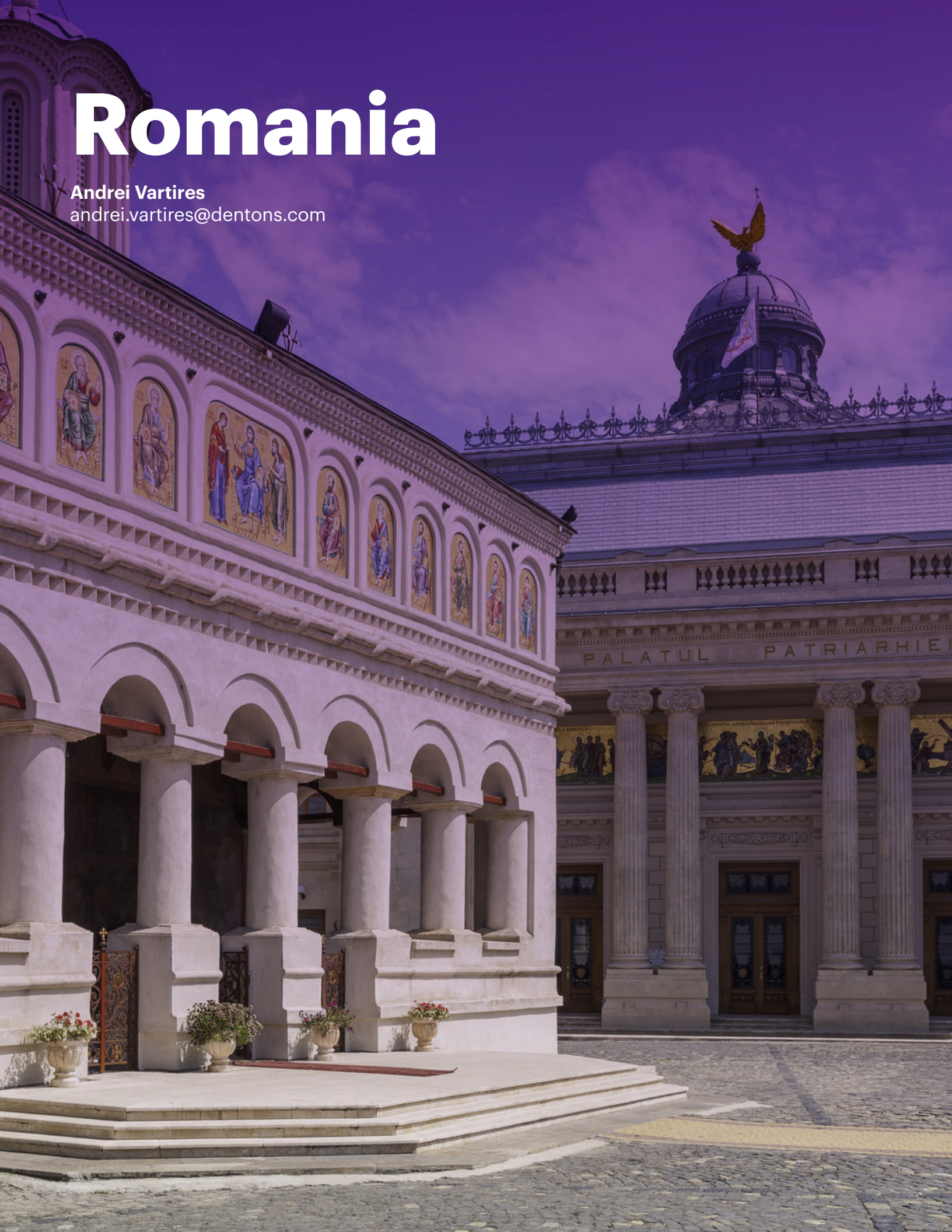


Romania

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1.0 OVERVIEW

In January 2007, Romania joined the European Union (EU) and went through important reforms in order to comply with the EU membership requirements. As a member of the EU, Romania has adopted the EU fiscal legislation.

Romania imposes a flat tax system for both corporate and personal income tax on its residents (including Romanian subsidiaries of foreign entities) in respect of income and capital gains earned anywhere in the world. Non-residents who carry on business in Romania, are employed in Romania or sell certain types of properties are also subject to Romanian income tax.

Given the wide array of double taxation treaties (DTTs) available, investments are made by interposing a holding company located in a favorable tax jurisdiction, such as the Netherlands or Luxembourg. The use of a holding company allows for distributions of dividends or interest that can be may be made free of Romanian withholding tax, subject to certain conditions.

Romania concluded more than 80 DTTs with other EU member states or third states. Foreign tax credits may be granted if so provided in the treaty and if tax was paid abroad. Tax credits, however, may not exceed the Romanian tax on the income. In order to apply the provisions of the relevant DTT, the non-resident recipient of the income should provide to the Romanian payer a tax residence certificate attesting its tax residency for the purpose of the DTT.

