

Chapter 6

Taxation

1. General

As of 1 January 2016, a New Fiscal Code and a New Fiscal Proceedings Code have entered into force. This has brought significant changes to the Romanian taxation field and had a material impact on doing business in Romania.

The New Fiscal Code includes stabilisation provisions, which means 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 New Fiscal Code will enter into force from the first day of the year subsequent to the year when the law was adopted.

Additionally, according to the provisions of the New Fiscal Code, if introduced new taxes or mandatory contributions are introduced, existing ones are increased or existing fiscal facilities are diminished, such amendments will enter into force starting on 1 of January of each year and thus such taxes, contributions or fiscal facilities will remain unchanged during a calendar year.

2. Main regulations

- New Fiscal Code approved by Law No. 227/2015, as amended up to date (“**New Fiscal Code**”);
- New Fiscal Proceedings Code, approved by Law No. 207/2015, as amended up to date (“**New Fiscal Proceedings Code**”);
- Customs Code, as amended up to date (“**Customs Code**”);
- Government Emergency Ordinance No. 80/2013 on judicial stamp taxes, as amended (“**GEO No. 80/2013**”);
- Law No. 117/1999 on extra-judicial stamp taxes, as amended up to date (“**Law No. 117/1999**”);
- Law No. 554/2004 on contentious administrative (“**Law No. 554/2004**”).

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 per cent**, except for the taxpayers performing activities in the areas of night-bars, night-clubs and casinos or sports betting. This includes legal persons who obtain

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these revenues based on a partnership agreement, for which the profit tax owed is equal to 5 per cent of the revenues obtained from such activities.

b) The following are deemed as taxable subjects:

- (i) Romanian legal entities, foreign legal entities which have their place of effective management located in Romania and legal entities headquartered in Romania incorporated, in accordance with the European legal provisions, for the taxable profit obtained from any source both in Romania and abroad;
- (ii) foreign legal entities that carry out activities through one or more permanent establishments in Romania and the related income;
- (iii) foreign legal entities obtaining income from a transfer of real estate located in Romania or any rights related to such real estate property. This includes the rent/transfer of the use of real estate located in Romania, income from exploitation of natural resources located in Romania and income from the sale or assignment of shares held in a Romanian legal entity, for the taxable profit related to such income;

The following are, *inter alia*, profit tax exempt:

- (i) The state's Treasury and public institutions;
- (ii) the National Bank of Romania;
- (iii) private education institutions, accredited and certified, for incomes allotted for financing higher education;
- (iv) associations of owners/tenants, for certain income categories;
- (v) Deposits Guarantee Fund in the banking system;
- (vi) Investment Compensation Fund;
- (vii) Private Pensions Guarantee Fund;
- (viii) legal entities subject to microenterprise tax;
- (ix) tax transparent entities with legal personality.

Romanian non-profit organizations, trade-unions or employers' associations are profit tax exempt on certain revenues (*e.g.* members' fees, sympathisers' contributions, donations received, interest resulting 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 EURO 15,000/fiscal year, as long as this is not more than 10 per cent of the total non-taxable income.

Chapter 9 c) Computation of the fiscal result

The fiscal result is computed as the difference between income and expenses recorded according to the applicable accounting regulations, from which non-taxable income and fiscal deductions are subtracted and to which non-deductible expenses are added.

d) Non-taxable income

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

- (i) dividends received by a Romanian legal entity from another Romanian legal entity;
- (ii) dividends received by a Romanian legal entity from a foreign legal entity subject to profit tax or a similar tax, located in a third country with which Romania has concluded a double tax treaty, provided that the Romanian legal entity receiving the dividends holds at least 10 per cent of the participation titles of the respective legal entity for at least one year ending on the date of the dividend payment. In addition, dividends received from a foreign legal entity resident within a Member State of EU are also tax exempt, provided that certain conditions are met and, amongst others, that the Romanian legal entity receiving the dividends holds at least 10 per cent of the participation titles of the respective legal entity for at least one year ending on the date of the dividends payment;
- (iii) the value of new shares or the amounts representing the increase of nominal value of existing shares registered as a result of incorporation of the reserves, benefits or issuance premiums by legal entities where participation titles are held. Such differences are taxable on the date of the free of charge transfer, assignment or withdrawal of the participation titles or liquidation of the legal entity in which the participation titles are held; except for the participation titles which fulfil the conditions mentioned at points (vii) and (x) below;
- (iv) income resulting from cancellation/recovery/re-invoicing of non-deductible expenses as well as from reduction or cancellation of provisions for which no deduction has been granted, income resulting from restitution or cancellation of interest and/or penalties for which no deduction has been granted, as well as income resulting from cancellation of reserve registered in respect of in-kind participation of the share capital of other legal entities or as a result of the increase of the share capital at the level of the legal entity to which the participation titles are held;
- (v) income representing increases resulting from revaluation of fixed assets, lands, intangible assets, as the case may be, which compensate expenses incurred with previous decreases in the same assets;
- (vi) non-taxable incomes, expressly provided for in agreements and memoranda approved through legal enactments;
- (vii) income obtained from the evaluation/revaluation/sale/assignment of participation titles held in a Romanian legal entity or a foreign legal entity located in a state with which Romania has concluded a double tax treaty, provided that the taxpayer holds at least 10% of the share capital

