

# DOING BUSINESS IN ROMANIA



This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Romania.

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# **1. Background**

## **1.1 Country overview**

Romania is located in Southeast Europe on the west of the Black Sea and has a surface of approximately 238,000 sq km. The country is divided into three regions: the central and north-western region (Transylvania, Crisana and Banat, encompassing the Carpathians Mountains), the southern region (Wallachian Plain with the river Danube forming the country's southern border; and the eastern region (Moldavian Plain).

Its population is approximately 21.6 million people (according to 2008 data) of which approximately 91% are Romanian. Minorities include Hungarian (6.7%), Roma (1.1%), German (0.2%) and Ukrainian (0.3%). The official language is Romanian. In the northwest and central regions, Hungarian and German are also used.

Bucharest is the capital city with a population of more than 2 million. Other big cities are Timisoara, Constanta, Brasov, Iasi, Cluj-Napoca and Craiova.

Romania is an independent and sovereign republic with a presidential system of government. The Romanian Constitution confirms among its aims a multi-party system, a free-market economy and the respect of human rights. The president serves a five year term and is the Head of State. The legislative power lies with the Parliament who's elections are held every 4 years.

## **1.2 Economic overview**

Since the beginning of 1990, Romania has had a free market economy countered by a continuous government presence in the industrial sector.

Successive governments have made strides in liberalizing and privatizing the economy.

Manufacturing and engineering are Romania's main industries. The country also possesses substantial energy resources and agricultural land. The technology sector plays an increasingly important role in the economy due to the high level of skill among its workers and low wage costs. The real estate sector also has significant growth opportunities.

There is a large industrial infrastructure in many of the country's leading cities, which together with the country's considerable natural resources possess substantial potential for exploitation and development.

As of 1<sup>st</sup> of January 2007 Romania joined the European Union. The accession process involved undertaking a vast array of political and economical reforms in order to guarantee the four fundamental freedoms: freedom of movement of goods, freedom of movement of salaried workers, freedom of establishment and freedom to provide services by independent persons and companies and, finally, freedom of capital movements within the common market.

## **1.3 Transport infrastructure**

Romania is situated on the crossroads of many historic trade routes. The main channels of these routes are the Danube River and the port of Constanta, one of the largest ports on the Black Sea, which is linked to the North Sea by a new navigation route through the Rhine Main-Danube Canal.

Romania also has a well developed airport infrastructure. There are 17 commercial airports in service today, most of them opened for international traffic, from which, considering the passenger traffic criteria, the most important are: Bucharest Henri Coandă, Bucharest Aurel Vlaicu, Timisoara Traian Vuia, Cluj Napoca, etc.

There are three important Romanian airlines: Tarom, the Romanian flag carrier, based in Bucharest Otopeni offering flights to major cities in Europe and not only, as well internal flights; Carpatair, based in Timisoara, and Blue Air, the only Romanian low-cost airline based in Bucharest.

## **2. Choice of Legal Form**

### **2.1 Limited Liability Company**

The minimum capital required for a limited liability company (SRL) is RON 200 and the minimum value per share of the capital is RON 10. The maximum number of equity partners is 50. A SRL is managed by one or more administrators who may have full or limited powers and who may be Romanian or foreign nationals. No distinction is done between companies operating with or without foreign share capital.

Limited liability companies (SRLs) are the most popular vehicles for business in Romania because of simple administrative requirements, greater flexibility and low capital requirement.

### **2.2 Partnership**

Under Romania law, partnerships may be:

*General* - the partnership's obligations are guaranteed by the capital and by the unlimited joint liability of all partners

*Limited liability partnership* - the partnership's obligations are guaranteed by the capital and by unlimited joint liability of all unlimited partners;

*Limited by shares* - limited partners are liable only up to the value of their share contribution. In this case the minimum capital is RON 90,000 (approximately EUR 22,500)

Partnerships are not a preferred vehicle for doing business in Romania.

### **2.3 Branch of Foreign Company**

Branches of foreign companies can be registered in Romania to carry out commercial operations. The registration formalities of registering a branch are the same as the company registration. A branch is subject to corporate tax in the same way as the others Romanian companies, but there are no remittance taxes for such branches.

Funds distribution to the parent company is not regarded as dividend distribution; therefore there is no withholding tax liability. However, profits are transferred at year-end, after the financial statements are approved by the parent company.

## **2.4 Representative Office**

Foreign companies can set up representative offices in Romania to carry out preparatory or ancillary activities such as advertising and market research, but no commercial activities.

There is an annual income tax of EUR 4,000 payable in RON at the exchange rate valid on the date of payment. The tax is payable in two equal instalment, by 20 of June and 20 of December.

## **2.5 Trust**

The concept of a trust it is not recognized by Romanian legislation.

