

Doing Business in Romania

2009



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1. Introduction

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 70 countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Romania has been provided by the office of UHY representatives:

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UHY Audit CD Srl was established in 2002 by Camelia Dobre, a senior auditor and specialist in fiscal consultancy, audit and accountancy. UHY Audit CD Srl joined UHY in 2007.

You are welcome to contact Camelia Dobre for any inquiries you may have.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at January 2009.

We look forward to helping you do business in Romania.

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2. Business environment

The Romanian constitution and government

According to the Romanian Constitution dated 21st of November 1991, Romania is a Republic and it has a parliamentary-type democracy. The president is elected for five-years and the bicameral Parliament, composed of the Senate and the Chamber of Deputies, is elected for four years. The last elections took place in November 2008.

Physical characteristics

Romania is situated in South - Eastern Europe, with an area of 238,391 square kilometres, being the second largest country in Central and Eastern Europe. Romania's neighbours are: Ukraine and Moldavia to the North and North East; Bulgaria to the South; Serbia to the South West, Hungary to the North West and Black Sea to the East.

The Danube Delta is the main natural attraction.

Population, Education and Language

According to the latest statistical information dated July 2006, Romania's population is about 21.6 million. Ethnic Romanians are about 89%, followed by Hungarians 7%.

Most of the population is Orthodox.

Education is mandatory from the age of six to fifteen. The Romanian state education system includes primary, secondary and higher education institutions.

The official language is Romanian, using a Latin alphabet. In addition, many Romanians speak English, French or German.

Currency

From 1st of July, 2005, the Romanian LEU (ROL) was subject to denomination, so that 10,000 ROL was exchanged into 1 RON. Transactions between residents must be done in RON, with few exceptions. The exchange rates on the 31 December 2008 were:

1 EURO = 3.9852 RON

1 USD = 2.8342 RON

Any foreign person coming in Romania has to declare cash amounts that exceed EUR 10,000 at the Customs.

Public Holidays

Romania's public holidays are:

- Easter – 2 days, according to every confessional holiday
- Labour Day – May Day
- The first and the second day of Pentecost - the seventh Sunday after Easter and the following day
- St. Mary – 15 August
- National Day – 1 December
- Christmas – 25 and 26 December
- New Year – 1 and 2 January.

3. Foreign investment

Business environment

Foreign investments in Romania have been in continuous growth since 1990. Foreign direct investment stands around EUR 9 billion. The largest privatizations took place in 2005.

Direct foreign investment

From a legal point of view, the most common form of investing in Romania is buying a Romanian company or establishing a new one, with foreign or mixed participation. Branches and subsidiaries are frequently used, as well as representative offices. Investment may consist of cash or assets.

Real estate investment

In the last two years, foreign investments are predominant in real estate field.

Romanian individuals and legal entities, no matter of the citizenship or nationality of their shareholders, are free to buy land.

Romanian legislation currently in force provides that European nationals are able to acquire ownership under the same terms as Romanian citizens and entities.

European nationals will be allowed to acquire titles of agricultural lands, forests and forestry lands within seven years as of Romanian's accession to the EU.

Foreign nationals formed outside EU and European Economic Area are allowed to acquire land under the terms of international treaties and based on reciprocity.

4. Setting up a Business

Legal framework

- Company law governs certain forms of business organization. The law covers registration procedures and documentation, capital and shares, administration, mergers and liquidation.
- Commercial Register Law stipulates the procedure required to register their entry into operation and any subsequent changes.
- Competition Law stipulates the rules for maintaining a competitive market.

Forms of Business Organization

Company law (Law No. 31/1990) stipulates the following types of business organization:

- Limited liability company (societate cu raspundere limitata – SRL)
- Joint stock company (societate pe actiuni – SA);
- General partnership (societate in nume colectiv – SNC)
- Limited partnership (societate in comandita simpla – SCS)
- Limited partnership on shares (societate in comandita pe actiuni – SCA)
- Branches and Subsidiaries of a foreign company.

