

## ROMANIAN FISCAL SYSTEM CHARACTERISTICS

Romanian's adherence to the European Union in 2007 determined many fiscal changes, as expected. The Law 343/2006 modifying the Fiscal Code includes numerous stipulations that depend on the implementation of some European directives into the Romanian legislation. We hereby refer to the 6<sup>th</sup> Directive, regarding the VAT and the reconciliation of excise legislation. Moreover, the following Directives were introduced into the Romanian legislation: Parent/Subsidiary Directive, Mergers and Acquisitions Directive, Information Trade Directive and there was established a grace period for implementing the Interests and royalties Directive (1<sup>st</sup> of January 2012). Therefore, we can state that the new Romanian Fiscal Code's stipulations include most of the European fiscal legislation.

### Presentation of main taxes and fees:

#### I. PROFIT TAX AND INCOME TAX

A positive characteristic of the Romanian fiscal system is represented by the 16% flat rate tax, both for the profit tax as well as for the income tax. We can state that this rate is a very competitive one and that, in general, the fiscal legislation in our country encourages the investors in Romania.

#### The fiscal year

In Romania, the fiscal year is the calendar year.

#### PROFIT TAX

The resident companies and the legal persons headquartered in Romania, incorporated according to the European legislation (European companies) are subject to taxation on global income. A company is resident in Romania if it is incorporated according to the Romanian legislation, if the actual place of performing the activity is established in Romania (for foreign legal persons) or if it is headquartered in Romania (for companies incorporated according to the European legislation).

Non-resident companies will be subject to taxation only for the income obtained in Romania. The sale of shares held at Romanian companies by non-resident companies and the sale of buildings located in Romania are also subject to profit taxation in Romania.

A permanent headquarter in Romania may be represented, without being limited to, by an office, a subsidiary, a factory, a mine, a land for oil and gas extraction or a construction yard older than six months. Also, a permanent headquarter should be the place where an activity involving assets and liabilities of a Romanian legal person takes place, which enters a reorganization process (such as a merger or division).

Romanian legal persons must register to the appropriate fiscal authorities any contract signed with non-resident legal or natural persons involving works of construction-assembling, overseeing, consulting, technical assistance or any other activity performed in Romania, if these activities might result in a permanent headquarter for the non-resident in Romania. The contracts must be registered by submitting a declaration in term of 30 days from the closing date.

## The profit tax ratios and the minimum tax

As of May 2009, the contributors pay the higher value between the standard ratio of the profit tax and the quarterly/yearly minimum tax. The standard profit tax ratio is 16%.

The minimum annual tax is located between 2.200 RON and 43.000 RON, depending on the level of total income obtained in the previous year.

The minimum tax is not applied in certain cases (such as to temporarily inactive companies).

The profit tax owed by the companies which obtained income from activities performed in bars, night clubs, discos, casinos or sports betting, including income from association contracts, is calculated by applying the 16% flat rate tax, providing that the tax amount exceeds 5% of the stated income total value. If the owed profit tax is located under this threshold, the contributor is obligated to pay the profit tax calculated at 5% of the income stated, resulting from performing such activities. The stipulations regarding the minimum tax are not applied for these contributors.

Starting with 2010, the Ministry of Finance has not established the taxation ratio for small businesses. In this situation, companies that chose to be a small business will obey the standard taxation regime.

In this respect, the contributors which were tax payers for small businesses' income in the previous year make quarterly anticipated payments amounting to a quarter of the small business's income tax owed the previous year, updated with the inflation rate.

The local offices are taxed once a year with a standard amount representing the equivalent in lei of 4000 euro, payable in two instalments, due on the 25<sup>th</sup> of June and 25<sup>th</sup> of December.

## Capital gain tax

The resident companies do not owe a separate capital gain tax. The capital gain obtained by the non-resident companies from the real-estate sales in Romania or sale/transfer of shares held at a Romanian legal person are taxable by the 16% flat rate tax.

During 1<sup>st</sup> of January - 31<sup>st</sup> of December 2009, the profits obtained by the non-resident legal persons from transactions with participating titles held at Romanian companies traded on the Romanian regulated market were non-taxable.

## Dividends

The dividends paid by the non-resident legal persons or by the European companies to the shareholders (Romanian legal persons, legal persons resident in the European Union and legal persons from member states of the European Free Trade Association, respectively Iceland, Norway and Lichtenstein) are exempted from paying the income tax obtained by the non-residents in Romania, providing certain conditions are met, among which the condition that the shareholders hold a minimum of 10% of the share capital at the Romanian legal person during a continuous period of 2 years, ending when the dividends are paid. If the above mentioned conditions are not met, a 10% ratio will be applied on dividends paid by the resident entities to other resident entities, while the 16% ratio will be applied in case of dividends paid to any non-resident legal person (or a valid tax ratio, based on a Convention for avoiding double taxation, if favourable)

Starting with 2010, through the Fiscal Code Methodological Norms, the dividends distributed by Romanian legal persons to the optional pension funds or to privately administrated pension funds are exempted from dividend tax payments.

Starting with 2010, in respect of applying the more favourable stipulations of the Convention for avoiding double taxation and the European legislation, the non-residents must provide the income payer with fiscal residence certificate as well as a declaration which certifies that the respective income is the true beneficiary.

If the holding period condition is subsequently met, the dividends' beneficiary is entitled to exemption and may request the reimbursement of the non-residents' income tax withheld in Romania.

The dividends paid by a Romanian company to shareholders natural persons are subject to taxation in Romania by 16%.

Starting with 2009, the reinvested dividends for the purpose of guaranteeing and creating new working places for developing the Romanian legal persons activity are exempted from paying the dividend tax.

The dividends reinvested in the share capital of another Romanian legal person in order to create new working places or help developing its activities are exempted from paying the dividend tax.

The application procedure of the above mentioned stipulations regarding reinvested dividends should have been approved by an Order from the Ministry of Finance which, until the present moment, has not been published.

The payments performed by a Romanian legal person to any of its shareholders for goods or services offered to the latter, which exceed the transaction's market value, are assimilated to dividends from the fiscal point of view. The same fiscal treatment is applied for payments performed for delivery of goods and rendering of services for personal interests by a company's shareholders or associates.

The dividend tax will be withheld and paid to the state budget until the 25<sup>th</sup> of the month following the one when the dividends were paid. In case of distributed dividends, which were not effectively paid until the year end, the dividend tax will be paid until the 25<sup>th</sup> of January of the following year.

### **External fiscal credit**

The foreign income of the Romanian companies are included in the taxable income which comprises passive income and capital gains. Despite all these, the credit will be granted for taxes paid abroad, within the limit of the tax owed in Romania for the respective income.

The dividends received from entities resident in the European Union constitute non-taxable income for the Romanian beneficiary, providing he holds at least 10% of the shares belonging to the entity resident in the European Union for a continuous period of minimum two years.

### **Tax exemption for reinvested profit**

The profit reinvested by the contributors in production and/or acquisition of technological equipments that are about to be used in order to obtain taxable income is tax exempted, providing the respective equipments are held in the patrimony for at least half of their normal useful life.

The profit tax exemption is applied for assets considered new, referring to the ones that have not been previously used and is granted within the limits of the profit tax owed for the respective period.

If, as a consequence of applying this exemption, the profit tax is under the level of the minimum tax, the contributors are obligated to pay the minimum tax.

### **The profit tax exemption is applied until the 31<sup>st</sup> of December 2010, including**

The profit amount for which the tax exemption was granted will be primarily distributed for constituting reserves until they reach the value of the accounting profit registered at the end of the financial exercise ( if necessary). The fiscal value, respectively the entrance value of equipments produced/purchased will be diminished with the amount for which the tax exemption was applied. In conclusion, the profit tax exemption merely determines a postponement until the respective assets are deleted from the accounting records.

### **Establishing the taxable profit**

The taxable profit is calculated as a difference between the income from any source, including delivery of goods and rendering of services and the expenses occurred in order to obtain an income from a fiscal year, from which the non-taxable incomes are deducted and to which the non-deductible expenses are added.

The following incomes are considered non-taxable:

- Dividends received by a Romanian company from another Romanian company. The dividends received from a non-resident (except for the entities resident in the European Union, providing certain conditions are met) are taxable (please see sections External Fiscal Credit and Dividends)

- The gain from investments held at other entities, recorded as a consequence of capital increase for those companies by incorporating reserves, benefits or insurance premiums as well as favourable value differences resulted from the evaluation of long term investments and bonds, performed in accordance with the accounting regulations
- Income from reversal of non-deductible expenses and provisions for which no deduction was granted
- Non-taxable income expressly stipulated by certain regulations and
- During 1<sup>st</sup> of January 2009 – 31<sup>st</sup> December 2009, the income obtained from transactions with investments on the Romanian regulated market

## Deductions

Usually, the expense related to the obtaining taxable income, including those regulated by normative acts, are considered deductible when calculating the taxable profit.

