

## Chapter 6

# Taxation

### 1. General

With a view to prevent the inflation of enactments and their amendments, Fiscal Code and the Fiscal Proceedings Code were enacted in December 2003 as unifying pieces of legislation.

The Fiscal Code includes stabilisation provisions, so that it can be amended and supplemented only by law, which should be promoted (as a general rule) six months before the date of entering into force. Moreover, any amendment to the Fiscal Code will enter into force starting from the first day of the year subsequent to the one when the law has been adopted. However, up to date, it has been itself subject to subsequent amendment.

### 2. Main regulations

- Fiscal Code approved by Law 571/2003, as amended up to date (“Fiscal Code”);
- Fiscal Proceedings Code, approved by GO 92/2003, as amended up to date (“Fiscal Proceedings Code”);
- Modernized Customs Code, as amended up to date (“Customs Code”);
- Law no. 146/1997 on judicial stamp taxes, republished, as amended (“Law no. 146/1997”).

### 3. Direct Taxes

Direct taxes are divided into two large groups, depending on the taxable subject:

- (i) Corporate income (profit tax, representative office tax, turnover tax);
- (ii) Individuals' income (personal tax).

#### 3.1. Profit tax

a) *The current profit tax rate is 16%.*

The main exceptions are listed below:

- (i) tax payers having obtained, prior to 1 July 2003, the permanent investor's certificate in a disfavoured area benefit from profit tax exemption for investments over the existence of the disfavoured area, in certain conditions provided by law;
- (ii) tax payers performing activities in the nature of bars, night-clubs, discotheques, casinos or sports betting and for which the profit tax owed is less than 5 per cent of the respective income are required to pay a tax equal to 5 per cent of the revenues obtained from such activities.

*b) The following are deemed taxable subjects:*

- (i) Romanian legal entities, for the taxable profit obtained from any source, both in Romania and abroad;
- (ii) foreign legal entities that carry out activities through a permanent establishment in Romania, for the related income;
- (iii) non-residents (i.e. legal entities or individuals) that carry out activities in Romania as partners, together with a Romanian legal entity in a joint venture without legal personality, for the profit obtained in Romania;
- (iv) foreign legal entities (a) for gains obtained from real estate located in Romania and (b) for the capital gains obtained from sale of securities issued by a Romanian legal entity;
- (v) Romanian individuals, partners in a joint venture without legal personality with Romanian legal entities, for the income obtained both in Romania and abroad from such joint venture.

The following, inter alia, are profit tax exempt:

- (i) State's Treasury and public institutions;
- (ii) The National Bank of Romania;
- (iii) Small and medium size enterprises, subject to special turnover tax (currently, 3% of the turnover);
- (iv) private education institutions, accredited and certified, for incomes allotted for financing higher education;
- (v) associations of owners / tenants, for certain income categories;
- (vi) Deposits Guarantee Fund in the banking system;
- (vii) Investment Compensation Fund;
- (viii) Private Pensions Guarantee Fund.

Romanian not-for-profit organizations, trade-unions or employers associations are profit tax exempt on what concerns on certain revenues (e.g. members' fees, sympathisers' contributions, donations received, interest resulted from bank-depositing the above-mentioned funds etc.). Should such entities obtain incomes from economic activities, they are profit tax exempt within a maximum limit of EUR 15,000 / fiscal year, but not more than 10% of the total non-taxable income.

*c) Computation of the profit tax*

The taxable profit is calculated as the difference between income obtained from any source and expenses incurred for the purpose of obtaining the income within a fiscal year, from which non-taxable income are deducted and to which non-deductible expenses are added.

*d) Non-taxable income*

According to the Fiscal Code, the following income categories are deemed as non-taxable:

- (i) dividends received by a *Romanian* legal entity from another *Romanian* legal entity. In addition, dividends received from a foreign legal entity resident within a Member State of the European Community are tax exempt provided the Romanian legal entity holds at least 15 per cent (10 per cent as from 2009) of the participation titles of the

respective foreign legal entity for at least two years ending on the date of the dividend payment;

- (ii) favorable differences with value of participation titles resulted from incorporation of the reserves, benefits or issuance premiums by the legal entities where the participation titles are held, as well as the differences from revaluation of the long-term financial investments. Such differences are taxable on the date of the transfer, assignment or withdrawal of the participation titles;
- (iii) income resulted from cancellation of non-deductible expenses, as well as from reduction or cancellation of provisions for which no deduction has been granted or income obtained from recovering non-deductible expenses; and
- (iv) non-taxable incomes, expressly provided for in agreements and memoranda approved through legal enactments.

*e) Deductible expenses*

The general rule is that, upon calculating the taxable income, the expenses are tax deductible provided they are incurred with the purpose of generating taxable revenue and compliant with the arm's length principle.