Chapter 6 of the legal entity for at least one year ending on the date of the evaluation/revaluation/sale/assignment;

- (viii) income resulting from the deferred profit tax determined and registered by taxpayers applying accounting regulations in compliance with the International Financial Reporting Standards;
- (ix) income resulting from the change in the fair value of real estate investments/biological assets, as a result of a subsequent evaluation using the fair value model by the taxpayers applying accounting regulations in compliance with the International Financial Reporting Standards. Such amounts are taxable concomitantly with fiscal depreciation deduction, respectively at the moment when such real estate investments/biological assets are de recognised;
- (x) income derived from liquidation of another Romanian legal entity or a foreign legal entity located in a state with which Romania has concluded a double tax treaty, provided that the taxpayer holds at least 10% of the share capital of the relevant legal entity for at least one year ending at the start of liquidation;
- (xi) compensations received based on European Court of Human Rights rulings;
- (xii) income registered through a permanent establishment in a foreign state, provided that the provisions of a double tax treaty concluded by Romania with the foreign state are applicable and the respective double tax treaty provides a tax exemption method to eliminate double taxation;
- (xiii) amounts received by shareholders/associates as a result of a refund of their quota of share contributions resulting in share capital decreases;
- (xiv) amounts collected, according to law, in order to fulfil funding responsibilities of waste management;
- (xv) income related to payment titles obtained by entitled persons, according to the law, representing initial holders who are registered in the Central Commission for determination of compensation or their legal heirs.

e) Deductible expenses

The general rule is that, upon calculating the fiscal result, the expenses are tax deductible provided they are incurred for business purposes. This includes ones expressly governed by laws, as well as tuition fees, fees and contributions payable to chambers of commerce, employers' organizations and trade unions.

To the extent of the above mentioned exceptions, salary expenses and those assimilated to salaries are considered deductible expenses for the computation of the fiscal result.

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

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- (i) protocol expenses within the limit of two per cent of accounting profit plus protocol expenses and profit tax. Protocol expenses also include the expenses incurred with the input VAT for gifts with a value higher than RON 100 granted by taxpayers;
- (ii) social expenses up to the level of five per cent of the salaries fund;
- (iii) perishables and losses resulting from manipulation/depositing;
- (iv) expenses for meal tickets and holiday vouchers granted by employers;
- (v) certain reserves and provisions (such as: legal reserves within the limit of 5 per cent of accounting profit; provisions for performance guarantees offered to clients; adjustments for depreciation 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 per cent of client receivables);
- (vi) interest expenses are fully deductible in the cases where the debt/equity ratio is a maximum of 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 of over one year as well as the loans with a maturity of less than one year, for situations where there are extensions of such terms and the current reimbursement period cumulated with the previous reimbursement periods exceed 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 3 or the owned capital is negative, interest expenses and net losses from differences in exchange rates, related to loans envisaged in determining the indebtedness ratio, 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, before applying the condition regarding debt/equity ratios, in case of loans contracted with all parties not being financial institutions, the first condition that must be applied is the one regarding the deductibility of expenses which is allowed up to the limit of 4 per cent for loans in foreign currency, and of the NBR's rate corresponding to the last month of the quarter for RON loans.
- (vii) 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;
- (viii) sponsorship expenses are deductible within the limit of 0.5% of turnover but less than 20 per cent of profit tax.

f) Non-deductible expenses

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

- (i) profit tax expenses, including expenses with taxes paid abroad;

Chapter 6 (ii) interests/fines/increases/delay penalties, seizures and penalties owed to Romanian or foreign authorities, except for those related to agreements concluded with such authorities;

- (iii) any expenses incurred for the benefit of shareholders or associates, other than those generated by payments for delivered goods or services supplied to the taxpayer, at the market price for such goods or services;
- (iv) management services expenses, consultancy, service performance or assistance, performed by a person located in a country with which Romania has not concluded an information exchange agreement. Such provisions are only applicable for expenses related to transactions qualified as artificial.

g) Fiscal depreciation

Expenses related to the acquisition, production or construction of depreciable fixed assets, as well as investments made to such assets are recovered by deducting fiscal depreciation expenses.

The fiscal depreciation regime is subject to the following rules: (i) constructions, copyright, trademarks, software copyright and any similar intellectual property rights (except for patent rights), and other assets, deemed from an accounting perspective as intangible, are subject to the straight-line method of depreciation; (ii) technological equipment, machines, tools, installations, computers and equipment peripheral to computers, as well as patent rights, may be subject to either 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, depreciation is determined by applying the straight-line rate of depreciation to the entry fiscal value of the depreciable fixed asset as of the date of entry into tax payer's patrimony.

When using the declining balance depreciation method, depreciation is 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 six and ten years; (iii) 2.5, if the normal use period of the depreciable fixed asset is more than ten years.