## **2.6 Subsidiary**

According to Law 105/1992, the subsidiary implanted abroad has its own nationality, distinctively from the company which founded it. The subsidiary acts like a legal entity pertaining to the company, in a sense that it is founded by the company applying the same procedures as when founding the company itself and depends economically on the latter; it benefits though of its own capital defined within the company's capital and undertakes engagements with third parties on its own, holding one or more self bank accounts.

Legally (Law 31/1990 and Law 26/1990), the subsidiary must be analyzed as a venture, organized as a company on its own.

## **2.7 Joint Stock Company**

The minimum statutory capital for a joint stock company (SA) is RON 90,000 (approximately EUR 21,000) and the minimum nominal value per share is RON 0.1. At the incorporation, at least 30% of the subscribed share capital, or 100% in case of contributions in kind, must be immediately contributed upon formation of the company. The rest of the subscribed share capital must be paid within 12 months of formation. The minimum number of shareholders is 2 (there is no maximum limit). Shares can be open to either public or private subscription.

Recent amendments state that the shareholders may empower the administrators to increase the share capital, provided that the amount does not exceed half of the value of the existing share capital.

Even if SRL is preferred in Romania, the number of joint stock companies and their attractiveness to investors are increasing.

## **2.8 Joint venture**

Romanian legislation allows joint venture agreements in which different parties act together for the accomplishment of a common business goal. This form of doing business in Romania does not lead to the creation of a legal entity. Usually, one part is in charge of keeping books of the joint venture.

## **2.9 Economic Interest Group (EIG)**

An Economic Interest Group is an association of two or more individuals or companies set up for a definite period. An EIG is allowed a maximum of 20 members. The main scope is the development of the activities of the members. A key feature of an EIG is the unlimited joint liability of its members and the fact that it may not, directly or indirectly,

own shares in one of its member companies or in another EIG. An EIG cannot issue shares, bonds or other negotiable instruments.

### **2.10 European Economic Interest Group (EEIG)**

An EEIG can be set up in any EU member state, but may function in Romania through subsidiaries, branches, representative offices or other non-legal entities provides these conform to domestic legislation. The subsidiaries and branches of an EEIG are subject to the same registration procedure as EIGs (with the Trade Registry where these are located).

## **3. Audit Requirement**

Statutory audits to be performed by external auditors are mandatory under the Romanian law, starting from January 1<sup>st</sup>, 2006 for all companies which met two of the following three criteria: turnover over EUR 7,300,000; total assets over 3,650,000; more than 50 employees.

External audits of the financial statements are a pre-requisite for companies that intend to go public. Independent audits for banks and other financial institutions are also mandatory.

## **4. Taxation**

Romanian tax residents are subject to tax in Romania on their worldwide income (except for salaries received from abroad for services performed abroad), whilst non – residents are subject to tax only on their income derived in Romania, (as of 2007, foreign individuals may be taxed on their worldwide income if specific criteria are met). A resident of Romania is the individual who stays in Romania for a period or periods exceeding in aggregate 183 days in the calendar year. A company is resident if its management and control is in Romania.

### **4.1 Corporation Tax**

Romanian entities and foreign entities doing business in Romania are liable for corporate income tax (profit tax). The standard profit tax rate is 16%, applicable to both Romanian companies and foreign companies operating through a permanent establishment in Romania. The profit tax liability due by nightclubs and gambling operations cannot be lower than 5% of the revenues obtained by such activities.

From 1<sup>st</sup> of January 2012, the credit institutions must apply International Financial Reporting Standards (IFRS).

### **4.2 Small Companies Rate**

Companies may opt for the micro-company regime (annual turnover up to EUR 100,000, 1-9 employees and more than 50% of their turnover derived from activities other than consultancy and management) are taxed at 3% of total revenue earned in 2011, up to and including the year in which they go beyond these criteria. The tax is payable quarterly, by the 25<sup>th</sup> of the month following the quarter for which the tax is paid.

### **4.3 Dividend payments**

Under EU Parent – Subsidiary Directive, dividends paid by resident legal entities to their shareholders Romanian legal entities and EU resident legal entities are exempt from

withholding tax in Romania, provided the shareholders own at least 10% of the Romanian company's shares for a continuous period of at least two years by the date of dividends payment.

If the above conditions are not fulfilled, a 16% tax rate applies to dividends paid by resident entities to other resident entities and a 16% tax rate applies to dividends paid to any non – resident legal entities, or if favourable, a tax rate available under a tax treaty.

Dividend payments by a Romanian company to individual shareholders are subject to 16% withholding tax or, if a double tax treaty is applicable, to the more favourable rate available under the respective treaty.

The tax on dividends must be paid to the state budget by the 25<sup>th</sup> of the month following the payment of dividend.