According to the Fiscal Code the following expenses are considered *inter alia*, to be incurred for the purpose of obtaining income and hence tax deductible:

- (i) expenses performed for labor protection and expenses performed for the prevention of labor accidents and professional illness;
- (ii) contributions for insurance against labor accidents and professional illness, as well as premiums insurance against professional risks;
- (iii) advertising and publicity expenses incurred based upon a written agreement;
- (iv) transport and accommodation expenses incurred by employees and directors, subject to certain conditions;
- (v) professional training expenses;
- (vi) expenses for marketing, market research, promotion, participation to fairs and exhibitions, etc;
- (vii) research expenses as well as development expenses which are not considered intangible assets;
- (viii) expenses for the improvement of management, IT systems, quality systems, obtaining certifications of conformity with quality standards;
- (ix) environmental protection expenses;
- (x) losses incurred as a result of writing-off non-cashed receivables, in the following cases:
  - the bankruptcy procedure of the debtors has been closed based on a court decision;
  - the debtor is deceased and the receivable cannot be cashed from the successors;
  - the debtor, limited liability company with a sole associate, is dissolved or the debtor is liquidated without successor;

- the debtor encounters major financial difficulties which affect its entire patrimony.

Nonetheless, the following expenses, *inter alia*, have limited deductibility, in accordance with the Fiscal Code:

- (i) protocol expenses within the limit of two per cent of the difference between the total taxable revenues and deductible expenses, less protocol expenses and profit tax;
- (ii) per diem allowances for travels granted to employees up to 2.5 times the legal level established for public institutions;
- (iii) social expenses up to the level of two per cent of the salaries fund;
- (iv) perishables, within the limits established by specialized bodies of the central administration, together with specialized institutions, with the endorsement of the Ministry of Public Finance;
- (v) expenses for meal tickets granted by the employers;
- (vi) certain reserves and provisions (such as: legal reserves within the limit of 5% of the accounting profit; execution collateral provisions; provisions and reserves set up by banking institutions, in accordance with the specific enactments; client provisions, related to unsecured receivables outstanding for at least 270 days against non-affiliated persons, currently up to the limit of 30% of client receivables);
- (vii) Interests expenses are fully deductible in case the debt/equity ratio is maximum three. The debt/equity ratio is calculated as the ratio between the average of the borrowed capital (i.e. the aggregate amount of loans with maturity over one year) at the beginning of the fiscal year and the borrowed capital at the end of the fiscal year, respectively the average between the owned capital at the beginning of the fiscal year and the owned capital at the end of the fiscal year. If the debt/capital ratio is higher than/equal to 3, interest expenses and net losses from differences in exchange rates are non-deductible. Interest expenses and net losses from differences in exchange rates that are not deductible are to be carried forward to the subsequent period, under the same conditions, until fully deducted. Moreover, in case of loans contracted with all parties not being financial institutions, deductibility of expenses is allowed up to the limit of 9% for loans in hard currency, and of the NBR's rate for RON loans.
- (viii) Expenses related to the depreciation of tangible and intangible assets are deductible within the limits of the fiscal depreciation, as provided in Section g) below;
- (ix) Sponsorship expenses are deductible within the limit of 3% of the turnover but less than 20 per cent of the profit tax.

*f) Non-deductible expenses*

According to the Fiscal Code, the following expenses are considered, among others, as non-deductible:

- (i) profit tax expenses, including expenses with taxes paid abroad;
- (ii) fines/increases/delay penalties owed to authorities, except for increases regulated by double tax treaties;
- (iii) VAT related to goods granted to employees (in-kind benefits), if their value was not subject to individual tax;

- (iv) any expenses incurred for the benefit of shareholders or associates, other than those generated by payments for goods delivered or services supplied to the taxpayer, at the market price for such goods or services;
- (v) expenses not recorded based on justifying documents;
- (vi) insurance premiums paid by employer on behalf of employee, except those subject to individual tax;
- (vii) salary expenses (or expenses assimilated to the same) that are not taxed to the individual;
- (viii) management services expenses, consultancy, service performance or assistance, where no written contracts have been concluded and for which the beneficiaries cannot justify the service provision. The norms of the Fiscal Code provide that such service agreement should include execution terms, specification of rendered services, as well as tariffs collected, the total value of the contract, a breakdown of expenses for the entire duration of the contract or as long as the services are performed. Moreover, the services performance shall be backed by work situations, work acceptance protocols, working reports, feasibility studies, etc.

*g) Fiscal depreciation*

Expenses related to the acquisition, production, construction, assembly, installation or improvement of depreciable fixed assets are recovered by deducting fiscal depreciation expenses.

The fiscal depreciation regime is subject to the following rules: (i) constructions, as well as copyright, trademarks, software copyright and any similar intellectual property rights (except for patent rights), and development expenses deemed as intangible assets, subject to the straight-line method of depreciation; (ii) technological equipment, respectively machines, tools, and installations, computers and equipment peripheral to computers, as well as patent rights, may be subject to either of the straight-line method, the declining balance method or the accelerated depreciation method; (iii) any other depreciable fixed asset may be subject to the straight-line depreciation method or the declining balance depreciation method.

When using the straight-line depreciation method, the depreciation is to be determined by applying the straight-line rate of depreciation to the entry value of the depreciable fixed asset. The straight-line rate of depreciation is calculated by dividing 100 by the normal use period of the fixed asset.

When using the declining balance depreciation method, the depreciation is to be calculated by multiplying the straight-line rates of depreciation by one of the following coefficients: (i) 1.5, if the normal use period of the depreciable fixed asset is between two and five years; (ii) 2.0, if the normal use period of the depreciable fixed asset is between five and 10 years; (iii) 2.5, if the normal use period of the depreciable fixed asset is more than 10 years.

