at the date of payment.

Where such requirements are not met, the dividends distributed by Romanian legal entities are subject to withholding tax of 16%, unless different rates provided in double taxation treaties. The due date for paying the dividend tax is the 25th day of the following month in which the dividends have been paid; in case of dividends not paid by 31 December of the same year, the tax has to be paid by 25 January of the following year.

Tax Credits and Losses Abroad

Romanian companies are entitled to a tax credit in Romania for taxes paid abroad.

According to the law, income taxes paid abroad are deducted from the Romanian tax calculated on the same source income, without exceeding it.

Tax Compliance

With the exception of banks, all parties subject to income tax have the obligation to calculate, pay and submit the tax return on a quarterly basis, by the 25th day of the month following the last month of the quarter. For the fourth quarter, taxes are calculated and paid by 25 March of the following year; at the same date, the annual tax return must be submitted.

Starting 1 January, 2013, tax payers may opt for computing, declaring and paying the annual profit tax with quarterly advance payments. The option for the annual profit tax with advance payments is not available for tax payers that in the previous year:

- have been newly established

- have incurred fiscal losses
- have been in temporary inactivity, recorded with the trade register or have declared that they were not performing any activity at their headquarters/secondary offices
- have paid the tax for microenterprises.

Banks, together with branches of foreign banks, have the obligation to file a tax return on an annual basis, with quarterly payments being made in advance and calculated at one-quarter of the tax due for the previous year and updated in line with the inflation rate.

Non-profit organisations and companies operating in agriculture have to file a tax return and pay taxes on an annual basis, by 25 February of the following year.

Transfer Pricing

The law governing the concept of transfer pricing operates to establish the payments in relation to infragroup transactions, analysing whether they are in line with standard market conditions existing between independent operators and in similar conditions (the 'arm's length' principle). Under Romanian law, the tax authorities can adjust payments that are not in line with the market price, this being determined according to methods adopted by the Organisation for Economic Co-operation and Development/OECD (mainly the price comparison, the re-sale price and the cost plus).

The new provisions state that, where asked to do so, resident companies shall present the financial authorities with all information relating to transactions carried out with 'related' foreign companies and the method used to establish the price.

An application can be made to the *Agentia Nationala de Administrare Fiscala* for a pre-emptive ruling regarding the transfer price – known as an *acord de pret in avans* (advance pricing agreement). The response is enforceable against the tax authorities and binding on the taxpayer, although the taxpayer has the right to give notice of dissent in writing, within 15 days. A taxpayer agreeing with the response issued by the financial authorities is to lodge a written report on an annual basis, setting out how the tax ruling has been applied.

Micro-Enterprises

Having been shelved for a year, tax advantages for micro-enterprises have been reintroduced. Micro-enterprises are companies that satisfy the following criteria (Articles 112^1 to 112^8 of the Tax Code):

- Annual revenue ≤€65,000
- Share capital is privately held in full
- None of the shareholders of the company has >250 employees.

Companies operating in the following sectors do not qualify for this tax regime:

- Banking
- Insurance
- Betting and gaming
- Management and consultancy.

Micro-enterprises pay tax at 3% of revenue; costs, therefore, are not taken into account in calculating taxable income (but must in any event be properly entered in the accounts and documented, as required by law). The current taxation treatment of microenterprises is compulsory for all companies that meet the conditions mentioned, with no exceptions.

In the event that, during the course of the year, the company should no longer satisfy one of the conditions set out above (other than the condition relating to revenue), the company comes out of the micro-enterprise tax regime and transfers to the standard regime (paying 16% on taxable income) as from the following financial year.

An exception to this is where the limit of €65,000 is exceeded during the year. In these circumstances, the company comes out of the micro-enterprise regime with retroactive effect from 1 January and is required to calculate and carry out a balancing exercise in relation to standard tax accrued up to the quarter in which the limit was exceeded. Tax paid by the 'micro-enterprise' up to that date is credited and applied to reduce standard tax payable.

Taxation of Individuals

The decision taken by the Romanian legislator as far back as 2005 to opt for a comprehensive flat tax of 16% has managed to withstand the economic crisis and the battering that the financial world has taken, both of which have put Romania's tax revenue – and, therefore, its taxation policy – severely to the test.

The principle adopted for the purposes of defining taxable income is the 'worldwide principle', meaning that income earned anywhere by Romanian residents is taxed, while non-residents are taxed only on income earned in Romania.

On 1 January 2005 the system taxation moved from a model with progressive tax rates to a flat model with a sole tax rate of 16% (the same rate provided for legal entities).

Type of Income

The Tax Code identifies eight different types of income to which the 16% flat rate is applied, except for incomes included in categories 7 and 8:

1. Income earned on a self-employed basis: this category includes traders and professionals; under a duty to keep simplified accounts, they calculate their income on a cash basis as being the difference between taxable revenue and deductible costs. Alternatively, they can calculate taxable income as a one-off sum on the basis of specific provisions issued by the financial authorities.
2. Income earned as an employee: certain deductions can be made for family dependants, with the result that the tax burden is considerably reduced, especially where the lowest level of income earners are concerned. Compulsory social security contributions paid by the employee can be deducted, while fringe benefits paid in kind are taxable. The employer has an obligation to calculate, withhold and pay the tax. Income earned by company directors and auditors fall within this category.
3. Income from the enjoyment of real estate or moveable property: this usually means renting, and the taxable amount is calculated by deducting 25% as expenses.
4. Income from investments: includes income earned on interests (save for government bonds), dividends and capital gains.
5. Income from pensions: as in the case of income earned as an employee, a fixed deduction is applied.
6. Income from farming.
7. Income in the form of prizes and winnings: winnings are subject to a 25% withholding tax.
8. Income from the transfer of real estate property: see Table 5. Where the sale and purchase of real estate is concerned, the notary is under a duty to calculate and retain taxes and pay it over to the Revenue.
9. Other income: a catch-all category encompassing all forms of income that do not fall within the previous categories.

Income earned in kind and the personal use of the assets of and/or rights relating to the business are deemed income for all categories.

Table 5. Summary schedule: Category 8.

Income category	Tax rate	Applicable range (RON)
Transfer of land and buildings where disposal is ≤3 years of date of acquisition	3% on sale value ________ 6,000 + 2% on value over 200,000	≤200,000 >200,000
Transfer of land and buildings where disposal is >3 years after acquisition	2% ________ 4,000 + 1% on value over 200,000	≤200,000 >200,000

Tax Compliance

Annual net income is established separately with regard to each category. Taxpayers are obliged to file tax returns on an annual basis by 25 May of the following year and to pay the tax due in the form of four quarterly payments made in advance over the course of the year. Taxpayers whose income has already been taxed as a result of tax being withheld at source (e.g. income as an employee or in the case of income from investments, etc.) are exempt from this provision.

NOTE in relation to Category 1.

Work on a self-employed basis by a non-resident: 'Authorised Physical Persons' (Romanian acronym: 'PFA')

Recent changes to legislation have made it simpler for foreign individuals to establish themselves for tax purposes as being the equivalent of 'self-employed' or a 'sole proprietor'.