Reinvested dividends are exempt from taxation if they are used in the same or in other Romanian Company's share capital, with the purpose of keeping and increasing the number of employees and to develop the Company's registered object of activity.

#### **4.4 Branch profit tax**

Branches are taxed under the provisions of Romanian companies.

Funds distribution to the head office country is not regarded as dividend distribution, therefore no withholding tax liability should arise. However, as with limited liability companies, profits are transferred at year-end, after the head office approves the branch's financial statements.

#### **4.5 Personal income tax**

##### **Residents of Romania**

A flat rate of 16% is applied to the following categories of income:

- Income from independent activities;
- Salary income;
- Income from investments (dividend, interest, capital gains, income from liquidation);
- Rental income (determined after deducting a 25% expense allowance);
- Pension income (for the amount in excess of Ron 1,000 per month);
- Prizes (on amounts exceeding Ron 600 per prize);
- Agricultural income (calculated on a fixed income quota basis or by single entry accounting);
- Other income;
- Income from non-identified sources (as from January 1, 2011).

Income subject to other tax rates:

- Income from real estate transactions (between 1% - 3% tax);
- Income from gambling (25% tax).

##### **Non-residents of Romania**

The following withholding taxes are applicable on incomes sourced in Romania, unless a relevant double tax treaty states otherwise:

- 16% on interest;

- 16% on dividends, royalties, commissions;
- 25% on income from gambling;
- 16% on various services.

If the income is paid to a resident of a country with which Romania has concluded a Double Tax Treaty, the more favourable rate may immediately be applied if the beneficiary provides a residence certificate.

### **Personal deductions**

Romanian individuals domiciled in Romania as well as foreigners meeting the residence criteria for three consecutive years are entitled to personal deductions, which vary depending on the monthly gross income and the number of dependents, as follows:

- For gross monthly income up to RON 1,000, the monthly deductions vary between RON 250 for non-dependents and RON 650 for at least four dependents;
- For gross monthly income between RON 1,000 and RON 3,000, the digressive deductions have been established through an order issued by the Ministry of Public Finance;
- For gross monthly income higher than RON 3,000, the tax payer's right to deductions is withdrawn.

## **4.6 Capital Gains Tax**

Capital gains are taxed in the year they arise. No separate capital gains tax is payable by resident entities. Capital gains from sale of immovable property located in Romania or from sale/transfer of shares held in a Romanian legal entity are taxed at the standard corporate tax of 16%.

In case of non-residents, the provisions of Double Taxation Treaties prevail over the provision of domestic legislation.

## **4.7 Value Added Tax**

The Romanian VAT system is modelled on the 6<sup>th</sup> EU Directive and aims at full harmonisation in the near future. Any person supplying taxable goods or services in the course of business on a regular basis is considered a taxable person. The term "business" refers to all independently carried out activities of producers, traders and suppliers of services.

Transactions subject to VAT refer to the supply of goods, services, import of goods and intra-community acquisitions. To be taxable, a supply must be made for consideration.

### *VAT Registration*

Persons with an annual turnover in excess of EUR 35,000 are required to register for VAT purposes. Persons not meeting the above-mentioned turnover criterion may also register for VAT purposes.

The registration may be performed before carrying out any taxable or exempt with right of deduction operations (by opting for registration or by declaring an envisaged turnover higher than the registration threshold upon starting the activity). Companies that were not registered as VAT payers will have to register within 10 days from the end of the month during which the above threshold was reached or exceeded.

Starting with January 2012, a taxable person registered for VAT purposes, that in the previous year does not exceed the threshold may request de-registration for VAT purposes between the 1<sup>st</sup> and 10<sup>th</sup> of each month following the fiscal period - month or quarter.

Taxable persons that are established in the EU but outside Romania and obliged to pay Romanian VAT have to register directly or appoint a fiscal representative for VAT purposes, to fulfil their VAT obligations in Romania. If the person liable to pay tax is a taxable person who is not established in the EU, such person is required to appoint a tax representative as the person liable to pay tax.

Taxable persons outside Romania not registered for VAT purposes in Romania may apply for VAT registration for import of goods or for sales or rentals of immovable properties (if they opt to be taxed).

The Tax Authorities may cancel automatically the registration for VAT purposes if no VAT returns are submitted in a semester or if in the returns submitted during one semester (6 months / 2 quarters consecutive) no acquisitions and delivery of goods & services are declared. The same applies if the taxpayer is inactive or its activity was temporarily suspended or if the administrators & shareholders do not have a “clean” tax offence record. Within 180 days from the cancelling date there must be submitted the request for VAT registration. The taxpayers under the above case performing further transactions are not allowed to deduct the VAT on acquisitions, but they are obliged to pay the VAT on supplies. Customers of the taxpayers whose VAT registration was cancelled cannot deduct the VAT;

#### *VAT rates*

*The standard VAT rate* is 24% and it is applied to all supplies of goods and services, including imports, not qualifying for an exemption (with or without credit) or for VAT reduced rate.