In the case of the accelerated depreciation method, the depreciation is to be calculated as follows: (i) for the first year of use, the depreciation cannot exceed 50 per cent of the entry value of the fixed asset; (ii) for the subsequent years of use, the depreciation is to be calculated by dividing the remaining depreciable value of the fixed asset by the remaining normal use period of the asset.

The fiscal depreciation applies as follows:

- (i) beginning with the month following the date in which the depreciable fixed asset is put into operation;

- (ii) for investment expenses effected from own sources to fixed assets from the public domain, during the normal use period, during the remaining normal use period or during the period of the concession or rental contract, as the case may be;
- (iii) for investment expenses effected in fixed assets under concession, rental or under the administration of the person that effected the investment, during the period of the contract or during the normal use period, as the case may be;
- (iv) for investment expenses effected for the improvement of land, on a straight-line basis during a 10 years period;
- (v) the depreciation of mining buildings and constructions, salt mines with extraction in solution by wells, quarries, current exploitations, for solid mineral substances and those in the industry of oil extraction, for which the use period is limited to the reserves duration and which may not be given other uses after the exhaustion of the reserves, as well as investments for uncovering, is to be calculated per unit of product, depending on the exploitable reserve of useful mineral substance.

*h) Profit tax payment. Loss carried forward*

Profit tax is due quarterly, until the 25<sup>th</sup> day of the first month of the quarter following the one profit is earned. NBR, the Romanian banks and the Romanian branches of banks representing foreign legal entities must pay the tax monthly until the 25<sup>th</sup> of each month following the month for which tax is calculated.

The annual loss, as established by the profit tax return, is to be recovered from the taxable profits obtained during the following five consecutive years.

*i) Transfer pricing*

In the matter of transfer pricing, Romania generally follows the transfer pricing methods recommended by the OECD guidelines.

According to the Fiscal Code, when determining the amount of any tax or fee, the fiscal authorities may disregard a transaction that does not have an economic purpose or may re-qualify the form of a transaction to reflect the economic substance of the transaction. In a transaction between affiliated persons, the fiscal authorities may adjust the amount of income or expense of either person as necessary in order to reflect the market price for the goods or services provided in the transaction.

If the fiscal authorities do not agree with the valuation criteria applied, the consequence will be, for example, that those expenses related to services provided by the parent company and deemed to exceed the market price will be considered as non-deductible expenses.

*j) Permanent establishments*

The foreign legal entities that carry out activities through permanent establishment in Romania owe tax on the income attributable to the respective establishment.

The taxable profit is to be determined in accordance with the rules provided above for Romanian legal entities under the following conditions: (i) only incomes that are attributable to the permanent establishment are to be included in taxable income; and (ii) only expenses that are effected for the purpose of obtaining such incomes are to be included in deductible expenses.

The taxable profit of a permanent establishment is to be determined by treating the permanent establishment as a separate person and by using the transfer pricing rules to

establish the market price for transfers between the foreign legal entity and its permanent establishment.

*k) Capital gains*

Romanian and foreign legal entities that rent / sell / assign immovable property located in Romania or participation titles in a Romanian legal entity are subject to profit tax for the relevant gains at a 16 per cent rate.

The obligation of filling in and submitting the tax return form, on behalf of the foreign legal entity, as well as the calculation, retaining and payment of the tax is incumbent on the payer of the relevant amounts - resident legal entity or on the intermediary company / financial investment company.

The provisions of double tax treaties prevail over the above-mentioned provisions (see Section 3.4 below).

*l) Dividend tax*

A Romanian legal entity that pays dividend (including in case of amounts distributed to investment funds) to a Romanian legal entity is required to withhold and to pay to the state budget the dividend tax as follows:

- (i) the tax on dividends is to be determined by applying a tax rate of 10 per cent to the gross dividend paid to a Romanian legal entity;
- (ii) the tax that must be withheld is to be paid to the state budget on or before the 25th of the month that follows the month in which the dividend is paid. When the allotted dividends are not paid by the end of the year in which the annual financial statement has been approved, the tax on dividends is to be paid by December 31 of that year;
- (iii) dividends received from a company within the EU are non-taxable revenue if the Romanian legal entity holds at least 15 per cent (10 per cent as of 2009) of the capital of the company that distributes dividends for a minimum period of two years ending on the date of dividends payment.

### **3.2. Representative office tax. Turnover tax**

The Representative Offices of non-resident companies are required to pay a yearly flat tax of €4,000 payable in RON. The tax is payable in two equal installments, before June 20 and December 20. When the Representative Office is set up or closed during the fiscal year, the tax owed for the year is to be calculated in proportion to the number of months that the Representative Office was in existence.

Companies having an annual turnover of up to €100,000 and having one to nine employees (so-called micro-enterprises) are taxed at 3 per cent of their total income. The tax is payable quarterly by the 25th of the month subsequent to the quarter for which the tax is paid.

