KPMG

Romania Country Profile

EU Tax Centre

October 2021

Key tax factors for efficient cross-border business and investment involving Romania

EU Member State

Yes

Double Tax Treaties

With the following countries, territories and jurisdictions:

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

Most important forms of doing business

Limited liability company (societate cu răspundere limitată - S.R.L.), Joint stock company (societate pe acţiuni - S.A.), General partnership (societate în nume colectiv - SNC), Limited partnership (societate în comandită simplă - SCS), Limited partnership by shares (societate în comandită pe acţiuni - SCA), Societas Europea (SE).

Legal entity capital requirements	No minimum share capital threshold required for a S.R.L (until November 2020 the minimum share capital level was RON 200, representing the equivalent of approximately EUR 40). The share capital is divided into shares (“parti sociale”) with a registered value of at least RON 1 each. The share capital of a S.A. may not be less than RON 90,000 (approximately EUR 20,000). Every 2 years, the Government can change the minimum value of the share capital with reference to the exchange rate, so as to keep this amount at the RON equivalent of EUR 25,000. The share capital is divided into shares ("actiuni"), each with a value of at least RON 0.1.
Residence and tax system	A company is tax resident in Romania if it is incorporated under Romanian law or has its place of effective management in Romania. Resident companies are taxed on their worldwide income.
Compliance requirements for CIT purposes	As a general rule, the fiscal year is the calendar year. Taxpayers that have opted for a financial year that is different from the calendar year, according to accounting legislation, may also choose to have a fiscal year which corresponds to the financial year. Romanian resident companies are required to submit quarterly tax returns for the first three quarters, by the 25th of the month following the quarter for which the liability is due. In addition, an annual corporate tax return must be submitted by March 25 of the year following the year for which the annual corporate income tax is due (or by the 25th of the third month following the closure of the fiscal year, for taxpayers that choose to have the fiscal year other than the calendar year).
Corporate income tax rate	The standard corporate income tax rate is 16 percent.
Withholding tax rates	On dividends paid to non-resident companies Generally 5 percent, unless a lower tax treaty rate applies. Exemption is available under the EU Parent-Subsidiary Directive (subject to certain conditions being met - shareholding of at least 10 percent for an uninterrupted period of one year). On interest paid to non-resident companies Generally 16 percent, unless a lower tax treaty rate applies. Exemption is available under the EU Interest and Royalties Directive (subject to certain conditions being met - shareholding of at least 25 percent for an uninterrupted period of two years). A 50 percent tax rate may apply if interest is paid to a country with which Romania has not concluded a tax treaty (irrespective of the residence of the

company receiving such amounts) and if the transactions are deemed artificial under Romanian legislation.

On patent royalties and certain copyright royalties paid to non-resident companies

Generally 16 percent, unless a lower tax treaty rate applies.

Exemption is available under the EU Interest and Royalties Directive (subject to certain conditions being met - shareholding of at least 25 percent for an uninterrupted period of two years).

A 50 percent tax rate may apply (under the same conditions as for interest - please see above).

On fees for technical services

Generally 16 percent. However, a 50 percent tax rate may apply (under the same conditions as for interest - please see above).

On other payments

Generally 16 percent. However, a 50 percent tax rate may apply (under the same conditions as for interest - please see above).

Branch withholding tax

No.

Holding rules

Dividend received from resident/non-resident subsidiaries

General rule
An exemption is available for dividends received by Romanian entities from:

(i) Romanian companies;

(ii) EU subsidiaries in accordance with the EU Parent-Subsidiary Directive, provided that the following conditions are met:

- Participation requirement: 10 percent;
- Minimum holding period: an uninterrupted one-year holding period (if paid earlier, subject to 16 percent or reduced rate but, if the condition is met after the payment was made, excess tax paid can be reclaimed).

(iii) Companies resident in the EU or in a third country with which Romania has concluded a DTT, provided the above conditions (10 percent and one year) are met.

Amendments made to the EU Parent-Subsidiary Directive with respect to hybrid instruments and GAAR have been transposed into domestic legislation.

Capital gains obtained from resident/non-resident subsidiaries

Generally subject to the 16 percent standard rate. Capital gains derived from the sale of shares in a Romanian subsidiary / subsidiary resident in a country with which Romania has concluded a DTT are non-taxable in Romania for corporate income tax purposes if the above conditions (shareholding of at least 10 percent for an uninterrupted period of 1 year) are met.