The Fiscal Code expressly stipulates other types of deductible expense, including:

- Contributions for work accidents and professional diseases insurance and expenses with insurance premiums for professional risks insurance
- Advertising and publicity expenses performed for promoting the company, products and /or services, based on the justifying documents, as well as other expenses with goods and services rendered in order to stimulate the sales
- Expenses regarding transportation and accommodation inside the country and abroad for the employees and administrators as well as for other assimilated persons
- Registration fees, subscriptions and other mandatory contributions according to the law
- Contributions to negotiation of Collective Labour Contract fund
- Expenses related to training and professional improvement of employees
- Marketing, market research expenses, promotion expenses for already existent or new markets, participation to fairs and exhibitions, business engagements
- Research-development expenses that do not meet the conditions to be recognized as intangible assets from the accounting point of view
- Expenses for improving the management, the informatics systems, introducing, maintaining and improving the quality management systems, obtaining the authorization according to the quality standards
- Expenses for protecting the environment and saving the resources
- Expenses with losses registered by the companies when un-collected, uncertain or litigated in case of debtor's bankruptcy (based on a final Court decision) receivables are deleted from the accounting records, as well as other situations such as the debtor's decease ( when the receivable cannot be recovered from the successor) or liquidation in cases without successor and when the debtor has major financial difficulties that affect his whole patrimony, and
- Registration fees, subscriptions and contributions owed to the Chamber of Commerce and Industry, labour and management organizations

The main expenses with limited deductibility include, without being limited to :

- Expenses with provisions and contributions to the reserve funds with the stipulated limits (please refer to section Provisions and reserves)
- Protocol expenses (such as gifts for clients, business meals) with 2% of the accounting profit adjusted with protocol expenses before taxation
- Per diem for expenses with travelling inside the country and abroad within the limit of 2.5 times of the threshold established for public institutions
- Social expenses (indemnities for births, deceases, untreatable diseases, expenses for the proper functioning of some units or activities belonging to the contributors, such as kindergartens, sanitary units, canteens, sports locations, sponsorships for schools as well as gifts

in cash or in kind granted to minor children or employees for Christmas, gifts in cash or in kind granted to the female employees, expenses with treatment and rest services) within the limit of 2% of the personnel salaries expenses value

- Expenses with meal tickets granted according to the law
- Outage, within the limits stipulated by law
- Expenses with interests and foreign exchange differences within the limits mentioned at section "Regulations regarding interests deductibility"
- Expenses on behalf of the employees to the optional pensions funds, within the limit of the equivalent in lei of a EUR 400/ employee for a fiscal year
- The voluntary insurance premiums within the limits of the equivalent in lei of a EUR 250/ participant for a fiscal year
- Expenses for functioning, maintaining, and repairing, excluding the ones referring to the fuel, deductible but limited to one vehicle per person, and
- Additional deduction representing 20% of the eligible costs for research-development activities (quarterly/annual calculation)

**The main non-deductible expenses include, without being limited to:**

- The profit tax in Romania and abroad (the fiscal credit will be granted for taxes paid in other countries – please refer to section "External fiscal credit")
- Sponsorship expenses (fiscal credit will be granted for expenses with sponsorships providing certain conditions are met – please refer to section "Sponsorship")
- Overdue fees and penalties and fines owed to the Romanian or foreign authorities
- Expenses regarding inventory or tangible assets that miss from the physical existence test or are impaired for which no insurance contracts were concluded, including the related VAT, depending on the case;
- VAT applied to goods granted to employees as benefits in kind, providing their value has not been subject to taxation at employee's level
- Any expenses occurred in favour of the shareholders or associates, other than the ones for payment of delivered goods or market price rendered services
- Insurance premiums that do not refer to the contributor's assets or are not related to the object of activity, except for those related to goods included in rent or leasing contracts or related to goods used as collateral for a loan referring to the activity
- Insurance premiums and other salary expenses which have not been subject to taxation at employee's level
- Expenses related to non-taxable incomes, with some exceptions
- Expenses with services, including management and consulting expenses, whose rendering cannot be justified by the activity performed through contracts and written documents
- Losses from investments' value held at other companies, except for losses from sales of such investments (the exception is not applied for transactions with investments held at Romanian companies on the regulated market during 1<sup>st</sup> of January- 31<sup>st</sup> of December 2009)
- The contributions exceeding the legal limits or those not mentioned by the normative acts
- Expenses representing the value of fixed assets depreciation after a revaluation
- Losses registered when the uncertain or litigated and un-collected receivables are deleted from the accounting records, for the part uncovered by the provision, and
- During 1<sup>st</sup> of May 2009 – 31<sup>st</sup> of December 2010, the fuel expense related to vehicles ( except for certain cases expressly stipulated by law, such as for vehicles used for paid transportation, renting activities, guarding activities, repairing and sales)

### Sponsorship

The contributors who register sponsorship expenses according to the related legislation are entitled to benefit from fiscal credit (respectively, to deduce an amount equal to the sponsorship expense from the profit tax owed) if the following conditions are cumulatively met:

- Sponsorship expense do not exceed 0,3% of the turnover, and

- Sponsorship expense do not exceed 20% of the owed profit tax

### Provisions and reserves

Based on the present legislation, the following provisions and reserves are deductible when calculating the profit tax:

- Contributions to the legal reserve fund, in general within the limit of 5% ratio from the annual accounting profit before determining the profit tax, until this fund represents 20% of the share capital
- Provisions for uncollected receivables, providing some conditions are met
- Provisions for good execution warranties granted to clients
- Specific provisions created by the credit institutions, non-banking financial institutions registered with the General Registry held at the National Bank of Romania, according to the functioning laws of these institutions, as well as specific provisions created by similar legal persons
- Technical reserves created by the insurance and re-insurance companies according to the related legal stipulations in force, except for the equalizer reserve, and
- Risk provisions for operations on financial market, created according to regulations stipulated by the Romanian National Securities Commission

### Regulations regarding interest deductibility

In general, the interest expenses registered by the companies (other than credit institutions) are subject to the following limitations:

- Capital's loan to value –the interest expenses are fully deductible if the capital loan to value is lower or equal to 3. If the value is higher than the mentioned limit or is a negative one, the interest expenses are non-deductible when calculating the profit tax and may be carried forward until they are fully deductible in the same conditions; and
- The interest expenses for the loans granted by the companies, other than financial institutions, are deductible within the following limits:
  - The reference interest rate established by the National Bank of Romania for the last month of the quarter for loans in RON or
  - 8% annual interest rate for foreign currency contracts (this rate is applicable for 2009 fiscal year, but can be periodically updated through a Government Decisions)

The difference between the incomes and losses from exchange rates differences, related to long term loans ( more than one year) is considered an interest expense and is subject to limiting the capital's loan to value ( see above)

The interest expense, as well as the losses from exchange rate differences related to loans from Romanian banks (including branches of foreign banks), leasing companies (for leasing operations), as well as from other legal persons that can grant credits according to the law, do not comply with the rules regarding the limitations of interest deductibility.

The interest expenses recorded by the financial institutions do not comply with the rules regarding the limitation of interest deductibility.

### Fiscal depreciation

There are three alternative methods for calculating the fiscal depreciation, respectively:

- Straight line depreciation method
- Declining -balance depreciation method and
- Accelerate depreciation method (for equipments and patents )

These methods must be applied unitarily.

Buildings can be depreciated only by using the straight line depreciation method, while the land cannot be subject to depreciation.

Patents, licences, copyrights, know-how, commercial and factory brands, as well as other industrial and commercial similar property rights, development costs considered as intangible assets from the accounting point of view, are depreciated during their useful life or contractual period, depending on the case. The goodwill cannot be fiscally depreciated.

The equipments destined for research-development activities can be depreciated by using the accelerated depreciation method.

Until the 30th of April 2009, the fixed assets revaluations performed according to the accounting regulations were taken into consideration for fiscal purposes (except for the revaluation of fixed assets totally depreciated performed after the 1<sup>st</sup> of January 2004). As of 1<sup>st</sup> of May 2009, the fiscal evaluation of assets is eliminated because the revaluation reserves are taxable when calculating the profit tax proportional with deducting the additional fiscal depreciation, respectively when transferring the revalued fixed assets.

### Transfer prices

According to the Romanian fiscal legislation, the transactions between related parties must take place according to the principle of market price (transactions must take place at the same price as if they were performed by independent persons). The calculation method for the market price are the price comparing method, cost-plus method, re-sale price method and any other method recognized by the Directive regarding the transfer prices issued by the Organization for Economical Cooperation and Development (OECD)

According to the Romanian legislation, the contributors that perform transactions with affiliated persons must submit to the fiscal authorities, at their request, the file regarding the transfer prices, whose content is approved by an Order from the National Agency of Fiscal Administration. The term for submitting the file is maximum three months and can be prolonged once for the same period of time. If the file is not submitted, the fiscal authorities can impose a certain level for transfer prices using a simplified methodology.

The contributor may request the authorities a price agreement in advance, which in theory would eliminate the risk of a negative calculation of transfer prices, providing it respects the terms and conditions of the agreement during the validity period.

### Recovering the losses

The fiscal losses recorded starting with 2009 may be reported in the following 7 years and are not updated with the inflation rate. The fiscal losses registered previously to 2009 may be reported for a period of only 5 years.

The reporting of fiscal losses is not applied by companies that cease to exist as a consequence of a division or merger.