*The reduced VAT rate* of 9% is applied to medicine for human and veterinarian use, books, newspapers and periodicals, accommodation in hotels or in areas with a similar function, cinema tickets, admission fees at museums, historical monuments, zoos and botanical gardens, fairs and exhibitions, supply of school manuals, supply of prostheses and orthopaedic products.

*The reduced VAT rate* of 5% applies to housing delivered as part of welfare policy, including: old people’s homes, retirement homes, orphanages, rehabilitation centers for children with disabilities, including buildings and parts thereof supplied as housing, subject to certain conditions. In addition, homes with no more than 120 square meters and a value of maximum RON 380,000 also qualify for the reduced 5% VAT rate.

#### *Intra-community trade*

Romanian companies performing transactions with companies within the EU deal with such operations as intra-community supplies and intra-community acquisitions. Intra-community supplies are VAT-exempt with deduction right, provided that certain conditions are fulfilled, whereas intra-community acquisitions are subject to VAT under the reverse charge mechanism.

### *Import of goods*

VAT on imported goods will continue to be paid in customs until 31 January 2012, save for taxable persons registered for VAT purposes that obtain an import VAT deferment certificate from the customs authorities. For these, the VAT is not paid in customs, but shown in the VAT return as both input and output VAT.

The taxable amount for VAT purposes for imported goods is the customs value, to which is added customs duties, excise duties and related expenses - commissions, packing, transport and insurance costs occurring subsequent to the entry of goods into Romania until their first destination.

### *VAT on services carried out in Romania by offshore entities*

Basic Rule: In case of services provided by taxable entities to other taxable persons, the place of supply is where the beneficiary is located and the reverse charge mechanism applies; In case of services provided by taxable entities to non-taxable persons, the place of taxation is where the provider is located.

Exemptions to the basic rule: services related to immovable assets – the place of taxation is where the immovable assets are located; catering services – the place of the effective provision of the services.

### *VAT tax groups*

May be formed by taxable persons (not only large taxpayers) administrated by the same competent fiscal body. The members of such a group could offset their VAT payable/refundable positions with impact on the VAT cash flow by appointing a representative who will submit the centralized VAT return.

### *VAT Exemptions*

*Exemption with credit* (deduction right) for input VAT applies to export of goods, transport and related services; international transport of passengers; goods sold through duty-free shops; certain operations performed in free trade zones and free harbours; supply of goods to a bounded warehouse and related services; services provided in connection with goods placed under customs suspensive regimes; supply of goods and services under projects financed through grants and supplies to diplomatic missions.

*Exemption without credit* applies to a range of activities including banking, financial, insurance, lease of certain real estate properties. The exemption also applies for medical, veterinary and social assistance and educational activities if provided by the licensed entities.

### *Simplification Measures*

For sale-purchase transactions between taxable persons registered for VAT purposes in Romania that involve waste materials, wood, secondary raw materials or goods/services supplied by/to bankrupt entities, VAT is not actually paid, but only shown by the purchaser in the VAT return as both output and input tax. The simplification measures for sale of land, buildings and parts of buildings, as well as construction / assemblage works, are removed from 1 January 2008; taxable persons purchasing real estate properties or construction works are required to pre-finance the input VAT.

### *Filing and recovery of VAT*

The fiscal period for filing VAT returns is the calendar month. For taxable persons whose previous year end turnover did not exceed EUR 100,000 the fiscal period is the calendar quarter.

If the input VAT exceeds the output VAT, the recoverable balance VAT (defined as negative VAT balance) can be:

- carried forward to the next period, or
- refunded by the tax authorities, based on the option expressed by the tax payer in the VAT return. The balance can be exercised only for a negative VAT balance exceeding RON 5,000

If a company is in a VAT refundable position, it must tick the VAT refund box on the VAT return to claim the refund. Alternatively, the balance can be carried forward against VAT liabilities reported in future returns. The refund claims must be processed by the tax office within 45 days of being submitted.

Large taxpayers (as classified by law) are entitled to refund on request, with a subsequent inspection (i.e. a "fast refund"). Other taxpayers may be entitled to a "fast refund" (i.e. without a prior inspection) but only after a complex risk analysis.

Taxable persons established in the EU and taxable persons established outside the EU are entitled to VAT reimbursement from Romania if certain conditions are fulfilled.

#### **4.8 Sales Taxes**

##### *Stamp duty*

Stamp duty is payable on most juridical claims, issue of certificates and licenses and documentary transactions which require authentication.

Juridical stamp duty is levied on claims and requests filed with courts and the Ministry of Justice, depending on the value of the claim.