### **3.3. Individuals Income Tax**

*A. Tax subjects*

The Fiscal Code defines the following categories of tax subjects:

- (i) resident individuals;
- (ii) non-resident individuals conducting independent activities through a permanent establishment in Romania;

- (iii) non-resident individuals carrying out dependent activities in Romania, when one of the following conditions is met:
- the non-resident is present in Romania for more than 183 days during any period of 12 consecutive months ending in the respective calendar year;
  - the salary incomes are paid by or on behalf of an employer that is a resident;
  - the salary incomes are a deductible expense of a permanent establishment in Romania.
- (iv) non-resident natural persons for revenues other than those obtained through activities provided at points (ii) and (iii) above or from investments.

#### *B. Tax rate*

The income tax rate is of 16 per cent, except for investment revenues for which special rules apply (see Section d) below).

#### *C. Taxable revenues*

The revenues subject to income tax are the following:

- a) revenues from independent activities;
- b) salary revenues;
- c) revenues from transferring the use of property / rental income;
- d) revenues from investments;
- e) revenues from pensions;
- f) revenues from agricultural activities;
- g) revenues from prizes and gambling;
- h) revenues from assignment of real estate;
- i) other revenues.

##### *a) Revenues from independent activities*

The revenues from independent activities include commercial revenues, revenues from freelance activities (i.e. revenues obtained from exercising professions such as doctor, lawyer, notary, expert accountant, certified accountant, investment consultant, architect) and revenues from intellectual property rights, obtained individually and / or in any association form.

Income from independent activities is assessed on the basis of entries in the single entry bookkeeping ledgers that providers of independent activities are obliged to keep. The net income is to be determined as the difference between the gross income and the deductible expenses related to the income obtained.

Upon determining the taxable revenues from independent activities, the following, among others, are not deemed as deductible expenses:

- (i) fines, delay increases and penalties, others than the ones having a contractual nature;
- (ii) donations;

- (iii) sponsorships that exceed 5% of the taxable base (i.e. revenues minus deductible expenses, less sponsorship, protocol and membership fees payable to freelancer organization expenses);
- (iv) protocol expenses, exceeding the 2% limit applied on the taxation base;
- (v) membership fees payable to freelancer organization exceeding 5% of the taxable base.

Income from independent activities is subject to yearly income tax. The yearly income tax return is to be filed by May 15 of the year following the year when the income was generated. Tax payers obtaining income from independent activities have the obligation to make equal provisional tax payments on a quarterly basis during the fiscal year, except for certain revenues which are subject to withholding tax (e.g. intellectual property rights revenues, revenues under commercial mandate or commission or agent agreements or under civil conventions etc).

*b) Salary revenues*

The following are deemed as salary incomes: all revenue in cash and/or in kind obtained by an individual carrying out activities based on an individual employment agreement or under a special statute provided under the law, regardless of the period it covers, of the revenue denomination or of the form they are granted.

The following, among others, are assimilated to salary: the incomes for public offices; incomes and profit share due to directors of companies under State or public administration control; amounts received by founders of companies set up by public subscription; amounts received by general shareholders meeting representatives, by the board of directors and auditors commission members; monthly payments of the sole shareholder; the private use of company car and telephone.

According to the Fiscal Code, salaries are taxable incomes subject to a 16 per cent income tax. The monthly tax is determined as follows.

- For the main job, the 16 per cent rate applies to the difference between the net salary income (computed by deducting from the gross income the social contributions) and the following:
  - personal deduction granted for the respective month;
  - union subscription paid in the respective month;
  - contributions for the optional schemes for occupational pensions, not exceeding € 200 (€ 400 as of 2009) at the end of the year.
- For salary incomes obtained in addition to the main job, the 16 per cent rate applies to the difference between the gross income and the social contributions.

The personal deduction is applicable only in case of revenues of up to RON 3,000 and varies depending on the value of the income and the number of people who are under the taxpayer's support.

The payers of salaries and of assimilated revenues must calculate and withhold the tax upon and pay it to the State budget on the last monthly salary payment, but no later than the 25th of month.

*c) Rental revenues*

The rental revenue is defined as income in cash and/or in kind resulted from transferring the use right to movables and real estate, under a lease, sub-lease agreement, agricultural lease etc. The net income is determined by deducting from the gross income a flat quota of expenses of 25 per cent of the gross income.

With a view to establish the amount of tax, the contract must be concluded in writing and registered with the local fiscal authority in 15 days after its conclusion. Tax payers obtaining rental income (except for agricultural lease) have the obligation to make equal provisional tax payments on a quarterly basis during the fiscal year.

*d) Investments revenues*

The following types of revenue are included in this category and are taxed as follows:

- (i) dividends and amounts obtained as a result of holding units issued by investment funds – 16 per cent (legal entities are required to calculate and withhold tax on income at the same time of paying the dividends to shareholders; The tax is payable by the 25th day of the month that follows the month in which the revenues are paid).
- (ii) income from interests - 16 per cent (the tax is to be calculated and withheld by the payers of such income. The deadline for the tax payment is on or before the 25th day of the month that follows the month in which the interest is obtained / paid);
- (iii) capital gains obtained from transfer of securities - 1 per cent if the relevant securities are transferred after more than 365 days from their acquisition and 16 per cent if otherwise. The acquirer or securities, securities broker or other payers of income are required to withhold and pay the tax on gains resulting from the transfer of the ownership right over securities, other than participation titles in open investment funds;
- (iv) revenues from sale-purchase of foreign currency on a specific future date, under an agreement, as well as from any other similar operations - 16 per cent;
- (v) revenues from liquidation/dissolution without liquidation of a legal entity - 16 per cent.