Tax losses	Losses may be carried forward for seven years. No carry back of losses.
Tax consolidation rules/Group relief rules	Tax consolidation will be possible, optionally, starting from January 1, 2022, for corporate income tax, i.e. to offset the taxable profits of companies in a group against the tax losses of other jointly owned firms, directly or indirectly, if the member of the group which benefits from the offset holds a proportion of at least 75 % of the value/number of shareholdings or voting rights in the entity which incurs the tax losses, for an uninterrupted period of one year prior to the start of consolidation. The period of application of the system will be five fiscal years, after which the option may be renewed. The application should be submitted at least 60 days before the beginning of the period for which the tax consolidation is requested, and the system will be applied from the tax year following the submission of the application. One of the members should be designated as the responsible legal entity which will calculate, declare and pay corporate income tax for the group, determined by adding up the individual calculations of each member. The tax losses incurred by a member of the group before the application of the system cannot be compensated at group level. If the group is abolished after five years, the losses incurred and not recovered during the consolidation will be recovered by the responsible entity/individual.
Registration duties	No *ad valorem* capital duty. Fixed registration fees applicable (small amounts).
Transfer duties	On the transfer of shares No transfer duties upon the transfer of shares. On the transfer of land and buildings According to Romanian legislation, transfers of real estate properties (e.g. land and buildings) are not subject to transfer taxes except for notary fees and taxes for registration with the Real Estate Book. Such fees would be in the range of 1 percent of the value of the asset. Stamp duties No. Real estate taxes No, except for those mentioned above.
Exit taxation	With effect from 1 January 2018, the exit taxation rule was transposed into the national legislation to implement the provisions of the Anti-Tax Avoidance Directive (ATAD).

The Romanian exit tax rule provides for the taxation of the difference between the fair market value of the assets at the time of transfer less their value for tax purposes with the regular corporate income tax rate (16%) in the following cases:

i. Assets transfer from a Romanian head office to a permanent establishment in another Member State or in a third country;

ii. Assets transfer from a Romanian permanent establishment to its head office or another permanent establishment in another Member State or in a third country;

iii. a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in Romania; or

iv. a taxpayer transfers the business carried on by its permanent establishment from Romania to another Member State or to a third country.

For i, ii and iv, exit taxation occurs in so far as Romania no longer has the right to tax the transferred assets due to the transfer

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

The exit tax might be paid in linear installments over a period 5 years (in line with the respective rules in the Fiscal Procedures Code) provided that it relates to a transfer to a Member State or to a third country that has signed the Agreement on the European Economic Area (EEA Agreement).

Controlled Foreign Company rules

Yes

An entity or a permanent establishment is considered a controlled foreign company and must apply the rules on controlled foreign companies if:

- the taxpayer by itself, or together with its associated enterprises:
  - owns directly or indirectly more than 50% of the voting rights;
  - owns directly or indirectly more than 50% of the share capital; or
  - is entitled to receive more than 50% of the profits of that entity
- the income tax paid on its profits by the entity or the permanent establishment is lower than the difference between the corporate income tax that would have been charged on the entity or on the permanent establishment under the provisions of title II and the actual corporate income tax paid on its profits by the entity or the permanent establishment.

If the entity or the permanent establishment is considered a controlled foreign company, the controlling taxpayer should include in its tax base the undistributed revenues, which the entity or the permanent establishment derives from the following categories:

a) Interest or any other income generated by financial assets.

b) Royalties or any other income generated by intellectual property rights.

c) Dividends and income from the transfer of units.

d) Financial lease income.

e) Income from insurance activities, banking or other financial activities.

f) Income received from companies that earn income from purchasing and selling goods and services from and to associated companies without any added value or with low added value.

The income of the controlled foreign company is included in the taxable base of the controlling taxpayer proportionally with its participation in the controlled company and for the tax period during which the tax period of the foreign controlled entity/permanent establishment closes.

CFC rules do not apply where the controlled foreign company carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances, or where the controlled foreign company is resident or situated in a third country that has signed the EEA Agreement.