In the case of the accelerated depreciation method, depreciation is to be calculated as follows: (i) for the first year of use, depreciation cannot exceed 50 per cent of the entry value of the fixed asset as of the date of entering into tax payer's patrimony; (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, *inter alia*, as follows:

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

Chapter 6 (ii) for investment expenses affected by 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 affected by fixed assets under concession, rental or under the administration of the person that affected the investment, during the period of the contract or during the normal use period, as the case may be;
- (iv) for investment expenses affected by the improvement of land, on a straight-line basis during a 10 year 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, 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 by the 25th day of the first month of the quarter following the one profit is calculated for the first three quarters of the year. The finalization and payment of profit tax due for the respective fiscal year must be made by 25 March of the following year. As of 1 January 2013, taxpayers (except those specifically mentioned by law such as banks) may opt to declare and pay the annual profit tax by making anticipated quarterly payments.

Romanian banks and the Romanian branches of banks representing foreign legal entities must declare and pay the tax annually by making anticipated quarterly payments.

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

As of 1 October 2012, losses incurred by a company are transferred within a merger or spin-off operation and hence, such can be recovered by the relevant successors pro rata from the assets transferred.

For foreign legal entities, the carrying forward of losses applies only to revenues and expenses attributable to their permanent establishment in Romania. This is done respectively to revenues and expenses attributable to a permanent establishment cumulated at the level of the designed permanent establishment in Romania.

i) Transfer pricing

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

According to the New Fiscal Code, when determining the amount of any tax, fee or mandatory social contribution the fiscal authorities may disregard a transaction that does not have an economic purpose and adjust its tax consequences 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

Chapter 9 adjust tax if the arm's length principle is not observed or may estimate, if the taxpayer does not provide the necessary information to determine whether the arm's length principle has been observed or the amount of income or expense related to the fiscal result of each related person is not provided.

If the fiscal authorities do not agree with the valuation criteria applied, the consequence are, 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 and therefore, delay penalties are incumbent to the tax payer.

j) Permanent establishments

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

The fiscal result 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 affected 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.

On a separate note, if, at the end of the year it cannot be determined whether the activities performed by a non-resident in Romania will last long enough as to determine a permanent establishment, the revenues and expenses related to the respective fiscal year will be taken into account in the next fiscal year. This is done in situations where the legal period of six months or the period mentioned in the double tax treaties are exceeded.

k) Capital gains

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

The obligation of filling in and submitting the tax return form, as well as the computation and payment of the tax is incumbent on the foreign legal entity. Nevertheless, 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 to a Romanian legal entity is required to withhold and 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 5 per cent to the gross dividend distributed or paid to a Romanian legal entity;
- (ii) the tax that must be withheld is to be declared and paid to the state budget on or before the 25th of the month that follows the month in which the dividend was paid. When the allotted dividends are not paid by the end of the year in which the annual financial statement was

Chapter 6 approved, the tax on dividends is to be paid by 25th of January of the next year, respectively until the 25th of the first month of the next fiscal year, following the year in which the annual financial statements were approved;

- (iii) dividends received by a Romanian legal entity from another Romanian legal entity are non-taxable revenues;
- (iv) dividends received by a Romanian legal entity from a foreign legal entity subject to profit tax or a similar tax, located in a third country with which Romania has concluded a double tax treaty. This is provided that the Romanian legal entity receiving the dividends has held at least 10 per cent of the participation titles of the respective legal entity for at least one year ending on the date of the dividend 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 instalments by the 25th of June and the 25th of December. When the Representative Office is set up or closed during the fiscal year, the tax owed for the year is calculated in proportion to the number of months that the Representative Office was in existence.

Micro enterprises are taxed at a special income tax rate, as follows:

- 3 per cent of total income if the microenterprise has no employees;
- 2 per cent of total income if the microenterprise has one employee;
- 1 per cent of total income if the microenterprise has at least two employees.

Notwithstanding the above quotas, newly established Romanian companies which have at least one employee have been established for a period of more than 48 months and their shareholders / associates have not held shares in other Romanian legal entities are taxed at a rate of 1 percent of income for the first 24 months of existence of the legal entity.

Microenterprise are companies which fulfil the following criteria at the end of the previous year: (i) their annual turnover is lower than the RON equivalent of EUR 100,000, (ii) more than 80% of their total revenues are derived from activities other than management and consultancy, (iii) their share capital is held by persons other than the state and local authorities, (iv) are not in dissolution procedure followed by liquidation (registered with the relevant trade registry or court of law), (v) derive income from activities other than banking, insurance and reinsurance, capital markets or gambling and exploration, development or exploitation of oil gas deposits.

The tax is payable quarterly by the 25th of the month subsequent to the quarter for which the tax is due.

Newly established Romanian companies are required to apply the micro enterprises tax regime, unless they have a share capital of at least the RON equivalent of EUR 25,000 and opt to apply the profit tax related provisions.

3.3. Individuals Income Tax

3.3.1. Tax subjects

The New 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;
- (iv) non-resident individuals for revenues other than those obtained through activities provided at points (ii) and (iii) above.