*e) Real estate assignment revenues*

Revenues obtained from transfer of the ownership right over immovable assets, if made within 3 years from acquisition date thereof is taxed at 16 per cent rate. The taxable revenue from transfer of ownership right over immovable assets (land or constructions) is the positive difference between (i) the value resulted from the sale/assignment of such immovable property, except for exchange operations or contributions of such immovable to the share capital of a company; and (ii) the basic value of such immovable property.

The basic value is equal with either:

- (i) the price paid, which is determined as being either (i) the actual amount as per the relevant purchase or donation or exchange agreement, increased by 5 per cent or (ii) the actual acquisition price plus the costs of works and services increasing the immovable value as of their respective date, established by an expert report;
- (ii) the construction cost, which is determined as being either (i) the actual construction costs, evidenced by an expert report or (ii) the minimum estimated immovable value used by public notaries as of construction completion, increased by 5 per cent;
- (iii) the minimum estimated immovable value used by public notaries as of acquisition method - for immovable acquired via a method non-allowing use of the first two methods.

The loss resulting from transfer of immovable assets is a final loss of the relevant transferor.

The following revenues are tax exempt:

- (i) revenues obtained from transfer of ownership right over immovable (land and/or constructions) for which the ownership right was re-constituted for the benefit of the transferor according to the law;
- (ii) revenues obtained from the transfer of ownership right over immovable by inheritance, if the heritance is finalized within 2 years as of the death of the author;
- (iii) revenues obtained through donation of ownership right over immovable acquired by donation between relatives of up to 3<sup>rd</sup> grade or spouses;
- (iv) revenues obtained from the exchange of the immovable assets.

If the transfer is made through a notarized deed, the public notary shall withhold such tax; otherwise the transferor shall file the specific tax return with the fiscal authorities within 5 days from the transfer date.

*f) Other incomes*

Pensions are taxable at a 16% rate only for the amount resulted after the deduction of RON 1,000 plus the mandatory contributions from the monthly value.

Revenues from agricultural activities are taxable by a tax rate of 16 per cent applied to the net income.

The following are deemed as income obtained from gambling activities and are taxed as follows: (i) revenue from gambling exceeding RON 600 per day and competition, but is less than or equals RON 10,000 - withholding tax of 20 per cent; (ii) revenue from prizes exceeding RON 10,000 - withholding tax of 25 per cent.

The other incomes are taxed by a quota of 16% applied to the gross income, such tax being considered as final.

### 3.4. Taxation of Non-residents

According to the Fiscal Code, non-residents obtaining income from Romania are required to pay tax.

The incomes subject to taxation are those resulting from activities performed in Romania or from operations carried out with Romanian legal entities, or with other entities authorized to operate in Romania, as well as with Romanian individuals authorized to carry out, in their own name, income-generating activities, regardless of whether the amounts are collected in Romania or abroad. In Romania, the following taxation quotas are applicable, depending on the income categories they relate to: (i) 20 per cent for the income resulting from gambling activities; (iii) 16 per cent for any other incomes (*i.e.* interests, dividends, royalties, commissions, management services, etc.).

The following incomes are exempted from taxation:

- (i) interest for current/deposit accounts;
- (ii) interest from debt instruments issued and/or guaranteed by the Romanian government, local councils, the National Bank of Romania, as well as by banks or other financial institutions acting as agents of the Romanian government;
- (iii) income obtained from Romania by non-residents that perform consulting, technical assistance and other similar services in any field (i) within the framework of a contract

financed by a loan, credit or other financial agreement guaranteed by the Romanian state and entered into between an international financial organization and the Romanian state or a Romanian legal person (including the public authorities); (ii) as well as within the framework of contracts financed by loan agreements entered into by the Romanian state with other financial organizations, in case the interest charged for such loans is less than three per cent per year;

- (iv) income of foreign legal entities performing consulting activities in Romania within the framework of a free financing contract entered into by the Romanian government with other governments or with governmental or non-governmental international organizations;
- (v) dividends paid by a Romanian legal entity to a legal entity within a Member State of the European Community are exempt from tax if the latter owns a minimum of 15 per cent (10 per cent as of 2009) of the participation titles in the Romanian legal entity for an uninterrupted period of more than two years ending on the date of payment;
- (vi) incomes representing interests to the economies, obtained in Romania by residents of the EU member states;
- (vii) as of 1<sup>st</sup> January 2011, incomes from interests or royalties obtained in Romania by EU residents, if the beneficiary owns at least 25 per cent of the participation titles in the Romanian legal entity for an uninterrupted period of more than 2 years;
- (viii) incomes representing interests to the securities/bonds issued by Romanian companies, provided that (i) such titles are traded on a regulated market and (ii) the interest is not paid to an affiliate of the issuer of the securities/bonds.