- Quantifiable claims are taxed under the regressive tax mechanism
- Non-quantifiable claims are taxed at fixed amount levels

A juridical stamp duty may also be levied at the transfer of real estate property under certain circumstances.

#### **4.9 Local taxes**

##### *Building Tax*

Building the tax rate ranges between 0.1% and 0.4% applied to the value of the building, for individuals and between 0.25% and 1.5% applied to the book value for legal entities. This percentage is increased to between 5% and 10% if the building has not been revaluated in the last three years. It is recommended that one always observes this provision when drawing up the annual accounts and, if necessary, revaluates the property.

The tax must be paid twice a year, in two equal instalments by 31 March and 30 September and 10% reduction is granted for advance payment of full tax by 31 March.

##### *Land tax*

Owners of land are subject to land tax which is established at a fixed amount per square metre, depending on location of the land within certain determined zones, towns or villages and depending of land use. Companies are not subject to land tax on land where buildings are sited.

The tax must be paid twice a year, in two equal instalments by 31 March and 30 September and 10% reduction is granted for advance payment of full tax by 31 March.

#### *Vehicle tax*

Vehicle tax is payable by owners of land/water vehicles, which should be registered in Romania. The tax depends on the engine capacity and is computed as a fixed amount per 200 cubic cm.

The tax is payable annually, in 2 equal instalments by 31<sup>st</sup> March and 30<sup>th</sup> September.

#### *Publicity and advertising tax*

Advertising tax is payable by the 10<sup>th</sup> of each month by the suppliers of publicity and advertising services rendered in Romania, except for publicity and advertising services performed through audio-video and the print media. The tax rate is established by the local councils and ranges between 1% and 3%. It is applied on the value of the publicity and advertising services. Users of outdoor advertising have to pay an outdoor media advertising tax computed as a fixed quota per square metre, depending on the surface used for advertising.

This tax should be paid in four equal instalments by 15 March, 15 June, 15 September and 15 November.

#### *Resort tax*

The tax is payable by individuals over 18 years for their stay in resorts and is included in the accommodation tariff. The tax rate is established by local councils and ranges between 0.5% and 5%.

#### *Show tax*

Show tax is payable by individuals and entities for public performances at a rate of between 2% and 5% of revenues, or a fixed fee depending on the surface of the premises (from RON 0.12 per sq m per day to RON 0.24 per sq m per day).

The show tax is payable monthly in arrears by the 15<sup>th</sup> on the month following the one in which the performance took place.

#### *Tax for construction authorizations*

The tax is established as a percentage on the construction value and is payable upon obtaining the construction authorization.

#### *Other local taxes*

The local councils may impose a daily fee for temporary use of public places and the admission to museums, memorials, or historical, architectural and archaeological monuments and also for the ownerships or use of equipment that is held for the purpose of obtaining income.

### **4.10 Tax treaties**

Refer to Appendix II for a table which shows the double taxation agreements Romania has with other countries in relation to withholding tax.

### **4.11 Transfer pricing rules**

Transactions between related parties should be at arm's length principal. If transfer prices are not set at arm's length, the Romanian Tax Authorities have the right to adjust the revenues or expenses, to reflect the market value.

Domestic legislation expressly stipulates that when applying transfer pricing rules, the Romanian tax authorities will also consider the OECD Transfer Pricing Guidelines.

#### **4.12 Advance Pricing Agreement**

Companies may request an Advance Pricing Agreement (APA) issued by the National Agency for Fiscal Administration.

APA establishes for a maximum period of 5 years and based on a negotiation between the taxpayer and Fiscal authority. APA establishes in advance the transfer prices, the level of deductibility of expenses, the taxable base and how transactions should be structured. In order to issue an APA, fiscal authority needs a period of 6 to 18 months and the issuing of APA is subject to a fee ranging between EUR 10,000 – 20,000.

#### **4.13 Advance Tax Ruling**

Companies may request an Advance Tax Ruling be issued by the National Agency for Fiscal Administration, subject to a fee of EUR 1,000.

Advance Tax Ruling is some kind of consulting that fiscal authority provides to the company individually in respect to a certain transaction.

Advance Tax Rulings are opposable and mandatory against tax authorities only if their terms and conditions have been observed by the taxpayers.

## **5 Allowances**

### **5.1 Depreciation**

Depreciation is provided on all fixed assets except land in order to write off the value of the asset over its useful economic life.

The Fiscal code makes an explicit distinction between accounting and fiscal depreciation. For fixed assets commissioned after January 1<sup>st</sup>, 2004, fiscal depreciation is to be computed based on the rules set out by the Fiscal Code and deductibility will no longer depend on the level of depreciation recorded in the accounts.

There are three alternative methods for the computation of fiscal depreciation, namely:

- straight-line method;
- reducing balance method; and
- accelerated depreciation (for equipment and patents).