The reporting of fiscal losses to a following period is not permitted.

### Non-residents income tax in Romania

The non-residents income tax in Romania is applied to some payments performed by residents with fiscal purposes in Romania to non-residents beneficiaries.

The payment types that are subject to non-residents income tax in Romania are mentioned in the table below:

Payment type	Taxation ratio (%)
Royalties	0/10/16
Interests	0/10/16
Commissions	16
Dividends	0/10/16
Sundry services	16
Gambling incomes	20

According to the European Directives regarding the payment of interest and royalties implemented in the Fiscal Code, the interest and royalties payments performed by a resident legal person to a European Union or a European Free Trade Association resident legal person or to a

permanent headquarter from the European Union or the European Free Trade Association of a company resident in the European Union or the European Free Trade Association are exempted from paying the non-resident income tax in Romania if, without being limited to, the beneficiary holds a minimum of 25% of the share capital of the Romania legal person for a continuous period of two years at payment date. The Directive was introduced in the Fiscal Code with a transition period that will last until the 31<sup>st</sup> of December 2010, while in the meantime the non-resident income tax ratio for interest and royalties payments will be 10%. If these conditions are not met, the 16% ratio is applied to interest/royalties granted to legal persons resident in the European Union (or a ratio applied based on the Convention for avoiding double taxation, if this ratio is more favourable).

In case the holding period condition is subsequently met, the beneficiary will be entitled to exemption and may request the reimbursement of the paid non-resident income tax.

Also, as a general rule, in case taxes were withheld, exceeding the ratio from the Convention for avoiding double taxation, respectively the European Union legislation, the tax withheld additionally may be reimbursed if the income beneficiary requests.

The interest income for on-time deposits, deposit certificates and other saving instruments offered by banks and other credit institutions authorized in Romania, created or purchased between the 4<sup>th</sup> of June and 2005 and the 31<sup>st</sup> of December 2005, are subject to non-resident income taxation in Romania, by applying a ratio of 10%. For interest income for on-time deposit certificates and other saving instruments offered by banks and other credit institutions authorized in Romania, created or purchased after 1<sup>st</sup> of January 2006, a 16% tax will be applied on non-residents income. The interest income obtained in Romania (such as from on-time deposits and/or other saving instruments) by non-resident natural persons (regardless whether they are resident in the European Union or non-the European Union member states) are exempted from paying the withholding tax in Romania.

The following income types are not taxable:

- Incomes obtained by the non-resident collective investment organizations (which are not legal entities ) from the transfer of value titles directly or indirectly held at the Romanian legal person
- Incomes obtained by non-residents from transfer of derivatives
- Incomes obtained by non-residents on foreign capital markets from transferring investments and other instruments issued by Romanian residents

The following interest categories obtained by non-residents are exempted from paying the non-residents income tax in Romania:

- Interest income for on-sight deposits and current accounts
- Interest for public debts instruments in lei and foreign currencies and income from trading State bonds issued by local authorities, in lei and foreign currencies, on the capital market in Romania and abroad as well as the interest for instruments issued by the National Bank of Romania for monetary policy purposes and the income from trading the securities issued by the National Bank of Romania
- Interest for the instruments/debentures issued by the Romanian companies, if they are traded on a regulated market and the interest is paid to a person who is not related to the one issuing the instrument/debenture
- Interest and/or dividends paid to pension funds, as defined in the European Union member state legislation or in one of European Free Trade Association states

According to the European Directive regarding savings, the savings income paid to resident natural persons inside the European Union are exempted from paying the non-resident income tax in Romania, providing some conditions are met.

The income received from non-residents from rendering consulting and assistance services based on certain contracts financed by the financing international organizations, with which the Romanian state authorities or Romanian legal persons have closed financing agreements, are not subject to non-residents income taxation in Romania if the interest rate applied for this financing is lower than 3% per year.

The respective entities are the following: the European Bank for Reconstruction and Development, the International Bank for Reconstruction and

Development, the International Financial Cooperation, the International Development Association, the International Monetary Fund and the European Investment Bank.

The exemption is also applied to non-resident entities which have an income from consulting services based on non-reimbursable financing agreements closed between the Romanian Government and foreign governments or organizations.

Non-resident income tax will be paid to the state budget until the 25<sup>th</sup> of the month following the one when the payment occurred.

In case of distributed dividends, which have not yet been paid to shareholders or associates until the year end, when the annual financial statements were approved, the dividends tax is stated and paid until the 25<sup>th</sup> of January of the following year.

The companies are obligated to submit an annual statement regarding the non-resident income tax in Romania until the 30<sup>th</sup> of June of the following fiscal year.

Romania has closed over 85 conventions for avoiding double taxation starting with year 1970, which could reduce the tax ratios applicable to non-residents income.

In order to apply the more favourable stipulations of a convention, the income beneficiary must present a fiscal residence certificate issued by the foreign fiscal authority. The Romanian law does not allow the application of the Conventions for avoiding double taxation for net-of-tax contracts when the Romanian income payer and not the beneficiary, is the one supporting the tax payment.

In order to apply the more favourable European Union legislation, the non-resident must also present (in addition to the residence certificate) a statutory declaration where he indicates the meeting of the beneficiary condition.

## INCOME TAX

The 16% flat rate tax is applicable to the following income categories:

- Incomes from independent activities
- Salary incomes
- Rent incomes
- Pension incomes
- Awards incomes
- Incomes from agricultural activities
- Other incomes

The Fiscal Code stipulates special taxation ratio for investment incomes, gambling and transfer of real estate goods from the personal patrimony.

### Salary incomes

The taxable remuneration includes salaries, advantages in cash or kind, premiums, compensations, payments for temporary work incapacity, paid vacations and any other incomes received by a natural person based on a Labour contract. The taxable remuneration also includes the amount received by daily workers or temporary workers, indemnities paid to managers and administrators of private trade companies, to members of the Administration Committee and the Shareholders General Assembly, to members from the Directive Committee and Censors' Committee.

In case of salary incomes, the taxable base is determined by deducing the following from the gross income:

- Mandatory contributions to social insurance
- Personal deductions allowed, depending on the case

- Monthly labour union contributions
- Contributions to the optional pension funds (up to 400 euro per year)

### **Incomes from independent activities**

The incomes from independent activities include:

- Incomes from commercial activities/ freelance professions
- Incomes from intellectual property rights

### **Incomes from commercial activities/ freelance professions**

The net taxable income from commercial activities/ freelance professions is calculated as gross income less specified deductible expenses that could be subject to some limitations. The authorized legal persons, as persons performing freelance professions, are obligated to keep a single-entry bookkeeping.

Alternatively, the incomes obtained by certain categories of people who perform freelance professions with no employees are subject to income taxation based on the ratios annually established by the Ministry of Economy of Finance.

The persons who perform freelance professions are obligated to perform quarterly advance payments until the 15<sup>th</sup> of the last month of the quarter.

### **Incomes from intellectual property rights**

The net income from intellectual property rights are obtained by deducting the following from the gross income:

- Deductible expenses representing 40% of gross income
- Mandatory contributions to the social insurance funds. The intellectual property rights payers are obligated to calculate, withhold and pay an anticipated income tax of 10% until the 25<sup>th</sup> of the following month

### **Incomes from other independent activities**

The incomes from the following sources are subject to a 10% beforehand income tax:

- Income from sale of goods in consignment
- Income from agent, commissions or trade mandate contract
- Income from civil conventions according to the Civil Code
- Income from accounting and technical expertise activity, as well as from legal and extrajudicial activities

The payers of such incomes must calculate, withhold and pay in advance the income tax until the 25<sup>th</sup> of the following month. Separately, the income payers who have the obligation to calculate, hold and pay in advance the income tax, are also obligated to submit a statement for each natural person until the last days of February, including for the previous year.

Only the salary income payers are exempted from this obligation. The income achieved from performing all types of independent activities are subject to an annual regularization, executed by applying a 16% ratio to the annual taxable income, less the fiscal loss carried forward (depending on the case) for five consecutive years.

The contributors who obtain incomes from independent activities for which the withholding tax is 10%, may apply for the 16% ratio. The final taxing is also possible for incomes from: intellectual property rights, sale of goods in consignment, activities based on agent, commissions or trade mandate contracts or accounting and technical expertise activity, as well as legal and extrajudicial activities (option previously possible only for incomes obtained from civil contracts/conventions).

## Rent income

The rent gross income include amounts in cash or kind stipulated in lease contracts and related to the fiscal year (regardless of the actual collection moment), as well as a series of expenses supported by the lessee and which, according to the law, belong to the lessor.

The tax basis is established by deducing an expenses ratio of 25% from the gross income. The tax on rent income is calculated by applying 16% to the tax basis. As an exception, the contributors may chose to determine the rent net income by using the single-entry bookkeeping.

## Investment incomes

Investment incomes include:

- Dividend income
- Interest income
- Gains from transfer of securities
- Income from on-time sale-purchase operations of foreign currency, based on a contract as well as other similar operations
- Liquidation income

## Dividends income

Dividends are defined as the granting of advantages in cash or kind by a legal person to the shareholders or associates as a consequence of holding investments (with a few exceptions). Any amount paid by a legal person for the goods or services provided by a shareholder/associate is considered a dividend for these goods' or services' value, which exceeds the market value.