3.3.2. Tax rate

The income tax rate is 16 percent, except for real estate revenues and gambling revenues for which special rules apply (see *Section e*) and *f*) below). Moreover, starting from 1 January 2016, dividends are subject to a tax rate of 5 percent;

3.3.3. 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, forestry and fishery activities;
- (g) revenues from prizes and gambling;
- (h) revenues from assignment of real estate;
- (i) revenues from other sources.

a) Revenues from independent activities

The revenues from independent activities include revenues from production activities, commercial revenues, revenues from the supply of services, revenues from freelance activities (*i.e.* revenues obtained from professions such as doctor, lawyer, notary, technical and accounting experts, certified accountant, financial auditor, tax advisor, architect, translator and sportsman) and revenues from intellectual property rights, obtained individually and/or in any association form.

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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 other factors, are not deemed as deductible expenses:

- (i) fines, delay increases and penalties, except those that have a contractual nature;
- (ii) donations;
- (iii) sponsorships that exceed 5 per cent of the taxable base (i.e. gross income minus deductible expenses, sponsorship, protocol and membership fees payable to freelancer organization expenses);
- (iv) protocol expenses, exceeding the 2 per cent limit applied on the taxation base;
- (v) membership fees payable to freelancer organization exceeding EUR 4,000 annually.

Income from independent activities is subject to yearly income tax. The yearly income tax return is to be filed by the 25th of May the year following the one in which the income was generated. Taxpayers obtaining income from independent activities have the obligation to make equal anticipated 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, etc.).

b) Salary revenues

The following are deemed as salary incomes: all revenue in cash and/or in kind obtained by an resident or non-resident individual carrying out activities based on an individual employment agreement or under a service report, secondment or 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 other factors, are assimilated to salary: the incomes for public offices; net profit share due to directors of companies according to the law/article of incorporation, as the case may be, as well as unit profit participation for managers with management contracts; amounts received by founders of companies set up by public subscription; amounts received by auditor commission members; the private use of company car and telephone.

According to the New Fiscal Code, salaries are taxable incomes subject to a 16 percent income tax rate. The monthly tax is determined as follows:

- (i) 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;
 - voluntary health insurance premiums, up to EUR 400 annually;

Chapter 6 contributions for optional schemes for occupational pensions, not exceeding EUR 400 at the end of the year.

- (ii) for salary incomes obtained in addition to the main job, the 16 per cent rate applies to the difference between gross income and related social contributions.

The personal deduction is applicable only in case of revenues of up to RON 3,000 (approx. EUR 670) 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 tax and pay it to the State budget on the last monthly salary payment, but no later than the 25th of the month following the month for which the tax is paid.

c) Rental revenues

The rental revenue is defined as income in cash and/or in kind resulting from transferring the use right to movables and real estate, under a lease, sub-lease agreement or agricultural lease etc. The net income is determined by deducting a flat quota of expenses of 40 per cent of the gross income from the total gross income.

With a view to establishing the amount of tax, the contract must be concluded in writing and registered with the local fiscal authority within 30 days after its conclusion. Taxpayers obtaining rental income (except for agricultural leases) have an obligation to make equal anticipated tax payments on a quarterly basis during the fiscal year. However, taxpayers may avoid the obligation by opting to pay tax on rental revenues considering the actual expenses and revenues incurred. In such cases, the tax is to be paid in two equal instalments: the first one, representing 50 per cent of the annual tax, must be paid by the 25th of July and the other 50 per cent by the 25th of November.

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 collective investment undertakings – 5 per cent (legal entities are required to calculate and withhold tax on income at the same time as paying 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 was obtained/paid);
- (iii) capital gains obtained from transfer of securities – 16 per cent;
- (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;

Chapter 6 (7) Revenues from liquidation of a legal entity, as well as the proceeds obtained from a share capital decrease, except for the amounts received following the restitution of a quota of the share of the contributions – 16 per cent.

e) Real estate assignment revenues

Revenues obtained from the transfer of the ownership right over immovable assets, if made within 3 years from the acquisition date thereof is taxed as follows:

- (i) 3 per cent up to the amount of RON 200,000 (approx. EUR 44,500);
- (ii) RON 6,000 plus 2 per cent of the amount which exceeds RON 200,000 (approx. EUR 44,500);

Revenues obtained from the transfer of the ownership right over immovable assets, if made subsequent to a period of more than 3 years from the acquisition date thereof is taxed as follows:

- (i) 2 per cent up to the amount of RON 200,000 (approx. EUR 44,500);
- (ii) RON 4,000 (approx. EUR 890) plus 1 per cent of the amount which exceeds RON 200,000 (approx. EUR 44,500).

The following revenues, among others, are tax exempt:

- (i) revenues obtained from the 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 inheritance 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 3rd grade or spouses.

The public notary shall withhold such tax before execution of the agreement or completion of inheritance procedure and pay it to the State Budget by the 25th of the month following the month for which the tax is withheld. The tax is computed at the value declared by the parties in the agreement for the transfer of ownership. However, if such value is lower than the minimum values established through the market study prepared by the public notary chamber, the public notary is obliged to report such transaction to the tax authorities.

f) Other income

Pensions are taxable at a 16 per cent rate for the amount after the deduction of health insurance contributions due by the relevant individual and with a monthly non-taxable amount of RON 1,050 (approx. EUR 233).