These methods must be followed consistently.

Technical equipment, computers and peripherals can be depreciated by using any of the depreciation methods available.

Buildings can be depreciated only on the straight-line method whilst land is not a depreciable asset.

For any other assets only the straight line or reducing balance method can be used.

### **5.2 Investment allowance**

Any support measure granted by the state is generally prohibited, being deemed incompatible with the Common Market. However, such support measures like state grants, preferential loans, tax exemptions, state guarantees and free access to utilities may be considered acceptable if they are granted for the purpose of serving specific objectives and are in full compliance with the relevant regulations applicable.

State aid may be granted in the form of state aid schemes or individual state aid:

- *State aid schemes* consist in measures supporting the development of a specific industry or field of activity.
- *Individual state aid* may also be granted under individual legislation and regulations.

Government Decision No.1165/2007 for supporting economic growth and investments in Romania introduced a new state aid scheme. This state aid scheme is issued based on national procedures and policies regarding State aid and follow European Union rules for regional state aid.

In order to benefit from this State aid scheme, a company has to be registered under Romanian Company Law, has to have registered offices and to perform activities in Romania and has to plan investments which fulfill both the following criteria:

- are above EUR 30 million
- create at least 300 new jobs as a result of the initial investment.

All domains of activity are eligible for state aid schemes.

### **5.3 Tax credits**

#### *Accelerated depreciation*

According to the Romanian Fiscal Code, machinery and equipment, computers and their peripherals, as well as patents, may be depreciated by using the accelerated method, under which a maximum of 50% of the fiscal asset's value may be deducted during the first year of usage, while the rest of the asset's value can be depreciated over the remaining useful life.

#### *Tax exemption for reinvested profit*

The incentive is available from 1 October 2009 until 31 December 2010 and applies to reinvested profits used for the production or acquisition of new technological equipment used in the business.

#### *Expenses related to research and development*

This incentive is applicable provided that the beneficiary participates in a state aid scheme supporting research, development and innovation.

Companies can benefit from an additional deduction of 20% from the eligible expenses from research and development activities performed by them.

#### *Capital gains on Romanian stock exchange*

During the fiscal year 2009, income obtained by non-resident entities from transactions with participation titles in Romanian legal entities on any market authorized and supervised by the National Commission of Movable Assets is non-taxable income.

### *Dividend tax exemption for reinvestments as of 2009*

Distributed dividends are exempted from taxation as of 1 January 2009 if they are invested in the same or in another Romanian company's share capital.

Companies can benefit from this exemption if dividends are reinvested to preserve and increase the number of employees and to develop existing lines of business.

### *5% VAT for sale of buildings*

Companies selling buildings can apply a reduced VAT rate of 5% if:

- ✓ the buildings are part of a social policy, such as old people's homes, retirement homes, orphanages, rehabilitation centers for children with disabilities;
- ✓ the building is supplied as housing to an individual / family and has a maximum useful surface of 120 square meters and a value of less than RON 380,000 (exclusive of VAT).

### *Local tax exemptions for business located in industrial parks, and science and technology parks*

No property tax is due for buildings and constructions located in an Industrial Park. Land within Industrial Parks is also exempt from land tax.

## **6 Employment**

### **6.1 Social Security/Unemployment taxes**

Under Romanian employment regulations, both employer and employee are required to contribute to the social security system.

**Social security contributions at the individual level**, as a percentage of Gross salary:

- *Social security contribution* – 10.5%;
- *Health fund contribution* – 5.5%;
- *Unemployment fund contribution* – 0.5%.

**Social security contributions at the employer level**

- *Social security contribution* – between 20.8% and 10.8% (depending on working conditions) on the total salary fund, which is capped at the level of five times the national average salary, multiplied by the average number of employees;
- *Health fund* – 5.2% of total salary fund;
- *Contribution for medical leave* – 0.85%
- *Unemployment fund* – 0.5% of total salary fund;
- *Guarantee fund* – 0.25% of the salary fund
- *National insurance fund for work accidents and professional diseases* – the contribution ranges between 0.15% and 0.85% of total salary fund, depending on the risk category.

### **6.2 Employment of foreign personnel**

Foreign individuals receiving personal services income and certain other income sourced in Romania need to file a fiscal application form with the Romanian tax authorities through a fiscal agent to obtain a fiscal registration number.

As a general rule, foreign individuals working in Romania need to apply for a Romanian work authorization with some exceptions, as follows:

- EU individuals working in Romania as local employees are no longer required to obtain work authorization; they are granted free access to the local labor market
- EU and non-EU nationals seconded to Romania by companies located in EU member states do not require work authorization; there is instead a procedure for notifying the labor authorities of the secondment.
- EU individuals seconded to Romania by companies located in third countries can perform their activities here without any immigration restrictions.