The taxation ratio applicable to the dividends distributed to resident natural persons is 16% and is calculated, withheld and paid by the dividends' payer. The tax will be paid until the 25<sup>th</sup> of the month following the one when the dividends' payment occurred. In case of distributed but not yet paid dividends until the year end, the tax is to be paid until the 25<sup>th</sup> of January of the following year, including. The dividend tax is final (the income is not regularized). The non-residents income tax in Romania for non-resident legal persons is whether a 16% ratio, whether a more favourable one, providing a Convention for avoiding double taxation is applied.

## Interest income

The taxable interest income represents any income in the form of interests other than the following exempted categories:

- Interest from current accounts/on-sight deposits
- Interest for on-time deposits and saving instruments
- Interest related to municipal debentures and bonds

The taxation ratio applicable to interest incomes of 16% and is calculated, withheld and paid by the interest payer until the 25<sup>th</sup> of the month following the one when the interest payment occurred. The interest income tax is final.

The non-residents income tax ratio applied to interest income obtained by non-resident legal persons according to the Romanian legislation, is whether a 16% ratio, whether a more favourable one, providing a Convention for avoiding double taxation is applied.

## Gains from transfer of securities

The capital gain represents the positive difference between the selling price and the purchase price applicable to various categories of moveable goods less the related costs, depending on the case. In case of shares transfer in a limited liability company, the capital gain represents the

difference between the sales price and the nominal value/purchase price of these shares. In case of buy-back of investment titles held in open investment funds, the capital gain is the positive difference between the buy-back price and purchase/subscribed price. When selling the shares obtained as a consequence of a stock option, the capital gain is defined as the difference between the selling price and the preferential purchase price. The concept of "net capital gain" was recently introduced, representing the difference between the gains and losses registered during the year (positive or negative differences between the selling and purchase price, less the related transfer costs).

The losses from shares transfer recorded starting with 2010 may be carried forward to the next year. This stipulation will not be applied in case of losses recorded for 2009.

The net capital gain from sale of shares held at companies and open investment funds are taxed by 16% applied to the gains obtained from sale of shares in term of 365 days including, from their purchase and 1% tax for shares held for more than 365 days.

The gains from transfer of shares and investments held at closed companies are taxed by 16%.

During 1<sup>st</sup> of January 2009 – 1<sup>st</sup> of December 2009, the income from shares held at listed companies were non-taxable when calculating the income tax.

#### **Incomes from on-time sale-purchase operations of foreign currency, based on contracts as well as other similar operations**

Gains from on-time sale-purchase operations of foreign currency, based on contracts as well as other similar operations are taxed by a final tax ratio of 16%. A beforehand tax of 1% is calculated and withheld by the intermediary (such as a bank) when the operation is closed. Subsequently, the tax is owed until the 25<sup>th</sup> of the following month. The final 16% tax is calculated by the contributor when submitting the annual tax statement.

#### **Pension income**

The pension income refers to any amount received as pension from the funds created from mandatory social contributions to a social insurance system. The pension incomes include any amount from the optional pension's funds and from those financed by the state budget. The monthly pension incomes up to 1.000 RON are not subject to taxation. The tax is final and is determined by applying a 16% ratio over the tax basis. The tax calculated for pensions is withheld at payment date and is handed over to the state budget until the 25<sup>th</sup> of the following month.

#### **Incomes from agricultural activities**

The taxable income from agricultural activities is determined over the income quotas issued by the specialized territorial authorities from the Ministry of Agriculture and Rural Development and approved by the public finance general territorial authorities. Alternatively, the contributors that obtain income from agricultural activities may chose to determined their income by using a single-party bookkeeping. The tax is calculated by applying the 16% ratio over the taxable income.

The incomes from sales of agricultural products harvested in certain conditions benefit from a diminished tax ratio of 2%.

#### **Awards and gambling incomes**

The awards taxation is performed by applying the 16% ratio over the net income representing the balance between the gross income obtained and the net amount (at the moment the respective value is 600 RON). The tax is owed until the 25<sup>th</sup> of the following month and the obligation to calculate, withhold and pay belongs to the income payer. The tax is final. The gambling tax is also final and is determined by applying a 20% ratio on the net income, which does not exceed 10.000 RON and a tax ratio of 25% over the net income that exceeds the amount of 10.000 RON. The gambling net income is calculated similar to the award income.

## Taxation of real estate transactions

The tax on real estate transactions that must be paid by a contributor when the transfer of property right or its divisions occur, is calculated as follows:

- For buildings and the related land, as well as for land without any construction, purchased and sold in term of three years, including:
  - 3% of the sales value, if it respects the limit of 200.000 RON, including
  - For a sales value higher than 200.000 RON, the tax owed is 6.000 RON in addition to 2% from the amount that exceeds the value of 200.000 RON
  
- For buildings and the related land, as well as for land without any construction, purchased and sold after three years:
  - 2% from the amount, if it respects the limit of 200.000 RON, including
  - For a sales value higher than 200.000 RON, the tax owed is 4.000 RON in addition to 1% from the amount that exceeds the value of 200.000 RON

## Income from other sources

The income from other sources include, without being limited to :

- The insurance premiums supported by a person performing freelance professions or any other entity on behalf of the respective person, who is not an employee of the person performing freelance professions or of the respective entity. The income is taxable by 16% at the beneficiary by withholding tax. The tax being final.
- Income received by the retired persons as former employees according to the labour contracts closed with former employees or based on special normative acts, as price differences for certain goods, services or other rights. These incomes are taxable by 16% for the beneficiary by withholding tax and the obligation to calculate and withhold belongs to the income payer.

The tax on income from other sources is to be paid until the 25<sup>th</sup> of the month following the one when the income was obtained.

The tax evolution during Romania's pre-adherence and post-adherence to the European Union 2007 period is attached at end of presentation as Annex.

Here we could refer to social contributions that at the moment are kept at very high ratios and the calculation basis is mostly the gross salary, which make the actual amount of all contributions to be a very onerous one for both the employee as well as the employer.

Employee's contributions	Ratio				
	01.2008-06.2008	07.2008 – 11.2008	As of 12.2008	As of 01.2009	As of 01.2010
(1) Employee's contribution to social securities - CAS	9,5%	9,5%	9,5%	9,5%	10,5%
(2) Employees' contribution to unemployment fund - CPPSS	0,5%	0,5%	0,5%	0,5%	0,5%
(3) Employees' contribution to health insurance - CASS	6,5%	5,5%	5,5%	5,5%	5,5%
(4) Salary tax	16%	16%	16%	16%	16%
(5) Company's contribution to social securities – CAS					
- For normal working conditions;	19,5%	19,5%	18%	18%	20,8%
- For particular working conditions;	24,5%	24,5%	23%	23,5%	25,8%
- For special working conditions;	29,5%	29,5%	28%	28,5%	30,5%
(6) Company's contribution for vacations and indemnities, paid to the Unique National Fund for Social Health Insurance, also known as FNUASS	0,85%	0,85%	0,85%	0,85%	0,85%
(7) Company's contribution to unemployment fund	1%	1%	0,5%	0,5%	0,5%
(8) The employees' receivables warranty fund (F.G.C.S.)	0,25%	0,25%	0,25%	0,25%	0,25%
(9) Company's contribution to health insurance	5,5%	5,5%	5,2%	5,2%	5,2%
(10) Company's contribution to the work accidents and professional diseases insurance fund	0,4% - 2%	0,4% - 2%	0,4% - 2%	0,15% - 0,85%	0,15% - 0,85%
(11) Territorial Labour Authority commission	0,75% or 0,25%	0,75% or 0,25%	0,75% or 0,25%	0,75% or 0,25%	0,75% or 0,25%
(12) Company's contribution to the handicapped persons fund, owed by the contributors with more than 50 employees	4% x total nr of employees x 50% of the gross minimum wage in Romania guaranteed for payment	4% x total nr of employees x 50% of the gross minimum wage in Romania guaranteed for payment	4% x total nr of employees x 50% of the gross minimum wage in Romania guaranteed for payment	4% x total nr of employees x 50% of the gross minimum wage in Romania guaranteed for payment	

### **Contribution to the health insurance fund owed by the foreign natural persons**

The European Union and Switzerland citizens ( as of 1<sup>st</sup> of June 2009) benefit from medical insurance in Romania, as well as from the exemption to pay the above mentioned contribution based on certificates ( form E101) issued according to the European legislation related to social securities.

Despite all these, if a natural person, citizen of the European Union/Switzerland does not pay social contributions in the native country, he will obey the social securities system in Romania during the period when he performs professional activities in our country and will be obligated to pay the contribution to the social insurance fund according to the Romanian legal stipulations.

We wish to present in terms of profit tax and income tax a series of fiscal facilities meant to encourage the economical environment in Romania. Therefore:

### **Fiscal facilities for stimulating the labour force**

#### **Employment of unemployed persons**

The companies that employ unemployed persons, during 2010, could benefit from an exemption to pay the contributions to the social insurance funds related to the persons employed, for a maximum period of 6 months.