Until very recently, the status of PFA was only open to those carrying on a business based on a specific qualification and having its own official professional society, with the result that it was a privilege limited to self-employed professionals such as doctors, lawyers, accountants, engineers, etc.

Today, however, any commercial activity may be carried on as a 'sole proprietor' on the condition that the individual enrols with the Trade Register. This makes life a lot easier for foreigners, who previously had no option but to set up a company under Romanian law in order to do any type of work under the umbrella of consultancy or management services or similar.

PFAs are subject to the same tax regulations as those for the self-employed. One important point to note is that income is also subject to health and social security contributions. Further, Emergency Government Ordinance 82/2010 introduced tax evasion measures, with the result that all working relationships officially considered as being of a 'self-employed' nature but in fact displaying the typical features of work done on an employed basis are classed as work done as an employee and taxed as such.

Aspects of International Taxation

Taxation of Non-Residents

The Romanian Tax Code defines anyone satisfying at least one of the following conditions as being a resident individual in Romania:

- residence in Romania
- settled life in Romania
- presence in Romania for one or more periods of time that exceed 183 days in a period of 12 consecutive months ending in the relevant calendar year.

Where legal entities are concerned, any legal entity constituted under Romanian law and having its effective management base in Romania is treated as being resident.

Where countries with which Romania has entered into a double taxation agreement are concerned, the definition of resident person is that established by the agreement.

Income Earned by 'Permanent Establishments'

The concept of a 'permanent establishment' is universally acknowledged as being a prerequisite for the taxation of a business carried on in any given country by a foreigner.

The Romanian Tax Code defines a non-resident party's permanent establishment as being the place where that party's business is carried on in whole or in part.

Solely by way of illustration, and not therefore to be treated as being exhaustive, the law identifies the following as examples of a permanent establishment:

- a head office
- a branch
- an office
- a workshop
- a laboratory
- a mine
- a construction site, if it lasts >6 months.

Facilities in the country used solely as a depot, the storage of goods and merchandise in a warehouse or of goods and merchandise that are to be processed, or the use of a fixed base solely for purchasing goods or to carry out work of a preparatory or ancillary nature, are not classed as a permanent establishment.

A non-resident legal entity will be taxed in Romania on the income produced by the permanent establishment in Romania, with the same provisions being applied as those governing the business income of resident legal entities and, naturally, where the revenue and costs attributable to the permanent base are concerned. It follows that the permanent establishment must of necessity be treated as being an independent and autonomous unit for the purposes of accounting and tax obligations, being subject to the same accounting obligations and tax declaration deadlines as a resident entity. A permanent establishment therefore has to be registered with the relevant authorities before starting business.

Income Earned by Non-Residents

A non-resident person, who is therefore taxed in their country of residence in accordance with the applicable rules, is by law also subject to tax in Romania on the items of income listed under taxation of individuals (to which reference is briefly made for the relevant taxes and rates, save where the application of the agreements referred to below is concerned), where the same are earned or paid in Romania. Where tax is paid by way of definitive final payment on income earned in Romania, a non-resident usually has the right to a tax credit, with the result that tax paid is deducted from tax in their country of residence in accordance with the applicable regulations.

It is worth mentioning one particular issue relating to where a non-resident works as an employee in Romania: a non-resident individual is only taxed on income earned working as an employee in Romania (applying the same rules as those governing the taxation of residents) where:

- the person is present in Romania (where s/he works as an employee) for one or more periods of time that exceed 183 days in a period of 12 consecutive months, if the salary is not paid by a Romanian employer; or
- regardless of the period of time present, if the salary is paid by or on behalf of a Romanian employer; or
- regardless of the period of time present, if the salary is a deductible cost for a permanent establishment in Romania.

Double Taxation Agreements

The Tax Code specifically states that the provisions of double taxation agreements entered into by Romania shall prevail over national legislation (see Table 6). In particular, the Code states that 'taxation of any income earned in Romania by a non-resident may not exceed what is contemplated by the agreement'.

In order for the provision of the agreements to apply, the non-resident is required to present the entity paying the income in Romania with the so-called Certificate of Residence for Tax Purposes. For the purposes of Romanian law, the certificate is valid for the year in which it is presented and for the first 60 days of the following year.

A reduction in tax withheld under national law on income earned by a non-resident in Romania and/or avoiding tax being withheld altogether, can, therefore, only be achieved by specifically asking that the provisions of the agreements be applied, such request being made as required by law.

Table 6. Double taxation agreements.

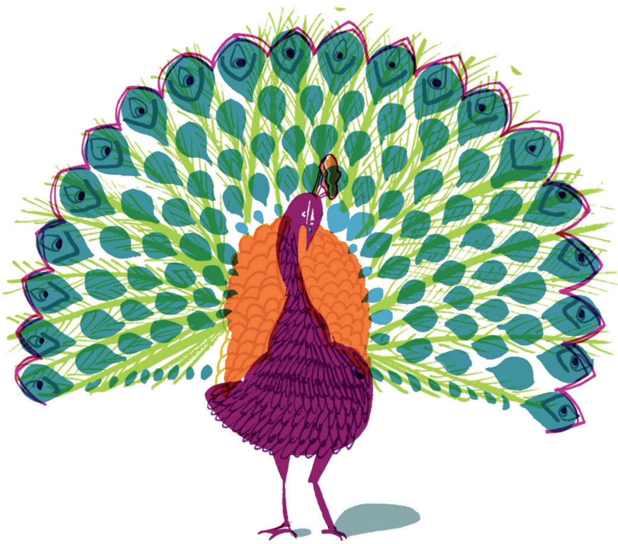
	Country	Dividends (%)	Interest (%)	Commission (%)	Royalties (%)
1	Albania	10–15	10	15	15
2	Algeria	15	15		15
3	Armenia	5–10	10	15	10
4	Azerbaijan	5–10	8		10
5	Australia	5–15	10		10
6	Austria	0–5	0–3		3
7	Bangladesh	10–15	10		10
8	Belarus	10	10		15
9	Belgium	5–15	10	5	5
10	Bulgaria	10–15	15		15
11	Canada	5	10		5–10
12	China	10	10	5	7
13	Croatia	5	10		10
14	Cyprus	10	10	5	5
15	Czech Republic	10	7		10
16	Denmark	10–15	10	4	10
17	Ecuador	15	10	10	10
18	Egypt	10	15	15	15
19	Estonia	10	10	2	10
20	Finland	5	5		2.5–5
21	France	10	10		10
22	Georgia	8	10	5	5
23	Germany	5–15	0–3		3
24	Greece	20–45	10	5	5–7
25	Hungary	5–15	15	5	10
26	India	15–20	15	5	22,5
27	Indonesia	12.5–15	12.5	10	12.5–15
28	Iran	10	8		10
29	Ireland	3	3		3
30	Israel	15	5–10		10
31	Italy	10	10	5	10
32	Japan	10	10		10–15
33	Jordan	15	12,5	15	15
34	Kazakhstan	10	10	10	10

Table 6. Double taxation agreements (Continued).