Revenues from agricultural activities are taxable by a tax rate of 16 per cent applied to the annual income based on annual thresholds.

Chapter 9 As of 12 June 2015, gambling income obtained by Romanian residents is taxed according to the following rules:

- revenues up to RON 66,750 (approx. EUR 14,900) will be subject to a withholding tax at a rate of 1 per cent;
- revenues that exceed RON 66,750 (approx. EUR 14,900), but are below RON 445,000 (approx. EUR 99,000) will be subject to a withholding tax for the amount of RON 667.5 (approx. EUR 150) + a rate of 16 per cent for the amount in excess of RON 66,750 (approx. EUR 14,900), and
- revenues from gambling that exceed RON 445,000 (approx. EUR 99,000) will be subject to withholding tax for the amount of RON 61,187.5 (approx. EUR 13,600) + a rate of 25 per cent for the amount in excess of RON 445,000 (approx. EUR 99,000).

By means of exception, gambling income obtained by individuals from online gambling and poker festivals is not subject to withholding tax. In such cases, taxpayers must file the income tax return by the 25th of May of the year following the year when the income was realized. Revenues from prizes, in cash and/or in kind, are taxed at a quota of 16 percent for each prize. (except for prizes that have a value less than RON 600)

3.4. Taxation of Non-residents

According to the New 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) 50 per cent withholding tax on the payments made by Romanian residents for income obtained in Romania, such as interests, commissions, services, etc., if the income is paid into an account from countries which do not have an information exchange agreement concluded with Romania. This increased tax rate only applies when the income is paid within an artificial transaction.
- (ii) 1 per cent for gambling winnings obtained in Romania, except for gambling winnings obtained from online gambling and poker festivals, which are not subject to withholding tax in Romania;
- (iii) 5 per cent for dividends obtained in Romania;
- (iv) 16 per cent for any other income obtained in Romania by a non-resident.

The following incomes are, inter alia, exempt from taxation:

- (i) interest related to public debt instruments, in RON or another currency, income obtained from derivative transactions used to perform risk management operations in relation to government public debt operations, income obtained from trading of state titles and bonds issued by

Chapter 6 Territorial administrative units, as well as interest related to instruments issued by the National

Bank of Romania in order to achieve the monetary policy objectives and incomes obtained from trading securities issued by the National Bank of Romania;

- (ii) income of foreign legal entities performing consulting activities in Romania within the framework of a free financing contract entered into by the Romanian government/public authorities with other governments/public authorities or with governmental or non-governmental international organizations;
- (iii) dividends paid by an undertaking, Romanian legal entity or legal entity headquartered in Romania, incorporated under European legislation, to a legal entity resident within a Member State of the European Union or to a permanent establishment of a European legal entity, located in another European country, are exempt from taxation if the foreign legal entity as the beneficiary of dividends meets the following cumulative conditions:
 - is incorporated under one of the organizational forms of foreign entities provided by the New Romanian Fiscal Code;
 - is resident within a Member State of the EU and pursuant to a double tax treaty concluded with a third state which is not deemed as resident for tax purposes outside the EU;
 - in accordance with the legislation of the above relevant Member State, pays profit tax or similar tax without the possibility of exemptions;
 - owns a minimum of 10 per cent of the share capital of the undertaking for an uninterrupted period of one year ending on the date of the dividend payment.

For the purposes of the above mentioned exemption, the Romanian Legal entities have to meet the following conditions:

- is a company incorporated under Romanian laws;
 - pays profit tax without the possibility of exemptions;
- (iv) incomes from interest or royalties obtained as stipulated by the New Fiscal Code;

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

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 of withholding of non-residents tax.

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 80 double tax treaties.

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When the taxpayer is a resident of a country with which Romania has concluded a double tax treaty, the provisions of such a 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 into by Romania 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	0/3	3	Not expressly established	30.03.2005
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	0/3	3	Not expressly established	04.07.2001
The Netherlands	0/5/15	0/3	0/3	Not expressly established	05.03.1998
Hungary	5/15	15	10	5	16.09.1993
India	10	10	10	Not expressly established	08.03.2013
Israel	15	5/10	10	Not expressly established	15.06.1997
Italy	10	10	10	5	14.01.1977
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 value added tax, excises and customs duties.

Chapter 6 Value Added Tax (VAT)

a) Taxable Operations

Pursuant to the New Fiscal Code, operations that cumulatively fulfil the following conditions are included in the scope of application of value-added tax: (i) they represent a supply of goods or services for consideration; (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 value-added tax, if the import is considered to be performed on the Romanian territory.

Any transfer of property in exchange for a consideration (?) is considered a supply 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 the supply 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 also fall under the taxable operations umbrella:

- (i) intra-community acquisition of goods (except for new transportation means or excisable products) made by a taxable person or a non-taxable legal person subsequent to another intra-community supply of goods that has as its delivery place another EU state except for Romania and performed by a taxable person which is not considered a small company in its Member State and to which the provisions regarding installation, assembly or distance sales do not apply;
- (ii) intra-community acquisition of new transportation means;
- (iii) intra-community acquisition of excisable products made by either a taxable or non-taxable legal person.

b) Territoriality

The operations relating to the transfer of ownership rights over the assets located on the Romanian territory are subject to VAT. 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 person receiving the respective services is a taxable person and has its seat of economic activities in Romania. Where the person receiving the services is a non-taxable person and the supplier is a taxable person established in Romania, the place of supply for such services is considered to be in Romania.