Further to Romania's EU accession, the EU regulations on social security contributions now prevail over domestic legislation. Accordingly, EU and non-EU expatriates working in Romania can be exempted from paying social security contributions, provided that they obtain the E101 certificate from another EU member state where their employer is located.

### **6.3 Medical**

There is no defined medical scheme for employees.

Citizens of European Union countries, as well as individuals resident in countries which have signed mutual agreements with Romania, benefit from coverage of medical expenses incurred on Romanian territory, according to provisions of the respective agreements.

### **6.4 Payroll taxes**

Employers must also contribute to an industrial training fund. The rate of the contribution is 16% of the employees' gross salary.

## **7. Withholding taxes**

### **7.1 Interest**

See Appendix II for withholding tax deducted at source in terms of interest with countries that have tax treaties with Romania.

### **7.2 Royalties**

See Appendix II for withholding tax deducted at source in terms of royalties with countries that have tax treaties with Romania.

### **7.3 Dividends**

See Appendix II for withholding tax deducted at source in terms of dividends with countries that have tax treaties with Romania.

### **7.4 Commissions**

See Appendix II for withholding tax deducted at source in terms of commissions with countries that have tax treaties with Romania.

## **8. Miscellaneous**

Romania has implemented the Interest and Royalties Directive with a transitional period for the application of the Directive until 2010. During the period between the accession date of 1 January 2007 and 31 December 2010, 10% withholding tax applies on payments

of interest and royalties made by Romanian companies to companies resident in EU and EFTA member states and holding at least 25% of the share capital of the Romanian company for a continuous period of at least two years prior to the date of payment of interest / royalties. Such payments are withholding tax exempt from 1 January 2011, under the same conditions as stated above.

*Thin capitalization rules*

The deductibility of interest expense and net foreign exchange losses related to loans except loans from credit institutions is subject to certain limitations, as follows:

- If the company's debt-to-equity ratio is higher than 3:1 the total amount of interest expenses and net losses from foreign exchange differences on loans with a maturity exceeding one year are fully non deductible. Debt included in the calculation is represented by all loans with a maturity period of over one year. The equity includes share capital, reserves, retained earnings, current year earnings and other equity elements. Both debt and equity are calculated as the average of values existing at the beginning and at the end of the period in which profit tax is calculated. Expenses assessed as non deductible under this rule can be carried forward without limitation and are deductible in the first year this criteria is met;
- the deductibility of the interest on loans is further limited to:
  - the National Bank of Romania's reference interest rate – for RON loans;
  - annual interest rate of 5.5% - for loans in foreign currency.

Interests exceeding these limits are tax non deductible and cannot be carried forward in future periods.

## **9. Sign off and disclaimer**

This document is provided as a general overview of matters to be considered when setting up an overseas business in Romania. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided

**Amended: March 2012**

**For further information on the services available from the DFK International Member firm in Romania please contact:**

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# APPENDIX I

## ROMANIAN LIMITED LIABILITY COMPANY FORMATION QUESTIONNAIRE

### CONFIDENTIAL INFORMATION

The following information is required to establish a Romanian Company.

#### 1. PROPOSED NAME OF COMPANY (in order of preference)

A company name must end with the word "SRL".

- (a) \_\_\_\_\_  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_

#### 2. ACTIVITIES OF THE COMPANY

Please provide brief details of the proposed activities of the company.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### 3. SHARE CAPITAL

The share capital of an SRL must be at least RON 200, approximately EUR 47 (calculated at the exchange rate of RON 4.2/EUR), divided into shares with a par value of at least RON 10 each.

3.1 Minimum share capital  Yes  No

3.2 If no, please state:

Amount \_\_\_\_\_

#### 4. SHAREHOLDERS

A limited liability company may be formed by a minimum of one shareholder and a maximum of 50 (fifty). These shareholders may include individuals and/or legal entities. A person, either natural or legal, cannot be the sole shareholder of more than one SRL. If a person intends to form several companies, it would be necessary for a minimum of one share to be held by another person or entity. Moreover, a limited liability company cannot have, as sole shareholder, another limited liability company that is also owned by a sole shareholder

Please use the following to indicate the shareholders details:

##### Shareholder 1:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Nationality: \_\_\_\_\_ Passport Number: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ % of Shares: \_\_\_\_\_

**Shareholder 2:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Nationality: \_\_\_\_\_ Passport Number: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ % of Shares: \_\_\_\_\_

**Shareholder 3:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Nationality: \_\_\_\_\_ Passport Number: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ % of Shares: \_\_\_\_\_

Please confirm that the following documents required for each shareholder are attached:

For Individual Shareholders:

- (a) Scan copy of passport  Yes  No
- (b) Curriculum Vitae (including the civil status)  Yes  No
- (c) Scan copy of Utility Bills to show the personal address  Yes  No

For legal entities shareholders:

- (a) Original Incorporation Certificates apostilled  Yes  No
- (b) Original Bank Reference Letter apostilled  Yes  No

## 5. REGISTERED OFFICE

### Each Romanian company must have its own official address

Please confirm that DFK Romania SRL. is to provide the

5.1 Registered Office for the company.  Yes  No

5.2 If no, please provide selling – purchasing agreement/free lease agreement

## 6. DIRECTORS

A minimum of one director is required. Corporate directors are permitted.