	Country	Dividends (%)	Interest (%)	Commission (%)	Royalties (%)
35	Korea North	10	10		10
36	Korea South	7–10	10	10	7–10
37	Kuwait	1	1		20
38	Latvia	10	10	2	10
39	Lebanon	5	5		5
40	Lithuania	10	10	2	10
41	Luxembourg	5–15	0/10	5	10
42	Macedonia	5	10		10
43	Malaysia	10	15	Domestic regulation	12
44	Malta	5–30	5	10	5
45	Morocco	15	10		10
46	Mexico	10	15		15
47	Moldova	10	10		10–15
48	Namibia	15	15		15
49	Netherlands	0.5–15	0		0
50	Nigeria	12.5	12.5		12.5
51	Norway	10	10	4	10
52	Pakistan	10	10	10	12,5
53	Philippines	10–15	10–15		10–15–25
54	Poland	5–15	10	10	10
55	Portugal	15	10		10
56	Qatar	3	3	3	5
57	Russian Federation	10/15	15		10
58	Singapore	5	5		5
59	Slovakia	10	10		10–15
60	Slovenia	5	5		5
61	South Africa	15	15		15
62	Spain	10–15	10	5	10
63	Sri Lanka	12.5	10	10	10
64	Sudan	15	10	15	10
65	Sweden	10	10	10	10
66	Switzerland	10	10		0–10

Table 6. Double taxation agreements (Continued).

	Country	Dividends (%)	Interest (%)	Commission (%)	Royalties (%)
67	Syria	Domestic regulation	7,5	15	15–10
68	Thailand	15–20	10–20–25	10	15
69	Tunisia	12	10	4	12
70	Turkey	15	10		10
71	United Arab Emirates	3	3	3	3
72	UK	10–15	10	12.5	10–15
73	Ukraine	10–15	10		10–15
74	United States	10	10		15–10
75	Uzbekistan	10	10		10
76	Vietnam	15	10		15
77	Yugoslavia	10	10	10	10
78	Zambia	10	10		15



Indirect Taxation

VAT

General Principles Regarding VAT

Romania's EU membership has led to the country being increasingly involved in the policies of integration and tax harmonisation within the EU itself, and it is on the basis of these principles that Chapter VI of the Romanian Tax Code, which deals with VAT (in Romania 'TVA'), was drawn up and subsequently amended.

Implementing EU Directive 2006/112 in full, Romania brought itself into line with the principles and guidelines established by European legislation.

Domestic transactions that satisfy the following criteria are therefore subject to VAT:

- Subjective criteria: transactions carried out by parties subject to the tax and who operate as such
- Objective criteria: transactions comprising of a transfer of goods or provision of services for valuable consideration or similar
- Territorial criteria: transactions that are taxable in Romania.

Transactions can, therefore, be classified on the basis of the VAT regime applicable, as outlined below.

Transactions Not Subject to VAT

These are transactions that do not meet the criteria set out above. They are noted for not being subject to VAT or to the consequent VAT requirements. A typical example of this type of transaction is the transfer of part of a business which, where the necessary grounds are satisfied, is not subject to VAT.

Transactions Subject to VAT

These can be separated into:

- Transactions subject to VAT

With these transactions, the VAT on acquisitions can usually be deducted and, therefore, certain formal VAT requirements have to be complied with (e.g. invoicing, recording in the accounts, etc.).

- Transactions exempt from VAT with a right of deduction

These are transactions that are not subject to VAT but generally allow VAT paid on acquisitions to be deducted.

These transactions are subject to all formal VAT requirements too (e.g. invoicing, recording in accounts, etc.). The following fall within this category:

1. Transfer of goods exported outside of the European Union
2. Intra-community transfers
3. The international transport of passengers

VAT Exempt Transactions Without the Right of Deduction

Some transactions are not subject to VAT but no VAT can be deducted for them. It follows that where a party liable for VAT carries out a transaction or transactions falling within this category together with transactions subject to VAT (the mixed system), a pro-rata calculation must be undertaken in order to deduct the VAT paid on acquisitions.

Transactions within this category are subject to the formal VAT requirements.

Transactions of particular relevance falling within this category are those concerning finance and insurance. Real estate transactions should also be flagged up as usually falling within this system.

VAT on the Sale and Purchase of Land and Buildings

Article 141 of the Romanian Tax Code provides that this type of transaction is generally exempt from VAT without the right of deduction. The sale of new buildings or parts of it and of building sites represent an exception and are subject to VAT.

Tenancies and leases of real estate are included in the category of transactions that are 'exempt from VAT without the right of deduction'. It is, however, possible to opt for the taxation of these operations under a VAT point of view.

Threshold for Becoming a VAT Payer

Taxable persons performing transactions within the scope of VAT are obliged to register and become a VAT payer once they exceeding the threshold of 220,000 RON (approx. €50,000).

Rates

Romania has a standard rate of 24%, being the rate generally applied to transactions, save where a reduced rate is applicable.

There are currently two reduced rates: 5% and 9%. These are to be taken as exceptions to the general rule and are limited to certain specific categories of goods or transactions, usually being those having a social purpose, transactions subject to the 5% rate include the transfer of buildings intended to be used for social purposes (as homes for the elderly, children's homes or homes for those with special needs, etc.) and above all those that are to be a 'first home'. Transfers of homes with a surface area of up to 120 m^2 and with a maximum value of RON 380,000 to persons who do not own any other real estate, are subject to the reduced rate of 5%.

The rate of 9% is applied to the sale of medicines, hotel services, the sale of books and other services of a cultural nature. Starting 1 September 2013, the reduced VAT rate of 9% was also applied to bread, flour and cereals

The Issue of Territory

Territory is one of the essential criteria determining whether a given transaction in Romania is subject to VAT. It is taken into consideration together with the subjective and objective criteria.

With reference to the principles established by the series of EU directives introduced over the years (with the one currently in force being Directive 2006/112), Romanian legislation deals with this issue in Chapter VI of the Romanian Tax Code. From the viewpoint of territory, transactions carried out by a party liable for VAT can be classified as follows:

- Domestic transactions: the transfer of goods taking place within Romania and the provision of services which, by law, are considered as being provided within Romania
- International transactions: the transfer of goods between different countries (intra-community sales/acquisitions and imports/exports) and services connected thereto.

Chargeable Event and Chargeability of VAT

Establishing the chargeable event is of fundamental importance, as this is the main element determining when VAT is to be collected and the extent, if at all, to which it can be deducted by the acquiring party/beneficiary. In order to determine the tax point, the law establishes two basic principles:

- Transfer of goods: where moveable goods are concerned, delivery or dispatch are considered the chargeable event, whereas with real estate it is the date of the sale/purchase contract and in any event the transfer of ownership
- Provision of services: completion of provision of the services, regardless of payment status.