The conditions that companies must respect are to employ, regardless of the contract's type, unemployed persons placing them in new created jobs and to keep them employed for at least 12 months.

In order to ensure an efficient implementation of this measure, companies benefit from this facility only if they employ unemployed persons which are registered at the Unemployment office for at least three months previous to the employment decision and which did not have work relations with the respective persons in the last 6 months.

#### **Employment of handicapped persons:**

The employers of handicapped persons, regardless of the legal statute benefit from the following rights and fiscal facilities:

- deduction from the taxable profit calculation of the amount related to adaptation of protected work locations and purchases of installations and equipments used by the handicapped person in the production process;
- deduction from the taxable profit calculation of expenses with transportation of handicapped persons from their home to the work location, as well as the transportation expenses of raw materials and finished goods to and from the home of the handicapped person who renders the professional activity by respecting the stipulations of art. 106 from the Labour Code;
- deduction from the unemployment insurance budget of the specific expense with training, forming and professional orientation of handicapped persons;
- a subvention is granted according to the stipulation of Law nr. 76/2002 regarding the unemployment insurance system and employment stimulation.

#### **Note!**

Granting a subvention to working places occupied by handicapped persons refers exclusively to the employers who are not obligated to employ them, according to Law no. 448/2006.

Therefore, if you have under 50 employees, you wish to employ a handicapped person for unlimited duration and you undertake the obligation to keep the respective person employed for at least 2 years, you have the possibility to close a convention with the National Unemployment Agency, based on which you will benefit from the following subventions from the unemployment insurance budget for 12 months:

- a monthly subvention granted for 12 months from the unemployment insurance budget, as a gross minimum wage in Romania guaranteed for payment;
- monthly subvention of the employer's contribution to the unemployment insurance budget related to the jobs occupied by the handicapped persons employed for 12 months ( 1% from the salary for January-November 2008, respectively 0.5% starting with December)

The subvention's value cannot exceed 60% of the employer's salary costs related to handicapped persons, for a period of one year from the employment date.

#### **Employment of retired persons:**

The legal entities who employ retired persons are exempted from paying the unemployment fund both for the employee and employer, related to the retired persons employed.

#### **Other deductions:**

Exemption from paying the salary tax for the activity of creating computer software;

#### **Conditions:**

1. The reference jobs are the following: analyst; programmer; informatics system designer ; informatics system engineer/programmer; database administrator; informatics project manager. The project managers develop ,plan, analyze, estimate and establish priorities related to the components about to be created as well as the bases and execution terms of projects.
2. The job is part of an informatics specialized department, highlighted in the employer's organizational chart such as: calculation centre, direction, department, registry, service, office, compartment or other similar ones;
3. The employees have graduated a long term superior education form, with a diploma issued by an accredited superior education institution with one of the following specializations: Automatics, Computers, Informatics, Mathematics, Cybernetics, Electronics, respectively one of the following specializations: Automatics and Industrial informatics, Computers, Electrical engineering and computers, Electronics, Applied electronics, Electronics and telecommunications, Communications, Mathematics, Informatics mathematics, Informatics, Economical informatics, Applied informatics, Cybernetics and economic informatics, Cybernetics and economical forecasting, Accounting and management information systems
4. As a consequence of creating computer software activities, destined to be traded based on a contract, the employer has obtained an annual income of at least 10.000 US Dollars in the previous fiscal year and distinctly recorded in analytical trial balances, ( calculated at the average monthly exchange rate communicated by the National Bank of Romania, related to each month when the income was recorded) for each employee that benefits from income tax exemption.

According to the stipulation of Ministry of public Finance Order nr. 748 / 2004, an employee may benefit from salary tax exemption only starting with the second year of the employer's existence (in order to be able to verify the condition regarding the employer's annual income of at least the lei equivalent of 10.000 US Dollars).

The natural persons who perform their activity based on an individual labour contract are entitled to deduce from the monthly net income an amount representing a personal deduction, granted for every month of the taxable period only for salary income where the main function is established.

(The personal deduction is granted for natural persons with a gross monthly income up to 1000 lei including, as follows:

- for contributors who do not have any person as dependent - 250 lei;
- for contributors who have one person as dependent - 350 lei;

- for contributors who have two persons as dependents - 450 lei;
- for contributors who have three persons as dependents - 550 lei;
- for contributors who have four or more persons as dependents - 650 lei.

For contributors that obtain salaries gross incomes between 1.000,01 lei and 3.000 lei including, personal deductions are digressive compared to the ones stated above and are established by Ministry Of Public Finance Order. For contributors that obtain salaries gross incomes of over 3000 lei, there is no personal deduction granted.)

## **II. VAT**

### **Regime:**

The VAT system in Romania is reconciled with the VAT European Directive.

### **Rates:**

(1) The standard ratio is 19% and is applied over the tax basis for the taxable operations which are not tax exempted or are not subject to decreased ratios.

(2) The lower ratio of 9% is applied over the tax basis for the following service renderings and/or services deliveries:

- a) services representing the access to castles, museums, memorial homes, historical monuments, architectural and archaeological monuments, zoos and botanical gardens, fairs, exhibitions and cultural events, cinemas, others than the ones exempted according to art. 141 par. (1) letter. m);
- b) delivery of schools books, books, newspapers and magazines, except for those exclusively or mainly destined for publicity;
- c) delivery of prosthetics and accessories, except for dental prosthetics;
- d) delivery of orthopaedic products;
- e) delivery of drugs for human and veterinary usage;
- f) accommodation within the hotel sector or similar sectors, including lending camping equipment lands.

(3) The lower ratio of 5% is applied over the deliveries of social houses, including the related land ( certain conditions must be respected in order to apply this stipulation)

### **The tax basis includes the following:**

- a) taxes and fees, unless otherwise stipulated by law , except for the value added tax
- b) other expenses such as: commissions, packaging, insurance and transportation expenses required by the supplier/provider to the buyer or the beneficiary. The expenses invoiced by the goods supplier or service provider to the buyer constituting the object of a separate contract and are not connected to the goods delivery or service rendering, are considered to be other expenses.

As of 1<sup>st</sup> of May 2009, the VAT related to motor vehicle acquisition as well as the acquisition of fuel for vehicles owned or used by the contributors ( that meet certain criteria) is in general not deductible. This rule applies until the 31<sup>st</sup> of December 2010 with some exceptions (vehicles used for commercial/resale purposes, for person transportation, including taxi services, those used for rendering of paid services, for interventions, security, etc). As a principle, in case of leasing these vehicles the VAT for leasing instalments is deductible.

The tax basis does NOT include the following:

- a) rebates, remises, discounts and other price reductions, granted by the supplier directly to the client at the tax due date
- b) amounts representing damages - interests, established by a final and irrevocable Court Decision, penalties and any other amount required for the total or partial unfulfilling of contract obligations, if they are charged in addition to the prices and/or negotiated fees. The tax basis does not include any amount that represents the counter value of delivered goods or services rendered.
- c) interests, charged after the delivery of rendering for overdue payments;
- d) the value of packaging that circulates between goods supplier and client through trade without being invoiced;
- e) the amounts paid by a taxable person on behalf and in the account of another which is then deducted from the latter as well as the amounts collected by a taxable person on behalf and in the account of another person.

### Taxable persons

#### General stipulations

Any person that delivers goods or renders taxable services during its activity on a regular basis is considered to be a taxable person. The term "activity" refers to all activities performed independently by manufacturers, traders and service providers.

The taxable persons established in Romania with an annual turnover greater than 35.000 EUR must register for VAT purposes. The persons who do not meet these criteria regarding the turnover also have the possibility of being registered for VAT purposes.

The registration can take place before performing any taxable operation and /or exempted with deduction right (by selecting the option when registering or when stating an estimated turnover greater than the limit for registering at the beginning of its activity). The persons that have not been registered as VAT payers must register in term of 10 days from the end of the month when this limit has been reached or exceeded.

The taxable person that has the economical activity headquarters outside Romania, but is established in Romania through a permanent headquarters is obligated to be registered in Romania for VAT purposes:

- Before receiving services from taxable persons established in other Member States for which tax payment is mandatory (general B2B rule).
- Before rendering a service at the permanent headquarters to the beneficiary who is a taxable person established in another Member State, for which the beneficiary is obligated to pay VAT ,
- Before for example performing at this permanent headquarters some taxable activities and/or exempted with deduction right

The taxable person headquartered in Romania but not yet registered is obligated to be registered for VAT purposes before rendering /receiving services from/to a taxable person established in other Member States for which the beneficiary is a person obligated to pay VAT (general B2B rule).

Until January 2012, the VAT fiscal group can be constituted out of taxable persons considered to be great contributors. In Romania, the VAT fiscal group does not have the characteristics of a fiscal group as defined by the VAT European legislation, but the member of a group that can only consolidate their position to pay/recover VAT (effect on cash flow)

## Taxable operations

Transactions subject to VAT taxation refer to the delivery of goods and rendering of services, import of goods and acquisition of the European Union goods. An operation is taxable in Romania if certain conditions are cumulatively met (such as: is paid, the operation location is in Romania).

### Delivery of goods

Delivery of goods represents the actual transfer of the ownership right from one goods' proprietor to another person for payment, directly or through an intermediary.