The most common used are:

- Limited liability Company (SRL)
- Joint stock Company (SA).

General rules of registration and capital

The registration procedures are similar for SA and SRL. The deed of association must be signed by the shareholders. In the case of SRL, the subscribed capital must be paid upon submission of the incorporation documents. In the case of SA, the shareholders have to pay at least 30% of the subscribed capital upon submission of the incorporation documents. Trade Register provides a Registration certificate and a Registration code. A separate VAT registration is required.

During the registration procedure, the company would have a limited legal capacity, only for registration purposes.

The registration procedure takes between five and seven days from the day when the relevant file was submitted to the Trade Register.

The minimum capital required for an SRL is 200 RON (about 50 EUR) divided into shares, at least 10 RON for each share. The minimum capital

required for a SA is the equivalent of 90,000 RON, divided into shares, at least 0.1 RON for each share.

Limited companies require at least 1 shareholder, a Joint Stock Company requires at least 2 shareholders.

Administration of the Company

Both SRL-s and SA-s must have one or more administrators (Romanian and foreign citizens), appointed by the general meeting of the shareholders.

Related to the administration of SA-s, Law No. 31/1990 stipulates two different administration systems: a unitary system (the management is entrusted to a single corporate body – a sole director or a Board of Directors) or a dualist system (the management is entrusted to a Directorate and to a Supervisory Board).

Censors and Auditors

If a Limited Liability Company has more than 15 shareholders, it has the obligation to appoint censors.

Joint Stock Companies are under the obligation to appoint either censors or auditors. Appointment of auditors is mandatory for Joint Stock Companies having implemented the dualist system of administration.

Branches

The branch registration procedure is in general similar to the registration of a Romanian company.

Branches must have a General Manager appointed by the parent company, who will represent the branch in dealings with third parties in Romania.

Branches are not allowed to include in their objectives other activities than the parent company.

Representative Offices:

Representative offices often represent the first step in starting a business in Romania, performing activities in the parent company's name.

Representative offices are subject to an annual tax of 4,000 EUR.

5. Labour

Legal framework

- Romanian Labour Code – Law No. 53/2003
- The National Collective Agreement.

Working conditions

In Romania, the only contract agreed for labour relations is the labour contract.

The minimum national gross salary is 600 RON, for unqualified workers and 1,200 RON for people with high studies.

The standard working week is 5 days, 8 hours per day. The maximum working time, including overtime, can not exceed 48 hours per week. Overtime can be remunerated by free time or extra pay – 100% of the gross salary.

In addition to the statutory holidays, employees are entitled to additional paid leave, for special occasions and to 21 days annual paid vacation.

Clauses and grounds for termination are classified by the following:

- termination by operation of the law
- agreement between parties, on the agreed date
- unilaterally by either party, in the cases and under the restrictive terms and under the law
- dismissal
- resignation.

Resigning employees are required to give no more than 15 calendar days notice (for non-managerial positions) and 30 calendar days notice for managerial positions.

In case of dismissal, the employer is required to give at least 20 calendar days notice.

Posted workers (established in European Union) are entitled at least to the minimum rights stipulated by the Romanian law concerning working hours, rest hours, minimum wage and labour protection.

Social security system:

In Romania, all employers and employees, as well as other categories of taxpayers must contribute to the state social, health and unemployment security system.

Employees' contributions as a percentage of gross salary are:

- social security contribution – 10.5%
- unemployment fund – 0.5%
- health fund – 5.5%

Employers' contributions:

- social security fund: 20.8%, 25.8% or 30.8%, depending on working conditions
- health fund – 5.2%
- contribution for medical leave – 0.85%
- guarantee fund – 0.25%
- unemployment fund – 0.5%
- work accidents insurance fund – between 0.15% and 0.85%
- labour office commission – 0.25% - 0.75%.