However, there are several exceptions to these principles: the immovable assets location - for services related to the respective assets; the departure place - for the intra-community transport of goods provided to a non-taxable person, the beneficiary's headquarters - for certain leasing operations,

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consultancy services, data processing, banking operations, insurance operations, etc., provided to non-taxable persons located outside the EU.

c) VAT payers

According to the New Fiscal Code, it is considered that a VAT payer is any person performing, in an independent manner and irrespective of the location, economic activities such as: activities carried out by producers, traders, or services suppliers including extractive activities, agricultural activities, independent activities or assimilated to such, exploitation of tangible/intangible assets in order to obtain continuing revenues. A foreign entity/individual is obliged to register for VAT purposes in Romania, where the entity/individual carrying out taxable operations if they (i) do not have their headquarters or permanent residence in the EU, such entity/individual must appoint a fiscal representative residing in Romania (ii) do not have their headquarters in Romania, but in the EU, such entity may appoint a fiscal representative residing in Romania or may register directly for VAT purposes.

d) Place of supply

As a general rule, the place of supply of goods refers to:

- (i) a place where goods are located at the moment the dispatch or transport begins;
- (ii) a place where installation or assembly is performed;
- (iii) a place where goods are made available to the purchaser, if the relevant goods are not transported/dispatched;
- (iv) a place of departure of passenger transport, if the delivery of goods is performed on board an airplane/ship/train, for passenger transport performed within the EU, provided certain conditions are met;
- (v) a place where the taxpayer trader is headquartered, has a fixed place of business to which the supply is performed or has its domicile or usual residence, in the case of energy/gas supply to a taxable-person trader and where the gas system is located within EU territory.

In principle, the place of intra-community acquisition of goods is considered to be the place where the goods are located at the moment transport or dispatch ends.

As regards import of goods, generally, the place of import is the territory of the member state where the goods are located at their entry into EU territory.

As a general rule, the place of supply of services is:

- (i) the headquarters of the tax payer or the place where it has a fixed place of business to which the supply is performed, has its domicile or usual residence, in the case of services that are supplied to a taxable person;

Chapter 6 (ii) the headquarters of the supplier or the place where it has a fixed place of business from which the supply is performed, has its domicile or usual residence, if the services are supplied to a non taxable person.

e) VAT rates and regimes

The standard rate of VAT is 20 per cent and is applied to all supplies of goods and services, which do not qualify for an exemption for a reduced rate of VAT.

The reduced rate of 9 per cent is applied to (i) supply of prosthesis and accessories thereof, except dentures, (ii) supply of orthopaedic products, (iii) medicine for human and veterinarian use, (iv) accommodation in hotels or in areas with a similar function including rental of land for camping, (v) restaurant and catering services, except alcoholic beverages, supplies of food, including non-alcoholic beverages, domestic live animals and birds, seeds, plants and ingredients used in food preparation, (vi) products used in order to complete or replace meals, (vii) supply of potable water and of water for irrigation in agriculture.

The reduced rate of 5 per cent is applied to (i) supply of school books, books, newspapers and magazines, except for those intended exclusively or primarily for advertising, (ii) services consisting of access to castles, museums, memorial houses, historical monuments, architectural and archaeological monuments, zoological and botanical gardens, fairs, exhibitions, cultural events, cinema and sporting events, (iii) housing supply (including the lands on which they are built) as a measure of social policy such as: housing supply for rehabilitation centres for minors with disabilities, homes for elderly, orphanages, houses having a surface area of a maximum of 120 sq. (related land of maximum 250 sq.) and a value of maximum RON 450,000 (EUR 100,000), which are acquired by an unmarried person or family.

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

The operations exempted from VAT, without credit, include a range of activities, such as banking, financial, insurance, medical and social assistance education.

As of 1 January 2013, the cash accounting system for VAT was introduced, which entails the deferment of VAT payment until the counter value of goods or services supplied is cashed in.

The system which was initially mandatory is currently optional for taxpayers with a turnover lower than RON 2,250,000 (EUR 500,000) registered in the previous calendar year and for new companies. The system cannot be applied by companies which register a turnover higher than RON 2,250,000 (EUR 500,000) or by the taxpayers which are part of a fiscal group or ones who are not established in Romania.

f) VAT administration

Chapter 6 Invoices for the supply of goods must be issued no later than the 15th of the month that follows the one in which the VAT became chargeable.

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

The fiscal period is the calendar month. An exception from this general rule is for the VAT payers who did not perform intra-community acquisitions of goods and have not exceeded a turnover of EUR 100,000 at the end of the previous year – in this case the fiscal period is the calendar quarter.

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

4.2. Harmonised Excises

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

The products for which excises are due encompass are mainly, alcoholic beverages, cigarettes, energy products and electricity.