The tax owed by non-residents for taxable incomes obtained from Romania is to be calculated, withheld and remitted to the state budget by the payers of the incomes.

The withheld tax that must be paid to the state budget on or before the 25th of the month that follows the month in which the income is paid at the exchange rate communicated by the National Bank of Romania for the day prior to the day of payment.

Under the provisions of Romanian tax law, taxation is in many cases subject to certain adjustments resulting from bilateral treaties for the avoidance of double taxation concluded between Romania and other countries. Up to now, Romania has concluded over 70 double tax treaties.

When the taxpayer is a resident of a country with which Romania has concluded a double tax treaty, the provisions of such treaty shall prevail. For the application of the provision of a double tax treaty, the non-resident is required to submit a certificate of fiscal residence to the payer of the income.

Below is a list of the main double tax treaties entered by Romanian to date.

Country signatory of treaty	WHT on dividend income (%)	WHT on interest income (%)	WHT on royalty income (%)	WHT on incomes from commissions (%)	Date of treaty conclusion
Austria	0/5	3	3	Not expressly established	20.11.2005
Belgium	5/15	10	5	5	04.03.1996
Canada	5/15	10	5/10	Not expressly established	08.04.2004
France	10	10	10	Not expressly established	27.09.1974
Germany	5/15	3	3	Not expressly established	04.07.2001
Holland	0/5/15	0/3	0/3	Not expressly established	05.03.1998
Hungary	5/15	15	10	5	16.09.1993
India	15/20	15	22.5	5	10.03.1987
Israel	15	5/10	10	Not expressly established	15.06.1997
Italy	10	10	10	5	14.01.1997
Turkey	15	10	10	Not expressly established	01.07.1986
UK	10/15	10	10/15	12.5	18.09.1975
USA	10	10	10/15	Not expressly established	04.12.1973

## 4. Indirect Taxes

The main categories of indirect taxes existent within the Romanian fiscal system are the value added tax, the excises and customs duties.

### 4.1. Value Added Tax (VAT)

#### a) Taxable operations

Pursuant to the Fiscal Code, operations that cumulatively fulfill the following conditions are included in the scope of application of the value-added tax: (i) they represent a supply of goods or services against payment; (ii) the place of delivery of goods or supply of services is considered to be in Romania; (iii) the delivery of goods or supply of services is made by a taxable person; and (iv) the delivery of goods or supply of services results from economic activities.

Import of goods is also included in the scope of application of the value-added tax.

Any transfer of property in exchange for a certain price is considered delivery of goods. This includes, for example, the transfer to public domain of private assets or transfer of property in result of forced execution. Any activity that is not delivery of goods is considered to be a service performance, such as: construction work; transport; postal and telecommunications services; agency and commission; repair works; assignment/ concession of intellectual property rights; consultancy work; leasing operations. The following operations fall also under the taxable operations umbrella:

- (i) intra-community supply of goods (except for new transportation means or excisable products) made by a taxable person subsequent to another intra-community supply of goods having as delivery place another EU state except for Romania;
  - (ii) intra-community supply of new transportation means;
  - (iii) intra-community supply of excisable products made by either a taxable or non-taxable person;
- b) Territoriality*

The operations relating to the transfer of ownership right over the assets located on the Romanian territory are subject to VAT. The imported goods are taxable in Romania upon registration of the customs declaration.

As a general rule, the service rendering is taxable in Romania when the place of performance is considered to be in Romania. In principle, the place of performance is deemed to be in Romania when the service provider has its headquarters or its place of residence in Romania. However, there are several exceptions to this principle: the building location - for the construction works; the departure place - for the goods' transportation, the beneficiary's headquarters - for certain leasing operations, consultancy services, data processing, banking operations, insurance operations etc.

*c) VAT Payers*

The following are VAT payers:

- a) any entity, regardless of their legal status, that carry out economic activities and that are registered as VAT payers;
- b) the importers of assets, regardless as to whether import is carried out directly, by agents or by third party legal entities, and regardless if they are registered as VAT payers or not;
- c) individuals, for the goods they bring into the country, as per the customs regulation;
- d) legal entities or individuals having their headquarters or permanent residence in Romania, beneficiary of services performed by foreigners, regardless if they are registered as VAT payers or not;

Where the entity/person carrying out taxable operations does not have its headquarters or permanent residence in Romania, such entity/person must appoint a fiscal representative residing in Romania. The fiscal representative must keep specific records with respect the non-resident's liabilities and observe special invoicing rules. Where the non-resident fails to meet its obligation of appointing a fiscal representative in Romania, the beneficiaries of the respective operations will have to pay the VAT related to these operations.

*d) VAT rates and regimes*

The standard rate of VAT is 19 per cent and is applied to all supplies of goods and services, which do not qualify for an exemption or for a reduced rate of VAT.

The reduced rate of VAT is 9 per cent and is applied to admission fees at museums, historical monuments, zoos, fairs and exhibitions, supply of school manuals, books, newspapers and periodicals, supply of orthopedic products, medicine for human and veterinarian use, accommodation in hotels or in areas with a similar function.