A Romanian head-office with a permanent establishment in a non-EEA country or with a permanent establishment which qualifies as CFC is not allowed to use the tax losses of the permanent establishment to reduce its own Romanian taxable profits. The tax losses incurred by the permanent establishment can only be used to offset taxable income from the permanent establishment itself. Remaining tax losses can be carried forward and offset within the following 5 fiscal years.

For the avoidance of double taxation, if the entity distributes profit to the taxpayer and this distributed profit is included in the taxable income of the taxpayer, the amount of the income previously included in the taxpayer's tax base is deducted in the tax period in which the amount of tax due for the profit distributed is calculated.

For the avoidance of double taxation, if the taxpayer disposes of its participation in a controlled entity or of the economic activity carried out through a permanent establishment and part of the proceeds of the disposal was previously included in the tax base of the taxpayer, that amount is deducted in the tax period in which the amount of tax due for the receipts is calculated.

The taxpayer deducts the tax paid to a foreign state by the controlled entity/ permanent establishment from the income tax owed, in accordance with double taxation conventions

Transfer pricing rules

General transfer pricing rules

The arm's length principle applies to related companies (including domestic payments).

Documentation requirement

Romanian companies which carry out transactions with affiliated companies are required to prepare the relevant documentation - the transfer pricing file, which is mostly a compilation of a comprehensive set of documents, including all supporting information justifying the arm's length nature of transfer prices used for intra-group transactions.

Generally, Romanian legislation on transfer pricing documentation follows the principles of EU regulations on transfer pricing (e.g. the EU Code of Conduct on Transfer Pricing).

Thin capitalization rules	As from January 2018, the former thin capitalization rules have been replaced with interest limitation rules implementing the provisions of ATAD.
General Anti-Avoidance rules (GAAR)	The tax treatment of certain items is generally determined with reference to the substance over form principle. In addition, the GAAR in accordance with the ATAD was implemented into Romanian legislation with effect from January 1, 2018.
Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions/Anti-Hybrid rules	Under the Romanian Fiscal Code, tax authorities may requalify a transaction in order to reflect its economic substance. Moreover, artificial transactions are defined as those not carried out in the normal course of business, solely for the purpose of obtaining undue fiscal advantages. Such transactions are denied the application of DTTs. Romania has implemented anti reverse hybrid rules starting February 2020, along with the other ATAD 2 measures.
Advance Ruling system	Romanian taxpayers may apply to the tax authorities in order to obtain an Advance Tax Ruling with regard to technical matters; also, taxpayers who carry out transactions with related parties may apply for an Advance Pricing Agreement.
IP / R&D incentives	Romanian taxpayers are entitled to deduct an additional 50 percent of R&D expenses for corporate tax purposes. Such extra deduction should be computed quarterly/annually. Starting 2017, taxpayers performing only innovation, research and development activities (as defined by Romanian legislation) and closely related activities are exempt from corporate tax for the first 10 years of operation. Individuals carrying out R&D activities are exempt from personal income tax on income derived from those activities (starting from August 2016).
Other incentives	*Reinvested profit*

	Profit reinvested in technical equipment (machines, equipment and work installations) and software used for carrying out economic activities is exempt for corporate income tax purposes. The profit invested in supporting dual (practical and theoretical) vocational education by ensuring the practical training and quality training of students is exempt from profit tax. *Fiscal measures to maintain or increase the equity of companies* In order to encourage maintaining / increasing the equity of companies during 2021-2025, certain reductions in the annual corporate income tax / microenterprise tax / activity-specific tax are provided for. If the conditions are fulfilled, the tax reductions can vary between 2% and 10% of the tax due. *Acquisition of electronic fiscal cash registers* For expenses representing the acquisition cost of fiscal electronic cash registers, companies benefit from a fiscal credit (deduction from the corporate income tax due). The unused tax credit is carried forward for the next 7 consecutive years. Companies benefiting from this incentive can no longer include these acquisitions in the application of the reinvested profit exemption incentive.
VAT	The standard rate is 19 percent, and the reduced rates are 9 percent, 5 percent and 0 percent.
Other relevant points of attention	No.

Source: Romanian tax law and local tax administration guidelines, updated 2021.

Contact us

René Schöb

KPMG in Romania

T +40 372 377 800

E rschob@kpmg.com

Ionuț Măstăcăneanu

KPMG in Romania

T +40 372 377 938

E imastacaneanu@kpmg.com

kpmg.com