As a general rule, a delivery of goods is located at the place when the goods are held when delivered – with some exception for the goods that are about to be transported, assembled, delivered, aboard ships, planes, trains and for distance sales – providing certain conditions are met.

### Service rendering

The place of service rendering to a taxable person that is acting as such is the place where the respective person receiving those services has established its economical activity headquarters. If services are supplied to a taxable person's permanent headquarters, that is located in a different place other than where the respective person has its economical activity headquarters, the service rendering place is the one where that persons' permanent headquarters is located ( general B2B rule).

The place of service rendering to a non-taxable person is the place where the provider has established its economical activity headquarters. If services are supplied from the provider's permanent headquarters, that is located in a different place other than where the respective person has its economical activity headquarters, the service rendering place is the one where that persons' permanent headquarters is located (general B2B rule)

There are a series of exceptions to the general rule regarding the service rendering place (such as services related to real estate goods, cultural services, artistic, passenger transportation, etc). Also, Romania has implemented the rule of actual utilization and exploitation for certain services rendered to taxable persons established in non European Union countries (such as services for tangible moveable goods, local transportation of goods).

The term "services" is applied to all transactions that are not considered delivery of goods.

### Import of goods

The goods brought from outside the European Union and introduced in the European Union territory in Romania are considered imports and are subject to VAT taxation with certain exceptions (respectively, the entrance of goods in a suspensive customs system).

### The European Union acquisition of goods

An European Union acquisition of goods represents the acquisition of the right to own as a proprietor, tangible movable goods sent or transported to the indicated destination by a buyer, a renderer or any other person on their behalf in Romania from another Member State from where the goods were shipped or transported.

### "Reverse taxation"

In case of Taxable European Union acquisitions, certain acquisitions of goods/services and imports (if the taxable persons registered for VAT purposes who have performed these operations have obtained the postponement certificate), for which the "rendering /delivery place" is considered

to be Romania, the law stipulates the application of the so-called reverse taxation mechanism by the Romanian beneficiary if certain conditions are met (which are different depending on the operation)

According to the reverse taxation mechanism, the beneficiary must recognize the output VAT in their tax returns for that respective month. As a general rule, input VAT can be recovered in the same VAT tax return depending on the beneficiary's right to deduce VAT.

### Simplification measures

In case of some deliveries (such as waste and scrap iron, wood materials) a VAT simplification mechanism will be applied, providing that both the buyer and the seller are registered as VAT payers in Romania.

According to the mechanism, the buyer must simultaneously recognise the input and output VAT in the respective month tax return without having any effect on the cash flow (providing that this one has the right to totally deduce VAT).

### Important aspects regarding natural persons:

<p>The following incomes are not considered VAT related economical activities:</p>	<p>The income from the sale of a personal establishment held as property or of other <b>goods</b> that were used by this person for personal use</p> <p>In the category <b>goods used for personal purposes</b> are included buildings and, where the case may be, the related land, held as personal property of the natural person that was used as an establishment, including villas, or any other goods used for personal purpose by the natural person, as well as goods of any kind representing legal inheritance or obtained as consequence of a repairing measure stipulated by law regarding the re-establishment of the property right .</p>
<p>The execution of an economical activity based on the utilization of tangible and intangible goods by a natural person</p>	<p>The natural person who has not yet become a taxable person for other activities, is considered to perform an economical activity based on the utilization of tangible or intangible goods, if the respective person is acting as such, in an independent manner, and the activity is performed with the purpose of obtaining a <b>permanent income</b> by respecting the art. 127 paragraph (2) from the Fiscal Code.</p>
<p>The moment from which the economical activity performed by a natural person is considered continuous</p>	<p>In case of building real estate goods by natural persons, for the selling purposes, the economical activity is considered to have begun in the moment when the natural person intends to undertake such an activity, and the intention of that person must be appreciated on the basis of objective elements, such as, the fact that person has begun to engage costs and/or make preliminary investments for the economical activity.</p> <p>The economical activity is considered continuous from the moment it began, including the delivery of the good or parts of the real estate good built, even in the case of sole buildings</p>
<p>The continuity characteristic of economical activity performed by a natural person</p>	<p>In case of land and/or building acquisition by a natural person for selling purposes, the delivery of these goods represent a continuous activity, providing that the natural person concludes more than one transaction during a calendar year.</p> <p>However, if that natural person is already undertaking the construction of a real estate good for selling purposes, according to article (4), the economical activity is already considered to have begun and to be</p>

continuous, and any other transactions later performed will not have an occasional characteristic.

Although the first delivery is considered to be occasional, if a second delivery happens to occur during the same year, the first delivery will not be subject to taxation, but will be taken into consideration when calculating the limit established by article 152 from the Fiscal Code.

**Delivery of land and buildings, tax exempted in accordance with article 141 paragraph (2) letter f) from the Fiscal Code** are taken into consideration both for establishing the continuity characteristic of the economical activity as well as for the exemption limit calculation, established by article 152 from the Fiscal Code

Deliveries of buildings and land, tax exempted in accordance with art. 141, par. (2) Let. f) from the Fiscal Code, modified by Law nr. 343/2006, Emergency Government Order nr. 106/2007, Emergency Government Order nr. 109/2009

The following deliveries of real estate goods are VAT exempted:

f) the delivery of buildings/parts of buildings and the land they are built on, as well as any other parcel of land

By exception, the exemption DOES NOT apply to the delivery of new buildings, parts of new buildings or buildable land.

In the respect of the present article the following terms are defined :

1. **Buildable land** represents any set-up or non-set-up land on which buildings can be built up, in accordance with the laws in force
2. **Buildings** represent any fixed structure in or on land
3. Delivery of a new building or a part of a new building refers to the delivery made by the latest 31<sup>st</sup> of December, in the year following the **first occupation or utilization** of that building or part of it, depending on the case, as consequence of a transformation.
4. A new building comprises any transformed building that had its structure, nature or destination altered or in the absence of these modifications, if the cost of transformations, excluding tax, represents a minimum of 50% of the building's market value, excluding land, subsequently to the transformation.

IMPORTANT :

NO VAT is owed for the sale of old buildings or plough land.

VAT exempted buildings and land

In respect of **article 141 paragraph (2) letter f)** from the Fiscal code, when the building and the related land form a **single land item, identified through a single real estate register number** :

the land on which the building is found submits to the building state, if the lands' value is less than the building's value as resulting from the expert's report.

the building will submit to the land's state on which it is found, if the building's value is less than the land's value as resulting from the expert's report.

if the land and the building have equal values, as resulting from the expert's report, the land item's state will be set by the real estate good with the greater surface. The whole built building surface will be taken into

consideration.

Delivery of a piece of land with a building whose demolition has started before delivery and was assumed by the seller :

These kind of delivery and demolition operations form a single operation as regard to VAT , having the whole objective of delivering a piece of land, and not delivering the existing building and the land it belongs to, regardless of the demolition works' status, at the time of delivery. In this regard the European Justice Court order has been pronounced in the C-461/08 Don Bosco Onroerend Goed BV case.

IMPORTANT :

In this case the delivery is treated, in respect to VAT , as a buildable land delivery, without a building, operation subject to taxation, therefore the sale will include VAT.

First occupation in the respect of art 141 paragraph. (2) letter f) point 3 from the Fiscal Code modified through Law nr 343/2006

In the case of a building or a part of a building that has not suffered transformations as stated at point 4 of article 141 paragraph (2) letter f) of the Fiscal Code, the signing date, by the beneficiary, **of the definitive building reception minute** or a part of the building

In case of a building manufactured by one self, the date of the first occupation is the document date on the basis of which the building or part of a building is recorded into the accounting records as a tangible noncurrent asset.

IMPORTANT!

For natural persons that have manufactured buildings on their own, that are to be delivered, at the moment when a interested beneficiary signs the contract, it is necessary to make a reception minute and record the building at DITL , at the Local Council.

A building, from the point of view of building tax, title IX of the Fiscal Code, article 249, paragraph (5), is a building situated above ground and/or underground, with one or more rooms, the basic structural elements being the walls and roof, no matter the materials used.

First utilization in the respect of art 141 paragraph. (2) letter f) point 3 from the Fiscal Code modified by Law nr 343/2006

It refers to buildings that have suffered transformations as stated at point 4 of article 141 paragraph (2) letter f) of the Fiscal Code

The first date of utilization refers to the date when the beneficiary has signed **the definitive work and building transformation reception minute** or for just a part of the building depending on the case.

In case of transformation works made by the person on their own for a building or part of a building, the date of the good's first utilization after the transformation is the document date based on which the building or part of the building has its value increased with the value of the afore mentioned transformation.

### III. LOCAL TAXES

In Romania, the local taxes are regulated by the Fiscal Code. They represent a distinct category of taxes established by the local administrations, which are owed by the natural and legal persons in Romania.