Deductions

In line with general principles established by EU directives, the deducting system of VAT paid on acquisitions allows a party liable for VAT to subtract VAT relating to acquisitions from VAT due on income. This is on the condition that it is done as part of the business carried on by that party. Furthermore, such a deduction is permitted only in relation to business activity giving rise to transactions subject to VAT or exempt with the right of deduction.

As well as general criteria concerning the right to deduct (e.g. relevance, formal date of the invoice, etc.) there are certain cases where, by law, VAT cannot be deducted. These include 50% VAT for acquisition of cars intended solely for the transport of passengers and related fuel.

A further aspect worth noting in relation to the exemption covering transfers of buildings and the deduction 'at source' is that giving rise to the obligation to adjust any VAT deducted at the time of acquisition.

International Transactions

As a result of Romania joining the EU on 1 January 2007, the international transactions that a taxable Romanian person may carry out can be divided into two substantial categories depending on the territorial area concerned:

- transactions within the EU territory, defined as being an 'intra-community' transaction
- transactions that involve countries that are not EU members, and defined 'non-EU' transactions.

Intra-Community Transactions

These are transactions undertaken by a taxable person with another taxable person established in the EU and can be subdivided on the basis of whether they involve transfer/ acquisition of goods or the provision of services.

In order to apply the intra-community provisions to transactions concerning goods, reference must also be made at the same time to the following requirements relating to:

- the subject-matter of the transaction: it must involve the transfer of goods
- the parties involved: the transaction must be carried out by taxable subjects
- valuable consideration: transfer of ownership of the goods must be in exchange for valuable consideration
- physical movement of goods: the goods must be physically transported from one member state to another.

With effect from 1 January 2010, when EU Directive 2008/8/CEE came into force, the provision of services classed as being 'generic' has been treated as follows:

- where services are supplied to a private consumer ('business to consumer' or 'b2c'), the residence of supplier criteria applies
- where services are supplied to taxable subjects ('business to business' or 'b2b'), the residence of customer criteria applies.

There are specific exceptions to these general criteria, depending on the service provided or parties involved.

Intrastat Lists

As is the case with all EU member states, Romania is subject to the duty to monitor and to coordinate with other countries in the form of summary lists of intra-community transactions. Directive 2008/117 extended this duty beyond the transfer and acquisition of goods alone to also cover the provision of services.

The tax section of the summary lists is subject to a monthly deadline and has to be submitted by the 25th day of the following month.

The statistics section, which is kept distinct and separate from the tax section both in terms of its preparation and submission, is also subject to a monthly deadline but is required to be submitted only by parties carrying out a certain volume of transactions.

Register of Intra-community Operators (the 'RIO')

The Register of Intra-community Operators was set up on 1 August 2010. All taxpayers intending to carry out intra-community transactions are required to enrol with the register in advance; failure to register triggers penalties.

Non-EU Transactions

These are acquisitions and transfers from and to non-EU countries.

Amendments to the Romanian Tax Code that came into effect on 1 January 2007 abolished the requirement to pay VAT at customs on imports from non-EU countries.

In order to cater for the fall in revenue as a result of the adoption of the new VAT rules, the requirement to pay VAT at customs on imports of goods from non-EU countries was reintroduced with effect from 15 April 2007 to 31 December 2016, save in the case of imports by parties who have obtained a suspension certificate.

The suspension certificate, which has the effect of suspending VAT at customs, can be obtained on application by parties who satisfy all the following conditions established by Order of the Ministry of Finance 500/2007, being parties who:

- have no debts owed to the Finance Department in the form of duties, taxes and contributions, save in the case of debts resulting from instalment plans agreed by Financial Administration pursuant to law
- have no debts owing to the customs authorities
- in the previous calendar year, received imports from third countries as defined by Article 125^2 of the Tax Code, excluding Bulgaria, to a total value in excess of 100 million RON
- have been liable for VAT for more than a year as at the date of application for the suspension certificate
- are not insolvent or undergoing reorganisation, in liquidation or dormant.

Refunds

The law provides that, at the same time as the periodic (monthly or quarterly) payments are made, if calculations result in a credit, the taxable person may, where the credit exceeds 5,000 RON, apply for a refund of that sum. Before proceeding with the refund, the Finance Department carries out a tax audit. An accelerated procedure in relation to VAT refunds was introduced in 2004: this operates on a type of 'rating system', with each taxpayer being rated on the basis of track record in terms of complying with tax obligations. Taxpayers who produce or trade in wood or construction materials, cereals, fruit, vegetables or waste materials and those who have been in business for less than a year cannot, however, use this procedure.

It is also possible to offset the VAT credit against other taxes and sums due by making the appropriate application and following the rules set out in the Tax Procedure Code.

Refunds to Non-Residents

A significant amendment to the procedure for claiming refunds for those operating within the EU but non-resident in Romania was introduced by Directive 2008/9/CE. On the basis of the amendment, in order to obtain a refund, the taxable person has to submit an application through the electronic portal set up by the member state of establishment. The application is to be submitted at the latest by 30 September in the year following the relevant period (save where an extension of time is granted by an individual member state). The relevant period must be <1 year, and must be ≥3 months.

Where refunds for those residents in non-EU countries are concerned, the procedure remains unchanged, with an application being made directly to the country of refund (i.e. Romania).

VAT Cash Accounting System

Starting 1 January 2013, taxpayers registered for VAT purposes, having the place of business in Romania, and an annual turnover not exceeding the threshold of 2,250,000 RON (approx. €500,000) have the obligation to apply the VAT cash system, with no option to opt out. For following examples do not apply to the VAT cash accounting system:

- the taxable person established in Romania, who are part of a single fiscal group
- the non-resident taxable person that is registered for VAT purposes in Romania directly, through a fiscal representative or by means of a fixed place of business (e.g. branches).

Customs and Excise Duties

Entry into the EU had the immediate effect of bringing Romania into the EU customs zone, with the result that, with regard to the position in law as far as tax and customs are concerned, the first geographical area to be considered is the EU area (customs and other taxes on imports and exports established by EU regulations) while the second in line is the national area (VAT and excise duties).

On an EU level, it should be remembered that customs regulations are applied across the board throughout the whole of the EU. One important feature where the position in law regarding customs is concerned is the material nature of the goods.

Customs value is established on the basis of the provisions of the WTO (World Trade Organization) Customs Valuation Agreement. Where the duty to pay sums due at customs is concerned, a taxpayer is any individual or legal entity carrying out the relevant transactions. The rates are those established at EU level.

Suspension/Exemption

There are two sets of circumstances in which customs duties can be suspended or there can be exemption from liability. The first is where goods are imported on a temporary basis in order to be processed. An application can be made for no customs duties to be payable on the grounds that the goods are to be re-exported following processing ('Inward Processing Relief' [IPR]).

Similarly, goods leaving the EU in order to be processed in non-EU countries can be re-imported without being subject to customs duties, save on the compensating part ('Outward Processing Relief' [OPR]).

At a national level, as well as being subject to VAT, imports also attract excise duties. These are charged on goods in three market sectors, and, while there are EU rates in force, are currently levied and calculated on a national basis:

- oil and energy products
- alcoholic products and alcoholic beverages
- tobacco products.