The operations exempted from VAT, with credit, are operations of export of goods and services, international transport, as well as operations concerning the international traffic of goods, such as: (i) the export of goods, transport and related services, as well as the goods sold through duty-free shops; (ii) the international transport of passengers to and from abroad, as well as the services directly related to it; (iii) certain operations performed in free trade zones and free harbours; (iv) services provided in connection with goods placed under customs suspensive regimes; (v) the supply of goods and services under project financed through grants, and supplies to diplomatic missions.

The operations exempted from VAT, without credit applies to a range of activities including banking, financial, insurance, medical, veterinary and social assistance, educational organization if provided by licensed entities and activities realized by entities whose annual turnover of up to RON 200,000.

#### *e) VAT Administration*

Invoices for the supply of goods must be issued at the delivery date. Invoices for services rendered should be issued no later than the end of the month when services have been rendered.

VAT payers must keep complete and detailed records for the calculation of VAT liability.

The fiscal period is the calendar month. An exception from this general rule are the VAT payers who have not exceeded a turnover of €100,000 at the end of the previous year – in this case the fiscal period is the calendar quarter.

VAT returns should be submitted to the tax authorities by the 25th of the month following the fiscal period, the same date being the moment the VAT is due. If a company is in a VAT reimbursable position, it is entitled to request this VAT by ticking the VAT refund box in the VAT return.

## **4.2. Excises**

The excises represent special consumption duties owed to the State budget for certain domestic and imported products.

The products for which excises are due encompass mainly, alcoholic beverages, cigarettes, mineral oils, electricity, as well as "luxury" products, for example: furs, gems, jewels, cars, perfumes, radio and video recorders, digital cameras, microwave ovens, air conditioners, hunting rifles, yachts/motor boats.

The excise is due at the moment of release for consumption or when losses or shortages of excisable products are assessed.

The Fiscal Code implements the concept of the fiscal warehouse. The fiscal warehouse is the place where the excisable products can be produced, transformed, held, received or dispatched under a duty suspension arrangement. Manufacture and/or deposit of excisable products is subject to authorization issued by the Ministry of Finance for operating a fiscal warehouse. The movement of excisable products under a suspensive arrangement between two fiscal warehouses is allowed only when based on an Administrative Accompanied Document.

The persons liable for the payment of excise duties are the importer or the warehouse keeper.

### 4.3. Customs Duties

Romania is member of the World Trade Organisation (WTO), of Central European Free Trade Agreement (CEFTA) and of the General System of Customs Preferences (GSCP).

The custom duties are applied to imported goods, and the applicable rates are specified under the EU Customs Tariff. The customs duties are expressed in percentages and are applied to the customs value of the goods, denominated in RON and valid on the date the import customs declaration is registered.

The law specifies the circumstances where, for special reasons and under special circumstances, exemptions are granted on import of commodities (e.g. goods to be used by diplomatic missions, export of merchandise or merchandise under suspensive customs regime).

The suspensive customs regimes are: customs transit, customs warehouse storage, active improvement, transformation under customs control, temporary admission.

Inside free zones, the foreign commodities are assimilated to commodities that are not located on Romanian territory. Foreign commodities may be introduced in Romania from the free zones, provided the conditions for commodity export are met. While stationary within the free zones, the foreign commodities may be granted a final customs regime or a suspensive customs regime.

## 5. Local Taxes and Duties

### 5.1. General issues

The local taxes and duties represent income to the local budgets established, according to the local autonomy principle, by the Local Councils, by the General Council of Bucharest Municipality and by the County Councils.

### 5.2. Categories of local taxes and duties

- buildings tax;
- land tax and duties;
- transportation means tax;
- tax for issuance of certificates, approvals and authorisations;
- tax for contracting publicity and advertising means;
- tax on shows/performances;
- hotel tax.

The local authorities may establish additional categories of local taxes. As a rule, the public institutions do not owe such taxes.

#### 5.2.1. Buildings Tax

Is an annual tax usually payable by the owner. For buildings in the public or private property of the State or of the local authorities, the tax is payable by the taxpayer that manages/uses such buildings.

Taxation quota varies as follows: (i) for individuals, amounts to 0.1%. In case several buildings are held, an increase from 15% to 100% is applicable depending on the number of buildings; (ii) for legal entities, the quota may range between 0.25% to 1.5% of the building's accounting value.

The building tax is calculated based on the tax return form and is payable quarterly in 2 instalments, until 31 March, respectively 30 September.

### **5.2.2. Land tax and duty**

The tax on land is established annually, as a fixed amount per square meter of land, depending on its location within the urban area (ranks and zones). It is incumbent, as a rule, to the owner.

Legal entities using the land in the public or private property of the State or of the local authorities for other purposes than agricultural/forestry activities are also subject to land tax.

### **5.2.3. Tax on transportation means**

Taxpayers owning transportation means with mechanical traction must pay an annual tax established depending on the cylindrical capacity of each vehicle, for each 200 cubic cm.

Taxes are payable as well for trailers, semi trailers and caravans, and for water transportation means.

Cars, motorcycles with side cars and moto-tricycles belonging to disabled persons adjusted to their handicap are exempt from tax. The tax is payable starting on the first day of the month during which they were acquired.