Employers calculate and withhold income tax and social contributions when paying salaries. State budget contributions are payable by the 25-th of the month following the month the salaries relate to.

Foreign personnel

Foreign individuals receiving personal income sourced in Romania need to submit a fiscal application form to the Romanian tax authorities, in order to obtain a fiscal registration number.

The number of the residency permit will be used as a fiscal identification number upon registering with the Romanian Tax Authorities.

As a general rule, foreign individuals working in Romania need to apply for a Romanian work permit, before obtaining the residency permit.

The following nationals of EU member states are exempt from obtaining work permits for employment purposes: Estonia, Finland, Poland, Slovakia, Czech Republic, Cyprus, Sweden, Slovenia, Latvia, Lithuania and Bulgaria.

In order to obtain a work permit, a working visa should be obtained from the Romanian diplomatic mission, unless the foreign individual is a citizen of an EU member state. Foreign individuals whose stay in Romania exceeds 90 days within a six-month period need to apply for a temporary residency permit, unless a relevant international agreement or special law stipulates otherwise. EU citizens have to obtain registration certificates, instead of residency permits.

Prior to applying for a temporary residency permit, a visa from Romanian embassy or consulate from the country of residence must be obtained, except for citizens of: EU, United States, Canada, Japan, Liechtenstein, Norway and Iceland.

6. Taxation

ACCOUNTING

Legal framework

- The accounting Law No. 82/1991
- Order of Ministry of Public Finance of Romania No. 1752/2005
- Order of Ministry of Public Finance of Romania No. 1121/2006.

General rules

Romanian companies and permanent establishment of foreign companies are required to organise and conduct their own accounting, including preparation of interim and annual financial statements.

OMF 1752/2005 stipulates the companies that should prepare simplified financial statements and the companies that should prepare complete financial statements based on three size-criteria:

- Total assets – EUR 3,650,000
- Annual net turnover – EUR 7,300,000
- Average number of employees during the financial year – 50.

If a company exceeds at the date of its balance sheet the limits of two of the three criteria in two consecutive years, it must prepare a full set of financial statements (balance sheet, profit and loss account, statement on changes in equity, cash flow statement and explanatory notes to the financial statements). Otherwise, it shall prepare simplified annual financial statements (simplified balance sheet, profit and loss account and explanatory notes to the financial statements).

From 1 January 2006, the preparation of consolidated financial statements is mandatory. Under OMF 1752/2006, a parent company is exempt from consolidation if, at the date of the balance sheet, the entities to be consolidated do not together exceed the limits of two from the three criteria:

- Total assets – EUR 17,250,000
- Turnover – EUR 35,040,000
- Average number of employees during the financial year – 250.

Starting with the financial year 2007, the implementation of IFRS is compulsory for legal entities that, at the balance sheet date, meet both of the following criteria :

- have transferable securities accepted for trading on a regulated market and
- must prepare consolidated financial statements.

AUDIT:

Legal framework

- Order of Ministry of Public Finance of Romania No. 1752/2005
- Government Ordinance No. 75/1999 on financial audit activity.

Audit services may be performed only by financial auditors, individual or legal entities, authorized by the Chamber of Financial Auditors of Romania.

Generally, the financial statements of the entities which meet the size criteria required to prepare a full set of financial statements should be audited by authorized auditors.

There are few exemptions from audit requirements, which are subject to audit performed by censors:

- simplified annual financial statements prepared by the companies under OMF 1752/2005
- annual financial statements prepared by insurance and reinsurance brokers which on their balance sheet do not exceed, in two consecutive financial years, the limits of two above mentioned criteria.

Audit carried out by financial auditors have to be performed under the Auditing Standards adopted by the Chamber of Financial Auditors of Romania, similar to International Auditing Standards.

Audits performed by censors do not have to follow any particular framework.