Some goods, such as alcoholic beverages and tobacco products, are required to have a duty stamp affixed prior to being put on sale; this is the responsibility of those operating the fiscal warehouses and importers. With the agreement of the EU, Romania is currently levying customs duties in excess of the minimum level established by the Union on certain other products (e.g. coffee, ships etc.) as part of a gradual harmonisation plan.

Local Taxes

All taxes levied and collected on a local level fall within this category. Dealt with in Part IX of the Tax Code, they specifically concern:

- buildings
- land
- possession of means of transport
- the grant and issue of authorisations, permits and certificates
- advertising
- entertainment
- hotel stays and similar
- others of a particular nature
- miscellaneous others.

The most significant are:

Tax on buildings: a tax payable on the possession of buildings. The party liable for the tax is the owner, who is required to pay it to the relevant local authority in the area where the building is located. The manner in which the tax is levied depends on whether the owner is an individual or a legal entity.

In the case of individuals, the tax, which is calculated annually, is at a rate of 0.1% on the taxable value of the building. Taxable value is established on the basis of surface area and certain other parameters, coefficients and 'land registry' values established by law. Where more than one building is owned, buildings not in use as a home are subject to a higher rate of tax.

In the case of legal entities, the tax, which is calculated annually, is at a rate of between a minimum of 0.25% and a maximum of 1.5% (depending on the area in which the building is located), and established each year by the local authorities) on taxable value, which is related to gross book value. The taxable value is reduced by 15% in the case of buildings that have depreciated in their entirety.

Where the book value of a building has not been re-valued in the last 5 financial years, the 'standard' rates are not applicable: in this case, 'special' rates between a minimum of 10% and a maximum of 40% are fixed by the local authorities. Buildings that have depreciated in their entirety are subject to the standard rate of between 0.25% and 1.5%.

In the case of buildings leased out or where a right of use has been granted (save in the case of financial leasing), the owner is liable for the tax. Where buildings are the subject of financial leasing, the lessee is liable for the tax for the entire duration of the contract, with taxable value being contract value.

Any legal entity acquiring, building, selling, increasing the surface area of, carrying out improvements to or demolishing a building is under a duty to lodge a declaration of change to the relevant local town council within 30 days of the date of land registry registration, disposal or change.

Tax is paid in two instalments of equal value, by and no later than 31 March and 30 September.

Tax on land: an annual tax payable on the possession of land. The owner is liable for the tax, which is paid to the local authority in the area where the land is situated. The tax is calculated on the basis of a fixed amount depending on surface area, type of zone (e.g. in town, out of town) and/or category of use of the land (e.g. agricultural/building site), in accordance with a classification system drawn up by the local authority.

Any taxpayer acquiring land is required to lodge a declaration with the relevant department of the town council within 30 days of date of acquisition. A declaration also has to be lodged within the same time frame in the case of change of use of the land.

Land tax is paid in two instalments of equal value, by and no later than 31 March and 30 September.

Where vehicles acquired during the course of the year are concerned, the tax is due as from the first day of the month following the month in which it was acquired. The tax is paid in two instalments of equal value by and no later than 31 March and 30 September.

The Employment Market

The Employment Code

The Employment Code (the Romanian '*Codul Muncii*') was published in Romania's Official Gazette No. 72 of 5 February 2003 and came into force on the following 1 March (Law No. 53 of 24 January 2003). The last amendment was made through Law No. 40/2011, with effect from 1 May 2011.

Totalling some 281 articles and 13 sections (setting out general provisions and transitional and final provisions, and dealing with individual employment contracts, health and safety and many other aspects), it did the excellent job of repealing and replacing a whole host of provisions that were often difficult to fully understand, bringing together, under one title, the whole range of legislative provisions that anyone concerned with employment law might need to consult or be aware of.

In 2005, Emergency Government Ordinance No. 65, approved and amended by Law No. 37/2005 and Law No. 40/2011 concerning the Employment Code, introduced important amendments in order to bring domestic legislation in line with EU provisions as well as to bring about more flexibility in the employment market. In fact, since 1 January 2007, Romanian employment law has been brought into line with EU regulations to a marked extent, especially in relation to the secondment of personnel.

Law no. 62/2011 on social dialogue, applicable from 13 May 2011, regulates the social dialogue, employers' associations and trade unions, as well as labour conflicts.

From an objective point of view, the Romanian Employment Code 'regulates … individual and collective employment relationships in their entirety and the manner in which the employment law provisions are to be applied, as well as regulating employment disputes' (Article 1). From a subjective point of view, it deals with work done by anyone in Romania (be they Romanian citizens, foreigners or displaced persons) as well as, to a certain extent, work done by Romanians abroad.

It is worth pointing out that the Employment Code dedicates a considerable amount of space in the first section to a series of general principles (Articles 3 onwards): the freedom to work (or not to work), to choose one particular job over another or to take part in union activity, the prohibition on forced labour and discrimination, equal rights, protection of health and confidentiality, etc.

The employee cannot give up the rights that they are entitled to by law.

From 2011 there is no labour collective contract at a national level. According to article 128 of the Law 62/2011 – Social Dialogue Law published in the Official Gazette, first part, no. 322 10 May 2011, the labour collective contracts can be negotiated at company level, groups of companies level and branch level but not at national level.

In the making of any labour contract (individual or collective) it must respect the rights provided by contracts/collective labour agreements at a higher level (groups and sectors), irrespective of Labour Code provisions and lower rights cannot be provided for employees in individual or collective contracts at the appointing level or at company level.

It should be remembered that a collective business contract is required where a business has >20 employees. Such a contract may only contain provisions or privileges that are 'more favourable' (from the employees' point of view) than those concluded at superior level. The collective business contracts are concluded for a determined period of time which cannot be <12 months or >24 months. The parties may decide upon the extension of the collective business contract only once, for a duration of ≤12 months.

The Individual Employment Contract

The Employment Code reaffirms (Articles 10 onwards) that an employee is to be employed by means of an individual employment contract drawn up in writing (known by its Romanian acronym, CIM), the provisions of which must be in line with those agreed at the time the applicable collective bargaining agreement was negotiated. A CIM can be for a fixed term (of ≤36 months) or open-ended, with an employee being by law on an open-ended contract in the absence of any provision to the contrary.

It is the employer's responsibility to draw up the individual employment contract, and this must be done before the employment relationship actually starts.

The contract in question must state details of the employer and employee, pay and other matters. It must, above all else, set out the employee's duties and responsibilities. The minimum age at which someone can start work is 16, subject to certain exceptions. Work cannot be unlawful or immoral.

Article 27 of the Employment Code strictly prohibits an employer from asking that a pregnancy test be taken. Article 36 states that foreign citizens may be employed by Romanian businesses on the basis of an individual employment contract and on condition that, where necessary, a work permit is first obtained from the relevant authorities. As well as a work permit, and prior to entering into an individual employment contract, foreign citizens must obtain a tax identification number in Romania (known by its Romanian acronym, NIF).