2.0 LEGAL SYSTEM

The Romanian legal system is similar to other European civil law countries. Romania utilizes a civil law system and adopted a new Civil Code in 2011. In 2016, a new Fiscal Code along with a new Fiscal Procedure Code came into force. This Fiscal Code implemented important amendments to the majority of Romanian taxes. Its main purpose is to provide clarity and predictability to domestic taxation, stimulate investments and economic growth and reduce bureaucracy.

3.0 TAXATION AUTHORITIES

The tax system in Romania is administered by the National Agency for Fiscal Administration (ANAF), which is subordinate to the Ministry of Finance. There are also local tax authorities, subordinate to ANAF, which are responsible for collecting tax from taxpayers.

4.0 BUSINESS VEHICLES

Foreign investors may establish a business presence in Romania by creating a new company or purchasing a shelf company (among other methods). The main vehicles used by investors in this respect are limited liability companies (LLCs) and joint-stock companies (JSCs).

While LLCs are easier to create than JSCs, in the case of an envisaged transfer of shares for LLCs, the transfer may only be effected upon the expiry of a 30-day opposition term from the date of publication in the Official Journal of Romania of the decision approving the transfer of social parts. This opposition term for LLCs is provided in favor of the company's creditors and is designed to prevent tax evasion.

The most common entities used for investment purposes in Romania are LLCs and JSCs. Below are highlights of the advantages and disadvantages of each.

4.1 Joint-stock companies

JSCs are the most complex and evolved of Romanian companies. They require a minimum of two shareholders, which can be either a legal person or a natural person. The social obligations of JSCs are guaranteed by the share capital, and the shareholders are only held liable up to the limit of their contributions. The minimum share capital is RON 90,000 (approximately €25,000). The share capital paid into the JSC upon incorporation by each shareholder may not be less than 30% of the subscribed share capital. The shares in the JSCs may be freely transferred and they may be traded in organized markets.

4.2 Limited liability companies

Foreign investment is usually made by way of incorporating Romanian special purpose vehicles. The most frequently used entity is the LLC, primarily due to its corporate flexibility and low capital requirements.

The LLC is the most commonly used type of company and may be established by a minimum of one member and a maximum of 50 members. The minimum share capital is RON 200 (approximately €45). The equity capital must be fully paid in as of the subscription date. The quotas do not represent negotiable titles and therefore may not be traded on organized markets. Members are liable for the company's obligations only up to the value of their subscribed equity capital.

4.3 Representative office

Foreign companies may conduct marketing activities, such as advertisement and market research, through a representative office. It represents, and acts for and on behalf of, its parent entity with a specific mandate, limited to the promotion and technical support of the parent company's business activities.

4.4 Branch

A branch is an extension of the parent foreign entity, with no financial independence. It may only carry out the activities that the parent foreign entity has been authorized to carry out in its home jurisdiction.

5.0 FINANCING A CORPORATE SUBSIDIARY

Financing of commercial entities usually involves a combination of debt and equity, with consideration of the applicable thin capitalization rules.

5.1 Equity financing

Equity includes the share capital, legal reserves, other reserves, retained earnings, current profit as well as other equity elements established by law.

5.1.1 Withholding tax implications – dividends

The Parent-Subsidiary EU Directive is applicable in Romania. The general withholding tax rate on dividends paid to a non-resident is 5%. In addition, when dividends are paid by a Romanian entity to another Romanian entity, a 5% tax is applicable and must be withheld, declared and paid by the dividend payer.

Dividends received by a Romanian legal entity from another legal entity are not taxable at the level of the recipient; however, dividends received from a legal entity may be taxable to the recipient. However, under the Parent-Subsidiary EU Directive, tax on dividends is exempt subject to an ownership of at least 10% and for an uninterrupted period of at least one year.

5.1.2 Withholding tax implications – interest and royalties

The EU Interest & Royalties Directive is applicable in Romania. A 16% withholding tax is applied on interest and royalties paid to a non-resident company, unless there is a different reduced rate under a treaty of the EU Interest & Royalties Directive. However, under the directive, tax on interest and royalties is exempt subject to an ownership of at least 25% and for an uninterrupted period of at least two years.

5.2 Debt financing

5.2.1 Thin capitalization rules

New rules apply to the deductibility of interest expenses of January 1, 2018. The excess borrowing costs (i.e., the difference between borrowing costs and interest income) that exceeds the deductible limit of €200,000 will be deductible only up to 10% of the company's adjusted tax profits.