The excise is due at the moment of release for consumption.

The New Fiscal Code maintains the concept of the fiscal warehouse-keeper. The fiscal warehouse-keeper is the individual or entity which is authorized by the competent authority to produce, transform, hold, receive or dispatch excisable products, under a duty suspension arrangement. The relevant authorization is issued by the Ministry of Public Finance.

The persons liable for the payment of excise duties are, inter alia, the importer or the warehouse-keeper.

4.3. Customs Duties

Romania is member of the World Trade Organisation (WTO).

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. products of sea-fishing and other products taken from the territorial sea of a country or territory outside the customs territory of the Union by vessels solely registered or recorded in a Member State and flying the flag of that State).

The special customs regimes are: transit, storage, specific use and processing.

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

- (a) buildings tax;
- (b) land tax and duties;
- (c) transportation means tax;
- (d) tax for issuance of certificates, approvals and authorisations;
- (e) tax for contracting publicity and advertising means;
- (f) tax on shows/performances;
- (g) special taxes;
- (h) other taxes.

5.2.1. Buildings Tax

Is an annual tax usually payable by the owner. This is paid 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.

The buildings are taxed according to their purpose (*i.e.* residential, non-residential or mixed-purpose), the owner's capacity (individual or legal person) and the place where the building is located within the urban area (ranks and zones), as follows:

- (i) for residential buildings – with a tax rate between 0.08 per cent and 0.2 per cent applicable to the taxable value of the building, computed based on specific local authorities' provisions for individual owners, or the value resulting from the evaluation report for legal entities;
- (ii) non-residential buildings – with a tax rate between 0.2 per cent and 1.3 per cent applicable to the taxable value of the building, established within the previous 5 years for individuals owners, and within the previous 3 years for legal entities owners; in case of a building used for agricultural purposes, the applicable tax rate is 0.4 per cent.

In case of buildings used for mixed-purpose, the building tax is calculated by comparing the tax calculated for the area used for residential purposes with the tax determined for the area used for non-residential purposes.

The building tax is calculated based on the tax return form and is payable quarterly in 2 instalments, by 31 March and 30 September respectively. In 2016, the deadline for payment of the first instalment was extended until 30 June 2016.

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, on the owner.

Legal entities using the land in the public or private property of the State or of the local authorities are also subject to land tax.

The land tax is payable quarterly in 2 instalments, by 31 March and by 30 September respectively. In 2016, the deadline for payment of the first instalment was extended until 30 June 2016.

5.2.3. Tax on transportation means

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

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

Transportation means belonging to persons with disabilities are exempt from tax.

The tax is due for the full tax year by the person who owns the transportation means by the 31st of December of the previous tax year, irrespective of if the ownership of the transport means is transmitted to another person. The new owner shall be liable to pay the tax as of the year following the one in which it acquired the transport means.

The tax on transportation means is calculated based on the tax return form and is payable quarterly in 2 instalments, by the 31st of March and the 30th of September respectively. In 2016, the deadline for payment of the first instalment was extended until 30 June 2016.

5.2.4. Taxes for issuance of certificates, approvals and authorisations

Urbanism certificates are taxed pro rata using the surface of the land plot. The construction authorisations are taxed at 0.5 % or 1% of the authorized value of the construction works (depending on the purpose of the construction), save for kiosks, trade boxes, displays which are 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 and 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 per cent 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 or other cultural or fun activities must pay a tax calculated on the amounts collected from selling tickets and subscriptions (respectively 2 or 5 per cent). The amounts assigned for humanitarian purposes, based on a contract, out of the amounts collected from performances, are not taxable.

The tax is calculated based on the tax return form and is payable monthly, by the 10th of the month following the one in which the performance was made.

6. Tax on constructions

As of 1 January 2015, a 1 per cent tax on special constructions, other than buildings, applies to Romanian legal entities (with certain exceptions), Romanian permanent establishments of foreign entities and legal entities headquartered in Romania. The tax on constructions is calculated by applying the rate of 1 per cent on the book value of the construction (as mentioned in Group 1 of the Catalogue regarding classification and service life of fixed assets) in the patrimony of taxpayers as of 31 December of the previous year, minus, *inter alia*, the following:

- (i) the value of buildings which are subject to the tax on buildings, as well as the buildings in industrial, scientific and technological parks which are not exempt from the tax on buildings;
- (ii) the value of reconstruction, modernization, consolidation, change or extension works performed to constructions used under a rental, administration or usage agreement;
- (iii) the value of constructions located outside Romania's state border, as defined under the law, including those in Romania's contiguous zone or the exclusive economic zone of Romania;
- (iv) the value of constructions owned by sports organizations, as defined under the law.

Taxpayers must declare the tax on constructions by the 25th May of the year for which the tax is due. The tax is payable in two equal instalments, by the 25th of May and 25th of September.

7. Judicial and extra-judicial stamp duty, notary public stamp duty

7.1. Judicial Stamp Duty

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

7.2. 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 obtaining driving licences, issuance of 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 for taxes up to RON 50,000 (approx. 11,100).