Termination of an Individual Employment Contract

Articles 55 onwards of Law 53/2003 set out the circumstances in which a CIM can be terminated. Termination can be:

- by law (e.g. on the death of the employee, on the business being declared insolvent, etc.)
- at the behest of the employer (dismissal)
- on the request of the employee (resignation)
- by agreement between the parties.

In the event of dismissal, notice must be given (of ≥20 working days in the case of dismissal of an individual).

Turning to the 'work schedule', save where otherwise indicated, the working day is 8 hours and the working week, 40 hours. With the exception of standard variations, Saturday and Sunday are rest days. An employee has the right to a lunch break and to a minimum of 20 working days holiday per annum. Public holidays include 1 and 2 January, Easter and Christmas (different days depending on religion, and which the employer is duty bound to ensure are observed) and the days that immediately follow; 1 May, the first and the second day of Ascension, 15 August and 1 December (a national holiday in Romania). Other family occasions (of celebration or mourning) are considered separately. There are, of course, particular provisions in place dealing with certain particular types of job.

It should be remembered that a collective business contract is required where a business has >20 employees. Such a contract may only contain provisions or privileges that are 'more favourable' (from the employees' point of view) than those concluded at superior level. The collective business contracts are concluded for a determined period of time which cannot be <12 months or >24 months. The parties may decide upon the extension of the collective business contract only once, for a duration of ≤12 months.

The Cost of Employment

A comparison between the average gross salary for 2012 and 2013 shows an increase of 11.2 % in euro values, in line with the economic growth registered in Romania in 2013 (Table 7).

Table 7. Average gross monthly earnings (€) for 2012, 2013 and the first quarter of 2014.

Sector	2012	2013
Average	479	533
Agriculture and related services	347	375
Industry (in general)	483	513
Textile industry	370	400
Metallurgical industry	604	648
Metal building and metal products industry	442	466
Chemical industry	574	605
Construction	386	402
Hotels and restaurants	259	270
Health and social services	407	456
Public administration	623	721
Recycling	335	354
Financial services	1,141	1,186
Transport over land	448	529

Source: National Institute of Statistics.

In order to calculate the cost to the business, including tax and social security contributions, reference should be made to the examples set out in Table 8. The calculations have been carried out on the basis of the rates for tax and contributions in force at the beginning of 2012 for an employee without any dependants and working in a company with a risk fund percentage of 0.15%.

Table 8. Cost to business of employee salaries and benefits.

Net pay (€)	Cost to the business	% net cost
200	366	183%

Details of contributions paid by the business	
Social security contributions	20.8%
Unemployment fund	0.5%
Risk and accident fund	0.15–0.85%
Health fund	5.2%
Sick pay contributions	0.85%
Salary guarantee fund	0.25%
Contributions paid by the employee	
Pension contributions*	10.5%
Unemployment fund	0.5%
Supplementary healthcare fund	5.5%
Income tax	16%
Other figures	
Working hours per day	8
Minimum annual holiday allowance	20 days
13th month's pay	None
Severance indemnity	None*

*In the event of dismissal as a result of business reorganisation, agreement must be reached that ≥1 extra month's salary will be paid as severance indemnity.

The pension contribution is capped at 5 times the national average monthly salary for 2013 (5 x 2,298 RON, approx. €2,553).

With effect from 1 January 2014, the minimum basic salary has been raised to 850 RON a month (approx. €189) from the previous 800 RON, and from 1 July 2014 was raised to 900 RON a month.

With regards to the minimum sum, these are the two key issues:

i. Mandatory minimum wage can exceed the sum of 850 RON if there are various regulations in superior collective contracts.

ii. In calculation of the minimum wage it must be taken into account the appointing coefficient established by the labour collective contract.

The rights provided in the National labour contract are considered "minimum rights" in case of negotiation of collective labour contracts at company level (that is compulsory for companies with more than twenty employees). In case the National labour contract is missing, the minimum gross salary will be stated at 800 RON/month.

The law 448/18.12.2006 provides the legal entity with 50 or more employees (previously it was 75) these companies are obligated to hire disabled employees (4% of total employees).

The companies that do not meet this obligation may choose:

- Monthly payment to the budget of a sum equal to 50% of the minimum gross basic salary multiplied by the number of jobs reserved for disabled persons which are not occupied by these
- The acquisition of products and services from authorised companies worth the equivalent of the debt mentioned in paragraph a) from above.

Secondment of EU Residents in Romania

Posting/secondment is a situation where an employee is temporarily assigned by their employer to a local subsidiary or affiliated company located in an European Economic Area Member State. During the posting, the employee keeps thier employment contract with the home company and remains an employee of the home company. At first glance, only the place of work is temporarily changed. However, many other legal issues may come into play and need proper preparation and well-drafted paper work.

The secondment procedure in Romanian provides that a non-resident has to follow an established procedure, lodging the following documents with the relevant Employment Office:

- written agreement between the company seconding the employee and the seconded employee (translated and certified)
- foreign employee's employment contract (translated and certified)
- secondment contract/letter.

A specific form for secondments also has to be completed and lodged with the Labour Inspectorate at least 5 days prior to starting work. Any changes in the meantime to the information originally provided must also be notified within the same time scale.

The seconding company is required to appoint a representative, chosen from among its employees seconded to Romania, as the contact person for the purposes of the relevant Romanian employment offices in the event that any checks needed to be carried out and to whom documents in relation to all non-resident employees on secondment can be delivered.

Tax Obligations

Income tax is paid by non-residents who work as employees in Romania, on the basis of the provisions set out earlier in this booklet. In order to formally establish their tax position, a non-resident has to apply to the Romanian Immigration Office to be issued with a registration certificate and a personal numerical code.

Non-residents are required to declare, calculate and pay tax on a monthly basis (either directly or through a tax representative) by the 25th day of the month following the relevant month, with the calculation being made on the basis of gross pay and any benefits in kind, lodging at the same time the relative declaration (Declaration 224).

Particular attention should be paid to fringe benefits (remuneration in kind) paid to the seconded employee in addition to salary.

At the end of the year, the taxpayer may request a certificate stating the amount of tax paid in Romania during the course of the year, so that tax in the country of residence can be recalculated (see tax credit).

Social Security Issues

EU regulations concerning social security came into force on 1 January 2007 with regard to Romanian employees seconded in the EU, as well as with regard to EU employees seconded to Romania.

The basic principle underlying the EU regulations is the so-called 'place where obligation to pay contributions arises' in that, by law, social security contributions are paid in the country where the work is carried out. This principle does not apply to a number of exceptions, the most frequent being in the event of secondment.

On the basis of this principle, EU employees seconded to Romania can continue to be insured in their country of origin (i.e. the employer there is required to continue to pay social security contributions) only where the secondment procedure has been activated and Form A1 obtained pursuant to EU social security regulations. In the event that the secondment procedure has not been activated (i.e. there is no form A1) or where the authorised period of secondment has been exceeded, seconded EU employees must be insured in accordance with the legislation of the country to which they have been seconded, on the basis of the 'place where obligation to pay contributions arises' principle, in accordance with the general rules applicable to the local workforce.