Tax	Calculation basis	Ratio	Discount	Increases	Exemptions
Natural Person – Building tax	Taxable value= complete building or useful surface  x 1,2  x Taxable value /sqmt  x Correction coefficient depending on the town rating	0,1%	A discount of 10% is granted for prepayments of the building tax owed for the whole year by the tax payer until the 31st of March of the current year.	<p><b>By 15%</b> for the <b>first</b> building except for the one registered at the living address</p> <p><b>By 50%</b> for the <b>second</b> building except for the one registered at the living address</p> <p><b>By 75%</b> for the <b>third</b> building except for the one registered at the living address</p> <p><b>By 100%</b> for the <b>forth</b> building except for the one registered at the living address</p> <p><b>Note:</b> Building tax increases as stated above <b>only if the building is not rented to another person.</b></p> <p>The buildings acquired by <b>legal succession do not enter under the jurisdiction of paragraph (1)</b> which refers to the increase in taxation (Fiscal Code, article 252 (1<sup>1</sup>) newly introduced by Law nr. 343/2006).</p>	<p>Building tax is not owed by (article 284) :</p> <p>War veterans (paragraph (1) letter a)) ;</p> <p>Natural persons stated at article 1 of Law-Decree nr 118/1990 regarding the granting of certain rights for persons persecuted for political reasons during the dictatorship that started from 06.03.1945, as well as those deported abroad or held prisoners, republished with the modifications and subsequent alterations, as well as other laws (paragraph (1) letter b)) ;</p> <p>Persons stated at art 3 (1) letter b) and art 4 (1) from the Law regarding gratitude towards the martyr-heroes and fighters that contributed to the victory in the Romanian Revolution in December 1989 nr 341/2004 (paragraph (2)) ;</p> <p>War widows and war veteran widows that have not remarried.</p> <p>Taxes are not owed by persons with a grave/severe handicap, that fall under the 1<sup>st</sup> degree of invalidity (article 284 (4)) ;</p> <p>Buildings considered historical or architectural monuments, museums, memorial houses, with the exception of places that are used for economical activities. (article 250 (1) point 2)</p> <p>10 years after obtaining a living space, in the conditions of (article 284 (13) and (14), newly introduced by Law nr 343/2006) stipulate:</p> <p>the building is a new living space made in accordance with the stipulations of Law nr 114/1996, republished ;</p> <p>the building is executed based on credit, in accordance with Government Order 19/1994 regarding the stimulation of investments for making some public works and living spaces, approved and modified by law nr 82/1995, with the modifications and alterations that followed.</p>
Legal Person – Building tax	The taxable value of a building that has been revaluated in accordance with the accounting stipulations, is the book value after revaluation  The taxable value is reduced by 5% if the value left to be depreciated is	1,5%,  For legal persons that own buildings that have not been	A discount of 10% is granted for prepayments of the building tax owed for the whole year by the tax payer until the 31st of March of the current year.		<p><b>As of 01.01.2008, the stipulation according to which</b> the Local Council can grant exemptions for payment of <b>building and land taxes for an investment of 500.000 EURO</b> for a period of <b>5 years</b> from the 1<sup>st</sup> of the next month after the building's finalization is <b>annulled.</b></p> <p>As of 01.01.2008, by Emergency Government Order nr 106/2007, article 286 (7) from the Fiscal Code introduced by Law nr 343/2006 was <b>annulled.</b> It stipulated:</p> <p>"For investments of over 500.000 Euros finalized and put in function at 01.01.2007, the Local Council can establish a quota of 0,25% for the calculation of building tax for a period of 3 years, including."</p> <p>As of 01.01.2009, building tax and land tax is <b>reduced</b> by 50% for <b>those buildings and land, owned by legal persons that are used exclusively to render tourist services</b> for a period of maximum 6</p>

	zero.	revaluated in the last 3 years prior to current fiscal year, the tax quota established for 2009 for Bucharest is 10%			<p>month during one calendar year.</p> <p>Building tax is not owed by:</p> <p>Any institution or unit that functions under the coordination of the Minister of Education, Research and Youth, except for those establishments used for economical activities;</p> <p>Willed institutions or constituted as stated by law, with the purpose to maintain, develop and adjust national cultural institutions, as well as those which hold humanitarian, social and cultural actions.</p> <p>Organizations that have as sole activity the free granting of services in specialized units that insure housing, social care and medical assistance, recovery, rehabilitation and social insertion activities for children, families, handicapped persons, elder persons as well as for persons in difficulty, in the conditions of the law.</p>
<b>Natural Persons</b> -Land Tax	The number of square meters owned		A discount of 10% is granted for prepayments of the land tax owed for the whole year by the tax payer until the 31st of March of the current year.	The Local Council can decide to increase the land tax by a maximum of 20%, on a yearly basis.	<p>Land tax is not owed by (article 284) :</p> <p>War veterans (paragraph (1) letter a)) ;</p> <p>Natural persons stated at article 1 of Law-Decree nr 118/1990 regarding the granting of certain rights for persons persecuted for political reasons during the dictatorship that started from 06.03.1945, as well as those deported abroad or held prisoners, republished with the modifications and subsequent alterations, as well as other laws (paragraph (1) letter b)) ;</p> <p>Persons stated at art 3 (1) letter b) and art 4 (1) from the Law regarding gratitude towards the martyr-heroes and fighters that contributed to the victory in the Romanian Revolution in December 1989 nr 341/2004 (paragraph (2)) ;</p> <p>War widows and war veteran widows that have not remarried.</p> <p>Taxes are not owed by persons with a grave/severe handicap, that fall under the 1<sup>st</sup> degree of invalidity (article 284 (4)) ;</p>
<b>Legal Persons</b> -Land Tax	The number of square meters owned		A discount of 10% is granted for prepayments of the land tax owed for the whole year by the tax payer until the 31st of March of the current year.	The Local Council can decide to increase the land tax by a maximum of 20%, on a yearly basis.	<p><b>As of 01.01.2008, the stipulation according to which the Local Council can grant exemptions for payment of building and land taxes for an investment of 500.000 EURO for a period of 5 years from the 1<sup>st</sup> of the next month after the building's finalization is annulled.</b></p> <p>As of 01.01.2008, by Emergency Government Order nr 106/2007, article 286 (7) from the Fiscal Code introduced through Law nr 343/2006 was <b>annulled</b>. It stipulated:</p> <p>"For investments of over 500.000 Euros finalized and put in function at 01.01.2007, the Local Council can establish a quota of 0,25% for the calculation of building tax for a period of 3 years, including."</p> <p>As of 01.01.2009, building tax and land tax is <b>reduced</b> by 50% for those buildings and land, owned by legal persons that are used exclusively to render tourist services for a period of maximum 6 month during one calendar year.</p> <p>Land tax is not owed by:</p>

					<p>Any institution or unit that functions under the coordination of the Minister of Education, Research and Youth, except for those establishments used for economical activities;</p> <p>Willed institutions or constituted as stated by law, with the purpose to maintain, develop and adjust national cultural institutions, as well as those which hold humanitarian, social and cultural actions.</p> <p>Organizations that have as sole activity the free granting of services in specialized units that insure housing, social care and medical assistance, recovery, rehabilitation and social insertion activities for children families, persons with handicap, elder persons as well as for persons in difficulty, in the conditions of the law.</p>
<p><b>Natural and Legal Persons</b> –Means of transportation tax</p>	<p>Determined based on the type of means of transportation and its cylindrical capacity</p>		<p>A discount of <b>10%</b> is granted for prepayments of the means of transportation tax owed for the whole year by the tax payer <b>until the 31st of March</b> of the current year.</p>		<p>Means of transportation tax is not applied for ( Fiscal Code, article 262, modified by Law nr 343/2006) :</p> <p>Automobiles, motorcycles with a side car, motothreecycles that belong to persons with locomotive handicap and are adapted to their handicap ;</p> <p><b>River passenger ships, boats</b>, used for transportation of natural persons housed in the Danube Delta, Braila Grand Island and Balta Ialomitei Island;</p> <p><b>Public institutions'</b> means of transportation;</p> <p>Legal persons' means of transportation used for public transport services outside town, if the transport fee is established in the conditions of public transportation.</p> <p><b>Historical vehicles</b> defined in accordance to the legal stipulations in force (letter e) is newly introduced by Law 343/2006).</p> <p>Means of transportation tax is not owed by :</p> <p>Willed institutions or constituted as stated by law, with the purpose to maintain, develop and adjust national culture institutions, as well as those which hold humanitarian, social and cultural actions.</p> <p>Organizations that have as sole activity the free granting of services in specialized units that insure housing, social care and medical assistance, recovery, rehabilitation and social insertion activities for children families, persons with handicap, elder persons as well as for persons in difficulty, in the conditions of the law.</p>

**Other local taxes:**

1. The tax for issuing building authorizations

The tax is calculated as a percentage of the building's value and is paid at the moment the building authorization is obtained.

2. The tax for using publicity and commercial means.

This tax is owed until the 10<sup>th</sup> of every month for the contract's duration with the publicity and commercials service provider in Romania, with the exception of publicity and commercial services by means of paper, audio, and video. The tax quota is established by the local councils and being located between 1% and 3% applicable to the value of the publicity and commercial services. The persons who use outdoor publicity display media are obligated to pay the tax for this publicity and commercials display as a fixed amount to the local council on the basis of square meters, depending on the display used for the purpose of publicity and commercials. The tax will be paid in equal instalments until the 15<sup>th</sup> of March, the 15<sup>th</sup> of July, the 15<sup>th</sup> of September and the 15<sup>th</sup> of November.