6.1 Please use the following to indicate the Directors details:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Nationality: \_\_\_\_\_ Passport Number: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Nationality: \_\_\_\_\_ Passport Number: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

6.2 Please confirm that the following documents required for each Director are attached:

For Individual Shareholders

(a) Scan copy of passport  Yes  No

(b) Curriculum Vitae (including the civil status)  Yes  No

(c) Scan copy of Utility Bills to show the personal address  Yes  No

## 7. BANKERS

We are able to assist with the establishment and administration of local bank accounts. Accounts may be maintained in a number of foreign currencies.

7.1 Do you require us to open a bank account for the company?  Yes  No

7.2 If yes, name of bank \_\_\_\_\_

7.3 If yes, estimated annual turnover \_\_\_\_\_

7.4 If yes, currencies \_\_\_\_\_

7.5 Names of authorized signatories:

Signatory: \_\_\_\_\_ Signatory: \_\_\_\_\_

Signatory: \_\_\_\_\_ Signatory: \_\_\_\_\_

## 8. OTHER

8.1 Person to whom correspondence is to be sent.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

8.2 Person to whom correspondence is to be sent.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

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### Completed by

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company / Firm: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX II

### Withholding Tax Rates for Companies in Some Representative Double Tax Treaties

| Country                             | Commissions (%) | Dividend (%) | Interest (%) | Royalty (%) |
|-------------------------------------|-----------------|--------------|--------------|-------------|
| Non Treaty                          | 16              | 16           | 16           | 16          |
| EU–Parent-Subsidiary Directive      | X               | 0*           | X            | X           |
| EU–Interest and Royalites Directive | X               | X            | 0/16**       | 0/16**      |
| Australia                           | X               | 5/15         | 10           | 10          |
| Austria                             | X               | 0/5          | 0/3          | 3           |
| Belgium                             | 5               | 5/15         | 10           | 5           |
| Bulgaria                            | X               | 10/15        | 15           | 15          |
| Canada                              | X               | 5/15         | 10           | 5/10        |
| Cyprus                              | 5               | 10           | 10           | 0/5         |
| Czech Rep                           | X               | 10           | 7            | 10          |
| Denmark                             | 4               | 10/15        | 10           | 10          |
| Estonia                             | 2               | 10           | 0/10         | 10          |
| Finland                             | X               | 5            | 0/5          | 2.5/5       |
| France                              | X               | 10           | 10           | 10          |
| Germany                             | X               | 5/15         | 0/3          | 3           |
| Greece                              | 5               | 25/45        | 10           | 5/7         |
| Hungary                             | 5               | 5/15         | 15           | 10          |
| Ireland                             | X               | 3            | 0/3          | 0/3         |
| Israel                              | X               | 15           | 0/10/15      | 10          |
| Italy                               | 5               | 10           | 10           | 10          |
| Japan                               | X               | 10           | 10           | 10/15       |
| Korea                               | X               | 10           | 10           | 10          |
| Luxembourg                          | 5               | 5/15         | 0/10         | 10          |
| Malta                               | 10              | 5/30         | 5            | 5           |
| Moldova                             | X               | 10           | 10           | 10/15       |
| Netherlands                         | X               | 0/5/15       | 0/3          | 0/3         |
| Norway                              | 4               | 10           | 10           | 10          |
| Poland                              | 0/10            | 5/15         | 10           | 10          |
| Portugal                            | X               | 10/15        | 10           | 10          |
| Russia                              | X               | 15           | 15           | 10          |
| Singapore                           | X               | 0/5          | 5            | 5           |
| Slovakia                            | X               | 10           | 10           | 10/15       |
| South Africa                        | X               | 15           | 15           | 15          |
| Spain                               | 5               | 10/15        | 10           | 10          |
| Sweden                              | 10              | 10           | 10           | 10          |
| Switzerland                         | X               | 10           | 10           | 0/10        |
| Turkey                              | 6               | 15           | 10           | 10          |
| Ukraine                             | X               | 10/15        | 10           | 10/15       |
| UK                                  | 12.5            | 10/15        | 10           | 10/15       |
| US                                  | X               | 10           | 10           | 10/15       |

X - Not Stipulated

\* - provided certain criteria are met

\*\* - provided certain criteria are met; 0% from 2011