New EU legislation – Regulations CE No. 883/2004 and No. 988/2009 and Implementing Regulation 987/2009 – Length of Secondment

With effect from 1 May 2010, the provisions coordinating the national social security systems in the 27 EU member states (those in Regulations CEE No. 1408 of 14 June 1971 and No. 574 of 21 March 1972) were replaced by the coordinating provisions contained in Regulation (CE) No. 883 of 29 April 2004, published in the EU Official Journal L 200 of 7 June 2004, as amended by Regulation (CE) No. 988 of 16 September 2009 and by Implementing Regulation (CE) No. 987 of 16 September 2009, published in the EU Official Journal L 284 of 30 October 2009.

The new EU provisions concerning the law applicable to employees or the self-employed working on a temporary basis abroad (this is the definition used, and one which in fact establishes a broad concept of work in another country – one that is wider than the classic concept of secondment/control, which is obviously included) have extended the maximum length of secondment from 12 to 24 months. The provisions concerning an extension of the secondment period that were established by Article 14 of Regulation No. 1408/71 have been repealed (with Form A1 replacing the previous E101 and E102), resulting in the relevant procedures and requirements relating to secondments being simplified.

Nevertheless, the exceptions contemplated by the new provisions can also extend to the standard period of secondment. In the event that the length of a secondment originally planned to last 24 months has to be extended for particular reasons, Article 16 of Regulation No. 883/2004 (which replaces Article 17 of Regulation No. 1408/71) allows the competent bodies of the member states concerned to enter into agreements with certain persons or categories of person by way of exception to the provisions referred to above and, therefore, to authorise a period of secondment that is longer that the standard period of 24 months (up to 5 years, at least on the basis of the previous Regulation).

Romanian Company Law

The most important piece of legislation concerning commercial enterprises is Law No. 31 of 1990, which was amended as early as 1 December 2006 (by Law No. 442/2006) in view of Romania's forthcoming membership of the EU. Other important amendments have subsequently been introduced by Law Nos. 515/2006 and 71/2011 and Emergency Orders Nos. 52/2007, 82/2008 and 54/2010.

The various types of companies and partnerships are, in the main, the same as those contemplated by Italian law:

- general partnership
- limited partnership
- limited partnership with share capital
- joint stock company limited by shares
- limited liability company.

Where general partnerships are concerned, all partners are jointly liable on an unlimited basis, while in the case of limited partnerships, only the general partners are liable (with the limited partners having limited liability to the extent of their contribution).

Liability in a limited partnership with share capital follows the same rules as those for a limited partnership, on the basis of the shares held by each individual shareholder.

As far as limited liability companies and joint stock companies limited by shares are concerned, shareholders are liable to the extent of the value of their shares or capital shares held, respectively.

As limited liability companies and joint stock companies limited by shares are the most common forms of company used by foreign investors as a means of investing in Romania, the following is limited to a consideration of these two only.

The Joint Stock Company Limited by Shares

Formation

A joint stock company limited by shares is formed by all shareholders signing a memorandum of association, unless a public floatation is involved, in which case the constituent members are to sign.

The minimum share capital for these companies must be of a minimum of 90,000 RON (around €21,000) and there must be at least two shareholders. Unless the company is transformed into another type of company, the share capital can't be reduced under the minimum provided by the Companies Law, or sanction the dissolution of the company, on request of any interested person.

The set-up of the company must be ratified by the Director of the Trade Register.

The decision of the Director that the company should be enrolled in the Register is immediately enforceable and must be appealed within 15 days.

If, within this time limit, no appeal is lodged, no further request for an amendment is presented, and no opposition to the company being constituted is expressed, the decision is treated as being final and is filed with the Trade Register and the Finance Department. The decision and the memorandum of association are also published in the Official Gazette.

Shares and Company Bodies

Shares may be personal shares or bearer shares, depending on the provisions of the memorandum of articles. Shares and capital shares cannot be issued having a value below par, and bearer shares must be fully paid up. Capital cannot be increased until shares previously issued are fully paid up. The nominal value of shares cannot be <0.1 RON, and they must all be of the same value.

Ownership in personal shares is transferred by way of declaration recorded in the share register signed by the transferor and the transferee or by their respective legal representatives and with the share being marked accordingly. Rights of ownership in bearer shares can be transferred simply by delivery.

Each share carries the right to one vote in general meetings, but a limit on the number of votes held by a shareholder holding more than one share can be established in advance by contract or by the articles. Exercise of the right to vote by shareholders who have failed to make any payments due can in any event be suspended. Shares are indivisible but, where a share belongs to more than one person, such persons are jointly liable to make the payments due. Preference shares can be issued that do not carry the right to vote at general meetings, but have a dividend right that has to be paid out before dividends to common stockholders.

General meetings may take two forms: ordinary and extraordinary. First and subsequent calls are subject to a variable quorum and variable majority requirements for the purposes of valid constitution and validity of the shareholder resolutions, respectively, depending on the type of meeting. The difference between the two types of meeting is related to the subject matter of the resolutions being discussed.

Management of a Joint Stock Company Limited by Shares

The section dealing with this particular aspect without doubt introduced what were the most radical of all the amendments brought in by the 2006 law. Two 'management systems' were introduced, meaning a wider range of options where the choice of governance of a joint stock company limited by shares is concerned.

A. The 'Unitary' System

This system requires the obligatory presence of an odd number of directors which, in the case of a company subject to compulsory auditing, must be at least three. The Board of Directors can delegate its duties (in practice, all operational duties) to one or more managers, who may be selected from those on the Board itself. In the case of companies subject to auditing by law, delegation of this type is compulsory.

B. The 'Dual' System

A joint stock company limited by shares can establish by way of its articles that it be managed and administered by a directorate and by a supervisory body.

Directorate

Within this system, management is dealt with on an exclusive basis by the directorate and subject to the control of the supervisory body. The directorate also represents the company.

It is appointed by the supervisory body and must be made up of one or more members (again, there must be an odd number). Where the company is subject to auditing by law, the directorate must have at least three members.

The supervisory body can revoke the appointment of one or members of the directorate at any time. However, where revocation is for no good cause, those whose appointments have been revoked may claim compensation.

Supervisory Body

The supervisory body is elected by a general meeting. It must have between three and eleven members, and the appointment of members can only be revoked with the votes of at least two-thirds of the shareholders present. The supervisory body cannot have any operational role, although the articles can provide that the directorate must obtain authorisation from the supervisory body before carrying out certain steps.

The members of the board of directors, the directorate and the supervisory body appointed at the time that the company is constituted may hold office for a maximum of 2 years and may be re-elected for subsequent periods of 4 years. Legal entities may only be members of the board of directors and the supervisory body.

Auditing and Auditors

a. Companies not subject to audit requirements: these companies can decide to appoint three auditors and an alternate auditor, or alternatively can elect not to have a board of auditors and instead decide to appoint an external auditing company to carry out the auditing work.

b. Companies subject to audit requirements: companies that have decided to have an external audit and companies working under the 'dual system'. These companies are required to appoint an auditing company and to arrange for an internal audit to be done.