7. Accounting & reporting

CORPORATE INCOME TAX

The following entities are liable for corporate income tax:

- Romanian companies
- foreign companies doing business in Romania through a permanent establishment
- foreign companies and non-resident individuals doing business in Romania through a joint-venture
- foreign companies which obtain revenues from real estate transactions or from transactions with shares of a Romanian company
- Romanian individuals who form joint-ventures with Romanian companies, for revenues derived in or outside Romania
- The standard corporate income tax is 16%.

For nightclubs and gambling operations, corporate income tax rate can not be lower than 5% of the revenues obtained from such activities.

There are special type of companies – micro-companies – that can choose to apply a special fiscal regime, with a tax rate of 3% of the total revenues earned, no matter the expenses.

A Romanian legal entity is considered micro-company if:

- it has an annual turnover less than EUR 100,000, more than 50% from it obtained from other activities than consultancy and management and
- a number of employees between 1 and 9.

In the period November 12,2009-December 31,2010 the companies which reinvest the profit in buying plants and equipments are exempted from paying any tax profit on the amount of the invested profit .

All entities doing business in Romania are required to keep their accountancy by the calendar year.

Beginning with 1 January 2007, dividends paid by a Romanian company to another Romanian company or to a company from an UE member state are tax exempt, if the receiver holds at least 15% of the Romanian company shares, for at least 2 years.

Transfer pricing

Transaction between related parties has to respect the principle of independent transactions; Romanian Tax Authorities have the right to adjust the taxpayers' revenues or expenses, so as to respect the market value.

Unless a Double Taxation Treaty applies, fiscal relief is provided through an ordinary fiscal credit for taxes paid abroad, which cannot exceed the profit tax computed by applying the Romanian profit rate of 16%.

Profit losses can be carried out and be recovered through a 7 year period of time. No adjustments for inflation are allowed in this respect.

Tax returns have to be submitted on a quarterly basis, by the 25th inclusive of the month following the quarter.

There is no tax consolidation or group taxation in Romania. Members of a group must file separate tax returns.

Non-resident companies obtaining income from a real estate property located in Romania or sale of shares held in a Romanian company are required to pay corporate income tax and submit a tax return.

Capital gains obtained by a Romanian company are included in ordinary profit and taxed with 16%. The provisions of a Double Taxation Treaty prevail over the provisions of domestic legislation.

TAXATION OF INDIVIDUALS

Taxpayers are

- resident natural persons
- non-resident natural persons conducting independent activities through a permanent establishment in Romania
- non-resident natural persons conducting dependent activities in Romania
- non-resident natural persons deriving specific income from Romania.

Incomes taxable in Romania

- salary income
- income from independent activities
- income from transfer of usage rights
- income from pensions, more than RON 1,000
- income from agricultural activities
- income from prizes and from gambling, more than RON 600

- income from investments
- income from real estate transactions
- other income subject to 16% tax rate.

The standard income tax rate is 16%.

There are special rules for taxation of incomes from investments; the tax rate is 1% or 16%, depending on the type of securities – simple shares or securities listed on stock exchange - and depending on the period of ownership.

We would like to underline that these special rules are not valid but only for 2009, that is, incomes from the abovementioned investments are tax exempted.

Incomes from gambling are taxed with 20%, for net incomes less than 10,000 lei and with 25% for net income more than 10,000 lei.

Romanian individuals domiciled in Romania are subject to taxation on their worldwide income, except for salaries received from abroad for services performed abroad.

Romanians not domiciled in Romania and foreign individuals are subject to taxation only for income sourced in Romania. Income earned by non-residents is subject to a 16% withholding tax, unless a more favourable Double Treaty provisions apply.

Starting with 1 January 2007, incomes from savings (interest) received from Romania by residents of UE member states will be exempted from withholding tax.

Foreign individuals have to calculate, declare and pay individual income taxes each month, as well as the contribution to the health fund (in relation to personal services performed in Romania).