3. Holiday resort tax

The tax is owed by natural persons over 18 years of age for staying in holiday resorts and is included in the accommodation price. The tax quota is established by local councils and being located between 0.5% and 5% applied to the accommodation price.

#### 4. Tax on entertainment

The tax on entertainment is owed by natural and legal persons for public shows at a quota between 2% and 5% of the revenues or under the form of a fixed amount depending on the surface of the establishment where the show takes place. The entertainment tax is paid on a monthly basis until the 15<sup>th</sup> including, of the month following the one when the show took place.

#### 5. Other local taxes

Local councils can impose daily taxes for the temporary use of advertising spaces and for access to museums, memorial houses or historical monuments of architecture and archaeology, for holding and using equipment and installations destined to obtain incomes that use the local public infrastructure, as well as the taxes for the activities with great impact on the environment.

### IV. CUSTOMS SYSTEM

#### The European Union customs legislation

Council Regulation (CEE) nr 2913/92 regarding the European Union Customs Code and Council Regulation (CEE) nr 2454/93 establishing a disposition in order to apply the European Union Customs code, are directly applied in Romania since the adherence date (1 January 2007).

As of 1<sup>st</sup> July 2009 the persons who perform activities regulated by the customs legislation must be recorded for customs purposes.

Also, the status of authorized economical operator can be granted at one's request by respecting certain criteria. This status gives the owner certain administrative facilities.

#### The European Union customs tax

Customs taxes specifically owed at the moment when goods are brought into requisition are established on the bases of the Common customs tax (established every year by the Commission) and the related preferential taxing measures. The European customs taxes are held in an electronic database (TARIC) which includes:

- Combined goods terminology
- The quotas and other taxes that are usually applied to goods in the combined terminology in relation to customs taxes and import rights established by the common agricultural policy or the specific regulations that apply to the goods resulted from the transformation of agricultural products.
- Preferential taxing measures from the agreement made with the European Community with some countries or groups of countries that state the granting of a preferential treatment.
- Preferential taxing measures unilaterally adopted by the European Community with regard to certain countries, groups of countries or territories.
- Autonomous adjourning measures that grant a reduction or an exemption from the payment of import rights applicable to some goods.
- Other taxing measures stipulated by other European normative acts.

Customs taxes represent a percentage of the customs value of goods. Other taxes, rights and contributions can be owed at the moment of import in addition to customs taxes, such as VAT, excise, etc.

The European Union Customs Code and the Application regulation comprise the new rules and dispositions in the goods' status, evaluation at customs, modifying the customs statements, mandatory information regarding goods' origin and mandatory taxation information, instalments administration system.

#### **Establishing the goods' value at customs.**

If the goods that are about to be imported in Romania after the joining date, will be the object of a sale, the value at customs will be based on the rule of the selling price, to which other costs related to the acquisition of these goods are added (ex.: insurance, transportation, commissions, royalties and licenses).

Transport costs (i) and insurance costs (ii) for imported goods and loading and manipulation expenses related to transportation of the imported goods at the entrance place on the European Union customs territory will be added to the effective price paid or owed by the importer at the goods' value at customs statement date as much as they are recorded by the buyer, but are not included effectively in the price paid or owed for the goods.

#### **Customs systems**

According to the European customs regulations, goods can fall under one of the following customs systems:

- For free circulation
- Transitory
- Customs warehouse
- Active improvement
- Transformation under customs control
- Temporary admittance
- Passive improvement
- Export
- Free storage
- Free port

Free circulation of goods outside the European Community offers the status of European Union customs goods, which means that the customs taxes and other rights have been paid, and thus, the goods can circulate freely in the European Community space as far as customs are concerned.

The special customs systems that defer the payment of import rights must be generally authorized by customs authorities.

The transitory disposition allows the goods from outside the European Community to be transported from one European Union customs point to another, without the goods being subject to import rights and other taxes or trade measures policies for a certain period of time. Some European Union goods destined for export could be placed under the same transitory system.

Customs warehouse represents any place approved by the customs authorities and held under the supervision of the afore-mentioned, where goods can be stored in the conditions established by law.

The customs warehousing system allows the storage in a customs warehouse of:

- Goods outside the European Union, without them being subject to import rights or trade policies measures
- European Union goods, that, based on the European law stipulations regulating specific fields, benefit, based on their placement in a customs warehouse, from measures related to export of goods.

Active improvement system is applied to goods outside the European Union destined to be re-exported outside the EU's territory as compensatory products, without applying import rights or trade policies measures. This system is also applied to free circulation goods with reimbursements or import rights remittance related to such goods, if they are exported outside the Community's customs territory as compensatory products.

The transformation under customs control system allows goods outside the Community to be used on the Community's customs territory to be subjected to operations that modify their nature or status, without them being subject to import right or trade policies measures, and allows the free circulation of the goods resulted from the payment transformations of the import rights owed for them.

The temporary admittance system allows the utilization of the European Union customs territory, with total or partial exemption of the import right and without being subject to trade policies measure, of the goods outside the Community destined to be re-exported, without them suffering any modifications except for normal depreciation due to their utilization.

The passive improving system allows for the European Union goods to be temporarily exported outside the European Union customs territory in order to be improved and the resulting products from these operations to circulate freely, with partial or total exemption of import rights.

The export system allows for the European Union goods to be taken outside the Community customs territory and also implies the fulfilment of export customs formalities, including the application of trade policies measures.

Free ports and free warehouses are parts of the European Union customs territory or establishments situated on this territory, separated by the rest in which goods outside the Community are considered in regard to import rights and trade policies measures to be outside the European Union customs territory, as long as they are not put in free circulation, nor placed under any other customs system, or utilized or consumed in other conditions than those stated by the customs regulations.

### **Customs systems for natural persons**

The customs regulations stipulate a specific treatment for personal objects belonging to natural persons that are living or reside in the Community, goods introduced by marriage, inherited goods as well as goods mailed between natural persons.

The goods in the personal luggage of travellers introduced into the European Community without trading purposes can be exempted from customs taxes. Customs tax, value added tax and excise exemption can be granted up to the value of 430 Euros for every traveller using transportation means by air or sea, and up to the value of 300 Euros for every traveller using transportation means by road.

In case of goods, the exemption is granted providing the following limitations are respected:

Tobacco products:

- 40 cigarettes

- 100 cigars (cigars that have a maximum weight of 3 grams each)
- 50 Cuban cigars
- 250 grams of pipe tobacco

Alcohol and alcoholic beverages:

- A total of 1 litre of alcohol and alcoholic beverages with an alcohol concentration greater than 22% in volume or ethylic alcohol unhampered having 80% volume or more or
- A total 2 litres of alcoholic beverages with an alcoholic concentration of less than 22% in volume
- A total of 4 litters of wine and
- 16 litters of beer.

The taxes exemptions mentioned above for tobacco and alcoholic beverages does not apply to travellers under 17 years of age.

## V. EXCISES

Excises are consumption taxes which are owed for certain categories of goods including alcoholic drinks, gas, tobacco products, coffee, electric energy and other products. The tax is paid at import and sale of locally produced goods on the internal market and is established at a fix amount in Euros per unit ("specific excises") or as a percentage from a specified tax basis.

The excises applied to the main goods' categories are presented in the table below:

Product category	Excises quotas valid for 2010
Alcoholic products	Up to 750 euro per hl
Cigarettes	48,5 euro/1.000 cigarettes+22% from the maximum retail price
Coffee	153euro-900 euro per tone
Fuel	347 euro-547 euro per tone
Electric energy	0,5 euro or 1 euro/MWh

The tax payers usually have the obligation to submit monthly fiscal statements and to pay the excises for the excisable products until the 25<sup>th</sup> of the following month, with some exceptions, for imported goods, the excises where the case may be, are to be paid at the date when the customs statement is made.

The law stipulated a special control and surveillance system for the production and distributions of excisable products.

A special procedure can be granted for reimbursing the harmonized excises following a fiscal risk analysis for the delivery of certain excisable products.

### Fiscal warehousing system

The fiscal warehousing system allows for the production, transformation and/or storage of products subject to harmonized excises (ex: beer, wines, other fermented drinks, intermediary products, ethylic alcohol, tobacco products, and mineral oils) without paying the related excises. In general, the fiscal warehousing system cannot be used for the retail sale of these products.

The Fiscal Code allows for the production (and storage) of electric energy and natural gas outside fiscal warehouses.

### Excises exemption system

In certain conditions, excisable products can be moved to an excises exemption system on the Community's territory. The movement of excisable products in an excises exemption system is accompanied by an administrative document.

The paper document that accompanies excisable products in an excises exemption system (Administrative Accompaniment Document - AAD) will be replaced by an electronic message from the sender to the addressee, certified by the authorities of the Member States involved.

In this purpose, an electronic system for monitoring the movement of excisable products in a excises exemption system on the Community's territory called EMCS (Excise Movement and Control System), will be implemented as of 1<sup>st</sup> of April 2010. For the movement of excisable products in excises exemption system on Romanian territory there is a component of the EMCS-RO electronic monitoring system that is already being used.