### **5.2.4. Taxes for issuance of certificates, approvals and authorisations**

Urbanism certificates are taxed pro rata with the surface of the land plot. The construction authorisations are taxed with 0.5 percent of the authorized value of the construction works, save for the kiosks, trade boxes, displays, located within public areas, as well as for locating display devices and billboards in which case the tax is computed based on the surface occupied by the respective construction. Taxes are payable prior to certificates, approvals, authorisations' issuance/endorsement.

### **5.2.5. Tax for contracting publicity and advertising means**

Taxpayers benefiting from advertising and publicity services (others than newspapers, radio and TV advertising) owe to the local budgets a tax ranging between 1% and 3% of the contract's value.

Billboards and other advertising means are subject to tax depending on the size of the advertisement.

### **5.2.6. Tax on shows/performances**

Taxpayers organising artistic performances, sports contests, discotheques etc. must pay a tax calculated on the collected amounts from selling tickets and subscriptions (between 2 and 5%), or in a fixed amount per square meter of premises. The amounts assigned for humanitarian purposes, based on contract, out of the amounts collected from performances, are not taxable.

### 5.2.7. Hotel Tax

The local councils may decide to set forth a hotel accommodation tax levied on individuals over 18 years of age.

The tax usually ranges between 0.5 and 5% of the accommodation tariffs.

## 6. Judicial and extra-judicial stamp duty, notary public stamp duty

### 6.1. Judicial Stamp Duty

The suits and petitions presented before courts of law are subject to judicial stamp duty and are taxed differently manner, depending on whether the case has or has not a patrimonial value. (see Chapter 18 - "Litigation and Arbitration").

### 6.2. Extra-judiciary Stamp Duties

Extra-judiciary stamp duties are collected for releasing various certificates, for the issuance/changing of ID papers, as well as for issuance of hunting/fishing permits; for examination of auto drivers in view of driving licences, issuance for car registration, for issuance of ownership titles acquired based on the Land Law no. 18/1991. The extra-judiciary stamp duties are payable, either in cash, by money order or by application and cancellation of fiscal stamps.

## 7. Fiscal Procedure

The Fiscal Procedure Code, which entered into force on 1 January 2004, unified former pieces of legislation on tax audits, collection of budget receivables, as well as legislation on tax returns, tax assessment and tax jurisdiction.

It applies to taxes and duties payable both to the state budget and local budgets, as well as to custom duties and payables from contributions, fines and other amounts deemed revenues to the state budget or other budgets ("Budgetary Debts").

According to the Fiscal Proceedings Code, burden of evidence lies on taxpayers, who should produce evidence sustaining the facts included in tax returns. However, fiscal authorities should base their fiscal decisions on a factual and legal perspective.

### 7.1. Collection of Budgetary Debts

The Fiscal Proceedings Code comprises detailed rules in respect of payment methods and deadlines, the enforcement procedure for collection of Budgetary Debts. The taxpayers' receivables may be offset in some conditions against the Budgetary Debts.

The quota of interests due for failure to pay when due the budgetary liabilities (taxes, duties, contributions etc.) currently amounts to 0.1 % for each day of delay. Interests are due for the period of deferral/rescheduling of taxes, whereby delay penalties are not, provided that the debtor observes in full the conditions of deferral/rescheduling.

The statutes of limitations for collecting Budgetary Debts is of five years, commencing on the year immediately following the one when the right to collect the relevant Budgetary Debts had arose.

## 7.2. Fiscal acts challenging means

The Fiscal Proceedings Code provides also for administrative and judicial procedures for requesting the reduction or cancellation, as the case may be, of taxes, duties, custom duties, contributions to special funds, delay increases or penalties, or of other amounts established and applied, as well as of other measures imposed by the Ministry of Finances' authorised bodies, to carry out controls or taxation acts.

The taxpayer who considers that the tax established by a fiscal authority through an act of control is incorrect or illegal may resort to the following appeal means:

- a) Administrative ways –preliminary complaints;
- b) Judicial ways - legal action filed, depending on the body settling the preliminary complaint, either with the Tribunal (if contestation is settled by county fiscal administration) or Appeal Court (in other cases). The decision of such courts is subject to second-degree appeal before respectively the Appeal Court or the Supreme Court of Justice.

Before applying to the courts, it is compulsory to resort to the administrative procedures first. Failure to exercise such ways within the legal term leads to the loss of the right of appeal in front of the courts. Filings to the court are exempt from stamp duties.

## 7.3. Payment incentives

According to the Fiscal Proceedings Code, upon debtors' well-grounded request, the competent fiscal authority may grant:

- (i) deferral or rescheduling of payment of taxes, duties, contributions and other budgetary liabilities;
- (ii) rescheduling of payment of delay penalties and/or of any kind of penalties;
- (iii) deferred payment, exemption, reduction of delay increases and penalties, except for delay increases owed for the deferral period of the principal;
- (iv) exemptions or reductions of local taxes and duties, under the terms stated by the law.

Payment incentives may be granted both before initiating the forced execution procedure, and at any point during such procedure. For granting payment incentives, the budgetary creditors will request the debtors to create collaterals.

In accordance with privatisation laws, the debtor benefiting from incentives on payment of budgetary liabilities may not participate in any privatisation procedure, for acquiring shares in other companies, for the entire incentives period.