In addition, companies that meet two out of three of the following conditions, for two consecutive years, have the obligation to perform a financial audit:

- total assets higher than €3,650,000
- turnover higher than €7,300,000
- average number of employees higher than 50.

General Meetings

In the case of ordinary general meetings, except where the articles provide otherwise, the required quorum has been reduced to the presence of a number of shareholders representing at least one-quarter of the total number of votes (previously being half of the share capital), while resolutions are carried with the majority of votes cast. On second call, however, the meeting can pass resolutions on a majority basis, irrespective of the quorum present. For the second call, the company's memorandum of association cannot establish a minimum quorum or majorities higher than those established by law.

Where extraordinary general meetings are concerned, on first call the required quorum has been reduced to the presence of a number of shareholders representing at least one-quarter of the total number of votes (previously it was three-quarters of the share capital). On second call, the meeting is validly constituted where the number of shareholders present represents one-fifth of total voting rights.

In both cases, resolutions are valid where adopted by a majority of votes cast, or by at least two-thirds of voting rights present in the case of: amendment to corporate purpose, increase or reduction in share capital, merger or spin-off, liquidation or transformation. The articles can establish a higher quorum as well as a larger majority.

A general meeting may be held no sooner than 30 days after publication of the notice in the Official Gazette or, in the case of personal shares, 30 days following despatch by recorded delivery of notice of the meeting having been called or, if the articles so provide, 30 days after notice of the meeting having been called was sent by e-mail bearing an electronic signature.

Notice that the meeting has been called must also be published on the company's internet site.

A legal entity may be appointed as director of another legal entity, but in such circumstances a 'director's contract', which is required to identify a permanent representative, has to be entered into.

One person cannot be a director on more than three boards of directors at the same time unless s/he is a director of and owner of at least one-quarter of the total shares of the company of which s/he is director or is director of a company holding the said quarter.

The Company Books and Financial Statements

A joint stock company limited by shares is required to keep a shareholders register, a register of resolutions passed at general meetings, a register of board of directors' resolutions and an auditors register, together with a bonds register if appropriate.

At least 1 month prior to the date fixed for the general meeting, the directors are required to present the auditors with the financial statements for the financial year comprising the balance sheet in order of liquidity, the profit and loss statement on a subdivided basis, the accompanying notes, the directors' report and supporting documentation.

Each year, ≥5% of the profit for the financial year has to be put aside for a legal reserve until the reserve reaches 20% of share capital. The directors are required to lodge the financial statements, the directors' report, the report submitted by the auditors and the minutes of the general meeting with the fiscal authorities. The fiscal authorities will transmit copies of such documents to the Trade Register, in order to make this information public. The financial statements are required to be lodged within the following time scales:

a. legal entities applying the accounting standards harmonised with the EU directives and with the International Accounting Standards, or who apply the simplified accounting standards: within 150 days of financial year end.

b. legal entities which, since being constituted, have been dormant: declaration to be lodged within 60 days of financial year end.

Law 31/1990 now requires that dividends be paid within the time frame established by the shareholders' general meeting, but no later than 6 months following approval of the financial statements in relation to the financial year ended.

Loss of the Company's Net Asset

In case the losses determine the diminishment of the company's net asset to less than half of the share capital value, the manager of the company is obliged to convoke the extraordinary general meeting in order to decide whether the company will be dissolute. The manager has the same obligation in case the share capital is reduced under the minimum value mentioned by the law or the company registers negative net assets.

In case the general meeting does not decide the dissolution of the company, it is obliged by law to reduce the share capital with the loss that was not covered by the company's reserves, in case the net asset of the company wasn't integrated until at least half of the value of the share capital.

The Limited Liability Company

The law relating to limited liability companies makes certain specific references to that applicable to joint stock companies limited by shares. It has in fact become established practice (accepted by case law) to apply certain provisions of Law No. 31/90 dealing specifically with the latter to limited liability companies. The provisions that apply to both are not dealt with below, reference being instead made from time to time back to the legislation governing joint stock companies limited by shares.

Formation

A limited liability company is formed by the shareholders signing a memorandum of association. The memorandum of association has similar content to the one for a joint stock company limited by shares, but must in addition state the division of the capital into capital shares, which cannot be represented by marketable securities. The maximum number of shareholders is 50, and a limited liability company can be formed with just one sole shareholder (who can be a foreigner). Attention should be drawn to a particular restriction: an individual or a legal entity can be a sole shareholder only in a limited liability company in Romania (Article 14, para. 1). In addition, a limited liability company having a sole shareholder cannot in turn be a sole shareholder of a Romanian limited liability company. Share capital must be ≥200 RON, divided into equal shares having a minimum value of 10 RON.

Limited Liability Company General Meetings

There is only one type of general meeting for limited liability companies, which has the task of considering and passing resolutions on all matters. Each capital share has one vote.

A validly constituted general meeting in first call that does not succeed in passing resolutions as the required majority is lacking, passes resolutions in second call, on a majority of those present, on the same order of business, regardless of the number of shareholders present and the extent of capital represented.

Capital shares can only be transferred to third parties with the approval of three-quarters of the share capital (Article 202, para. 2). Transfer of a capital share has to be registered with the Trade Register once the 30-day period for raising objections following publication in the Official Gazette has expired.

Voting at a General Meeting

The new Article 192, para. 1, states that: 'The shareholders' meeting shall decide by way of absolute majority vote of the shareholders and the capital shares, save where the memorandum of association provides otherwise'. It follows that where the memorandum of association has such a provision, the previous double majority principle (numbers present and capital shares) falls away.

Management of a Limited Liability Company

The company is managed by one or more directors who can be shareholders or not, and are elected at a general meeting. The memorandum of association can also provide for the election of one or more auditors; where there are >15 shareholders, appointment of auditors is in any event mandatory on the basis of the provisions governing joint stock companies limited by shares.

The company's financial statements are drawn up in accordance with the provisions applicable to joint stock companies limited by shares, with the provisions for those companies also applying to limited liability companies where the legal reserve and reduction in share capital are concerned. The provisions governing formation of the company apply where an increase in share capital is concerned.

The new Article 15, in providing that 'Contracts between a limited liability company and an individual or legal entity being the sole shareholder of the said limited liability company must be in writing and shall otherwise be entirely null and void', in fact extends the requirement that all relationships of any type between the parties mentioned must be drawn up in writing.

Other Possible Forms that a Non-Resident Company Can Take

Branches

Foreign companies can operate in Romania through one or more branches. Branches have to be registered with the Trade Register and are subject to the same tax requirements as companies. They do not acquire their own legal status, and in practice remain an offshoot of the parent company.

Representative Offices

Representative offices can operate on the condition that authorisation is issued by the relevant Ministry and an annual tax of €4,000 is paid. Foreign companies having a presence of this type in Romania are limited in the way that they can operate, as they cannot trade on a direct basis at all.

The Next Step

Contact Boscolo & Partners to discuss your needs.

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