Criteria for qualifying as a resident are:

- domicile in Romania
- centre of vital interests in Romania, or
- having lived for more than 183 days in 12 consecutive months ending in the calendar year concerned.

Foreign individuals who meet the second or the third criterion for three consecutive years are taxable in Romania on worldwide income as of their year of stay.

VALUE ADDED TAX

Standard value added tax rate is 19%; there is a reduced VAT rate of 9%, for medicines, books, newspapers and periodicals, accommodation in hotels or in areas with similar function, cinema tickets, admission fees at museums, supply of prostheses and orthopaedic products and another reduced VAT rate of 5% for the delivery of private houses (maximum 120 sq. m.) and social buildings as part of the social policy.

Transfer of business (total or partial) is outside VAT scope.

Services supplied by foreign companies to Romanian entities with the deemed place of supply in Romania are subject to Romanian VAT.

Invoices for domestic supplies must be issued no later than the 15th business day of the month following the one when the supply of goods is performed.

The chargeability for ICS (intra-community supply of goods) occurs on the date when the invoice is issued for the entire value of the supply, but no later than the 15th of the month following the one when the ICS is performed.

Operations exempt with credit

- export of goods, transport and related services
- international transport of passengers
- certain operations performed in free trade zones and free warehouses
- supply of foreign goods, which are placed under temporary custom regimes
- supply of goods and services to diplomatic missions, international organizations and NATO forces.

Operations exempt without credit: banking, finance, insurance, medical and educational activities, rental of real estate properties, transactions with old buildings.

For sale-purchasing transactions between taxable persons registered for VAT purposes in Romania that involve waste materials and wood, VAT is not actually paid, but only shown by the buyer in the VAT return as both output and input tax.

As a general rule, the fiscal period is the calendar month. For taxable persons registered for VAT purposes whose previous year-end turnover did not exceed EUR 100,000 the fiscal period is the calendar quarter.

A taxable person using the calendar quarter as a fiscal period and performing an intra-community acquisition taxable in Romania, the fiscal period shall become the calendar month.

The taxable person who has to change the fiscal period shall submit an adjustment statement with the competent fiscal body, within maximum 5 working days from the end of the month when the intra-community acquisition which generates this obligation becomes enforceable, and shall use the calendar month as the fiscal period, without having the possibility to come back to the use of the calendar quarter as the fiscal period.

From January 2007, the usage of standard pre-printed invoices is no longer mandatory, but the invoices must contain the minimum information required by law.

EXCISES

The Romanian Fiscal Code distinguishes from Harmonised Excisable Products (alcoholic beverages, tobacco products and energy products) and Other Excisable Products (coffee, natural fur products, jewellery, perfumery, yachts and leisure motor boats, hunting guns).

For Harmonised Excisable Products, excises duties are due when the products are released for consumption. For Other Excisable Products excises duties are due when the actual delivery takes place.

The excise duty for motor cars and motor vehicles has been replaced by a special registration tax, that must be paid upon the first registration in Romania is made. This tax depends on the cylinder capacity and age of the vehicle.

LOCAL TAXES

The building tax rate is between 0.25% and 1.5% on the entry value of the building. This percentage is increased between 5% and 10% if the building has not been revaluated for accounting purposes only, in the last three years.

Owners of land are subject to land tax which is established at a fixed amount per square metre, depending on the rank of the locality where the land is located and the category of use of the land.

OTHER TAXES

The providers of advertising services for tobacco products and alcohol pay 12% health tax, applied on the value of cashed advertising revenues.

The producers and importers of tobacco products have to pay a health tax, as follows:

- cigarettes – EUR 10/1,000 pieces
- cigars – EUR 10/1,000 pieces
- tobacco – EUR 13/kg.

8. UHY firms in Romania

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9. UHY offices worldwide

For contact details of UHY offices worldwide, or for details on how to contact the UHY executive office, please visit www.uhy.com