5.3 Stamp tax

Romania does not impose stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

For 2018, the standard corporate tax rate is 16%. Taxpayers of corporate income tax include:

- Romanian legal entities, except for taxpayers subject to the micro-enterprises tax or specific tax, tax-transparent entities and certain institutions specifically defined in the Fiscal Code
- Non-Romanian legal entities that carry out activities through one or more permanent establishments in Romania;
- Non-Romanian legal entities that have their place of effective management in Romania
- Non-Romanian legal entities that obtain income from the transfer of ownership or any other rights related to immovable property located in Romania
- Legal entities established in accordance with European legislation that have their registered office in Romania.

6.2 Fiscal year

As a rule, the fiscal year follows the calendar year. However, taxpayers can opt for a financial year-end that is different from the calendar year, and may also choose a taxation year that coincides with their financial year.

6.3 Deductibility of expenses

As a principle, expenses are deductible only if they are incurred for the purpose of carrying out economic activity. There are, however, certain types of expenses provided by the Fiscal Code as being non-deductible or have limited deductibility.

6.4 Tax losses

Tax losses may be carried forward for seven years, however, there is no carry-back of losses. Changes in ownership do not affect the carrying forward of tax losses.

6.5 Taxable base

A taxpayer is subject to tax on its profits from carrying on its business. Profit is generally considered to be revenues less deductible expenditures.

6.6 Income tax reporting

Romanian resident corporations and non-resident corporations that carry on business in Romania or that dispose of taxable Romanian property are required to file an annual corporate income tax return.

6.7 Micro-enterprise tax

The micro-enterprise tax is based on the turnover or net sales of a company. Instead of applying the 16% corporate tax, legal entities with a turnover of up to €1,000,000 are subject to a lower tax rate of 1% for companies with at least one employee, or 3% for companies with no employees.

Any company may opt for the 16% corporate tax if it has a minimum share capital of RON 45,000 (approximately €970) and at least two employees, even if its turnover is less than €1,000,000.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Specific transfer pricing rules apply to transactions between related parties. The rules also apply to transactions between related resident companies. There are different requirements relating to transfer pricing documentation depending on the type of taxpayer, type of transaction and materiality thresholds.

Romanian legislation is aligned with the Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the EU. Organisation for Economic Co-operation and Development (OECD) guidelines outline the details and content of transfer pricing.

Large taxpayers carrying out intragroup transactions exceeding certain limits must prepare a transfer pricing file on an annual basis in the Romanian language, along with all related supporting documentation.

8.0 PAYROLL TAXES

8.1 Payroll taxes and capital duty

Neither capital duty nor payroll tax is due from the employer. However, employers must establish and withhold tax on salaries on a monthly basis and remit it to the state budget.



9.0 INDIRECT TAXES

9.1 Value-added tax

Value-added tax (VAT) is established on the supply of good and provision of services performed in exchange on remuneration. The standard VAT rate is 19%, with reduced rates of 9% for orthopedic products and medicine products (among others), and 5% for school books, newspapers and magazines.

VAT registration is required for taxable persons carrying taxable transactions or intra-EU acquisitions. VAT returns must be submitted with the tax authorities on a monthly or quarterly basis, depending on the company's annual turnover.

9.2 Real property tax

Pursuant to the Fiscal Code, residential buildings and buildings owned by natural persons are subject to a tax rate between 0.08% and 0.2% of the taxable value of the building. Non-residential buildings owned by natural persons are subject to a tax rate between 0.2% and 1.3% on their value, which can be calculated as one of the following:

- The amount resulting from an evaluation report prepared up by an authorized evaluator, during the last five years preceding the reference year
- The final value of construction work, new buildings built in the last five years preceding the reference year
- The value of buildings resulting from the act of transfer ownership, acquired in the last five years preceding the reference year

If the value of the building cannot be calculated according to the above, the tax is calculated by applying the rate of 2% on the taxable value determined under applicable residential buildings owned by individuals.

In regards to legal persons, the Tax Code provides the following rates:

- For residential buildings, the tax rate is between 0.08% and 2% on the taxable value of the building
- For non-residential buildings, the tax rate is between 0.2% and 1.3% on the taxable value of the building.

Owners of land are subject to a land tax with a fixed amount per square meter, depending on the location of the land and the category of the area in use.

9.3 Land transfer tax and share transfer tax

No land transfer taxes apply to the sale of real estate. However, stamp duties apply to the registering of real estate with the relevant land books. As a general rule, the buyer will be required to pay the notary fees along with the Land Registration Office fees. Sale of Romanian properties may be subject to a 19% VAT depending on the VAT regime of the seller and whether or not the property is considered new.

Acquiring shares in Romanian companies is not subject to any transfer tax. In addition, the sale of shares is not subject to VAT. Capital gains resulting from the sale of properties is taxed at a flat rate of 16%.