8. Use of Trusts

Civil Code sets forth the use of trusts ("*fiducia*" in Romanian), legal arrangements via which a legal or natural person(s) (the settlor) transfers, for a period of maximum 33 years, real rights, receivables, guarantees or other patrimonial rights or an entirety of such rights, either existing or forthcoming, to one or more persons or institutions (the trustee) for a specified purpose, for the benefit of one or several beneficiaries who can be the settlor, the trustee or a third person.

Trust agreement must be concluded in an authenticated form and is deemed null and void if the principal made an indirect liberality in favour of the beneficiary.

Pursuant to the provisions of the new Civil Code, only the following persons can act in the capacity of trustees:

Chapter 6 Credit institutions;

- (i) credit institutions;
- (ii) investments management companies;
- (iii) financial investments services companies;
- (iv) insurance and reinsurance companies;
- (v) public notaries;
- (vi) attorneys at law.

The trust agreement and any amendment thereto must be registered within one month as of their execution date, upon the trustee's request, with the tax administration competent to manage the amounts due by the trustee to the consolidated State budget. Additionally, in case the principal transferred, via the fiduciary agreement, real estate properties, as such have to be registered with the competent local authorities. Failure to comply with these obligations triggers the absolute nullity of the trust.

For publicity reasons, the trust must be registered in the Electronic Archive of Real Movable Guarantees.

In relation to third parties, the trustee acts as a true owner of the transferred assets, save for cases when third parties know that trustee's powers were limited via the trust agreement. The transferred assets shall not be affected by the trustee entering into insolvency proceedings.

The transferred assets may be subject to enforcement by the principal's creditors who had a security interest on real property over the relevant assets established prior to the trust. It is worth noting that as long as the trust agreement was not accepted by the beneficiary, it can be unilaterally terminated by the principal.

The trust agreement can be terminated, *inter alia*, in the following cases:

- (i) upon its expiration date;
- (ii) when the purposes for which it was concluded have been fulfilled;
- (iii) the insolvency procedure in respect of the trustee has been opened.

If the trust agreement is terminated, the entirety of the patrimonial rights are transferred to the beneficiary or in his absence, to the principal.

Moreover, Romanian trust rules expressly provide that upon termination of the fiduciary contract, the existent fiduciary patrimony is transferred to the beneficiary and, in their absence, to the principal. Hence, the transfer of fiduciary patrimony from the trustee to the beneficiary should generate income tax for the beneficiary. Such a transfer may, however, be tax exempt under certain conditions.

9. Fiscal Procedure

The New Fiscal Procedure Code, which entered into force on 1 January 2016, provides general and specific norms on tax audits, collection of budget receivables, legislation on tax returns, tax assessment and tax jurisdiction.

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 It applies to taxes and duties payable to both 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 proof 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.

9.1. Collection of Budgetary Debts

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

The quota of interests due for failure to pay budgetary liabilities when due (taxes, duties, contributions, etc.) currently amounts to 0.02 percent for each day of delay, while the delay penalties amount to 0.01 percent of the tax liability due, for each day of delay. When the taxpayer has failed to correctly report the tax liability a non-reporting penalty of 0.08 per cent per day of delay is due. Such a penalty may be reduced by 75 per cent of the amount due (under certain conditions) or may be doubled in cases of tax evasion. . Where the non-reporting penalty is due, the delay penalty is no longer assessed by the tax authorities. However, the interest rate is still be applicable. For tax liabilities paid after the legal deadline to the local tax authorities, a delay increase of 1 per cent per month or fraction of month delayed is due. The delay increases may be assessed only for tax liabilities for which the interest may not be applied.

Interest is due for the period of deferral/rescheduling of taxes, whereas delay penalties are not, provided that the debtor observes the conditions of deferral/rescheduling in full.

The statute of limitations for collecting Budgetary Debts is five years, commencing on the year immediately following the one when the right to collect the relevant Budgetary Debts has arisen. However, the Romanian tax authorities may assess tax liabilities during a period of five years (that may be prolonged to ten years the in case of criminal law acts), starting with the 1st of July of the year following the one related to which the tax liability is due.

9.2. Fiscal acts challenging means

The Fiscal Proceedings Code provides 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 methods:

- (i) administrative- appeals;
- (ii) judicial– legal action filed, depending on the body settling the preliminary complaint, either with the Tribunal (if contestation is settled by county fiscal administration) or the Appeal Court

Chapter 6 (in other cases). The decision of such courts is subject to a second-degree appeal before the Appeal Court or the High Court of Cassation and Justice respectively.

Before applying to the courts, it is compulsory to resort to the administrative procedures first. Failure to exercise in such a way within the legal term leads to the loss of the right of appeal in front of the courts.

9.3. Payment incentives

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

- (i) deferral and/or rescheduling of payment of fiscal liabilities;
- (ii) deferred payment, exemption or reduction of delay increases and penalties.

Tax authorities may approve, based on the application file submitted by the taxpayer, reschedule of payment for a maximum period of 5 years and deferral of payment for a maximum period of 6 months (but no later than the 20th of December of the year for which the approval is performed). For granting payment incentives, the budgetary creditors will request the debtors to put up collateral.