

Real Estate in Romania

Tax and Legal Overview

The principle of free transferability of assets is enshrined in the Romanian law, with only few restrictions on the acquisition of real estate or a set of conditions to be met to this effect (eg, restrictions for non-EU foreign companies and individuals; the pre-emption right of the persons/state regarding certain property with special statute, etc).

Romanian individuals and legal entities (regardless of the citizenship of the shareholders) are free to acquire land and properties in Romania. However, in case of entities or assets in strategic industries, having a value in excess of EUR 2 million, FDI approval might be required under specific conditions.

Foreign non-EU citizens, stateless persons and legal entities are generally restricted from directly acquire land ownership in Romania. European nationals, part of the EU or EEA, may acquire land in Romania under the same conditions as Romanian nationals.



The income from the transfer of real estate is taxed differently depending on the period of ownership and the value of the real estate.

Capital gains from sale of shares obtained by legal persons are taxed in Romania at 16%, unless the participation exemption regime applies, whereby more than 10% of the shares are held for more than one uninterrupted year at disposal date. Individuals who realise income from the transfer of securities (shares, fund units owned by investment funds) owe income tax of 10% of their gains.

Foreign individuals are generally subject to the same tax treatment as Romanian individuals, but depending on the fiscal residence of the individual, treaty relief may be available. Capital gains obtained by individuals are also subject to capped health contribution (10%) if the income exceeds a certain thresholds (between 6 minimum gross salaries and 24 minimum gross salaries per year). Investment income (e.g. interest, dividends, capital gains) derived from Romania or from abroad is subject to health fund contributions if the annual income alone or cumulated with other non-salary /freelancing income derived by the individuals (e.g. rent, intellectual property rights, investment income) is at least equal to 6 minimum gross salaries (currently RON 3,300*6 = 19, 800 RON). The annual taxable basis for health fund contribution is capped at 24 minimum gross salaries (currently RON 79,200).

In the event of a direct investment, under Romanian law, any profit (including capital gains) related to Romanian real estate earned by a non-resident company is subject to 16% profit tax. Under most of the currently applicable double tax treaties concluded by Romania, capital gains obtained by non-residents from real estate property located in Romania are generally taxable in Romania. Ownership of real estate does not necessarily constitute a permanent establishment (PE) in Romania.



If the landlord is an individual, the net rental income (i.e, after deemed expenses deduction of 20%) is subject to individual income tax of 10% (withholding tax or annual income tax, depending on the type of income payer). Rental income is also subject to capped health contribution of 10% if the total personal yearly income (other than salary income and income from freelancing activities) exceeds certain thresholds (between 6 minimum gross salaries per year, currently equal to 19,800 RON per year, and 24 minimum gross salaries per year – currently RON 79,200.).

If the landlord is a company, the net rental income is taxed at 16% profit tax. Expenses incurred that are directly related to deriving the rental income are generally tax-deductible from the taxable revenue as a whole, although there are some special rules that might make some expenses non-deductible.

Depreciation

The depreciation method to be used for buildings is the straight-line method. Other methods, such as the accelerated depreciation or reducing balance methods, are not applicable for buildings. Their useful lives usually vary between 40 and 60 years (i.e. depreciation rates between 2.5% and 1.66%).

Building tax

According to the Romanian Fiscal Code, buildings are classified based on their utilisation purposes, as follows:

- residential buildings, i.e. buildings which are used strictly for residential purposes;
- non-residential buildings, i.e. buildings which are used for economic purposes;
- mixed-purpose buildings, ie. those used for both residential and non-residential purposes

In case of residential buildings owned by individuals and legal entities, the building tax is calculated by applying a rate ranging from 0.08% to 0.2%, to the taxable value of the building. In case of non-residential buildings owned by individuals and legal entities, the building tax is calculated by applying a rate ranging from 0.2% to 1.3% to the tax value of the building. In case of mixed usage, if the building address is registered as a fiscal residence (i.e. for an individual or for a company) but at which no economic activity is performed, the tax is calculated according to the regulations applicable to the residential buildings. Where there is mixed usage with actual economic activity, the building tax is determined proportionally. There are also other rules concerning mixed usage.

For non-residential buildings owned by both individuals and legal entities, used for agricultural activities, the building tax is calculated by applying a rate of 0.4% to the taxable value of the building.

In case of non-residential buildings, the taxpayer may revalue the property every five years by commissioning an interdependent authorised valuator. Not exercising the right to revalue the assets will result in higher taxation percentage, i.e. 5% for legal entities and 2% for individuals..

The tax on buildings is due for the entire fiscal year by the person who owns those assets at 31 December of the previous fiscal year, irrespective of whether these assets are alienated during the reference year.

Building tax is paid twice a year, by 31 March and 30 September, in equal instalments. As a rule, if the building tax due for the entire year is paid in advance by 31 March, a reduction of up to 10% may be granted by the Local Council.

The Fiscal Code stipulates that building tax is applicable on the value assessed in the leasing contract and payable by lessee for buildings subject to a financial leasing contract.

Land tax

Owners of land are subject to land tax established at a fixed amount per square metre, depending on the rank of the locality where the land is located and the area or category of land use, in accordance with the classification made by the Local Council.

The provision according to which for the surface of land, covered by a building, the tax land is not due was eliminated.

Likewise, the tax on lands is due for the entire fiscal year by the person who owns those assets at 31 December of the previous fiscal year, irrespective of whether these assets are alienated during the reference year.

Similar to building tax, land tax is paid twice a year, in equal instalments, by 31 March and 30 September. A 10% reduction is granted for full advance payment of this tax by 31 March.

The Fiscal Code stipulates that for land subject to a financial leasing contract, land tax is payable by the lessee.

Acquiring title to real estate in Romania

The principle of free transferability of assets, with the owner being free to dispose of property, is enshrined in Romanian law. The applicable law prescribes a few restrictions on the acquisition of real estate or a set of conditions to be met to this effect, for instance, the duty to observe inter alia the right of first refusal of individuals, private and/or public entities and of the Romanian state for the sale of historical monuments, woodland and agricultural land.

Romanian and European nationals (nationals of the European Union and/or of the European Economic Area), natural persons and legal entities (regardless of the citizenship of the shareholders) are free to acquire land in Romania under the same conditions as Romanian citizens, subject to FDI rules. Non-EU/EEA citizens are generally restricted to directly acquire land ownership in Romania.

Notarisation and registration of title to real estate

Romanian law requires the notarisation of any transfer agreement regarding ownership of land or construction located in Romania. Notarisation is compulsory for the validity of the ownership transfer which need to be executed under an authentic deed.

The ownership transfer has to be recorded in the Real Estate Register (Land Register) in order to be effective against third parties. However, registration with the Land Register does not guarantee the ownership title is free of any flaws. Due to the particularities of the reconstruction of the private ownership over the land after 1990, it is advisable to conduct legal title checks on any property prior to acquiring it.

Superficies

Superficies is a real right over a plot of land owned by a third party that grants to the beneficiary the right to erect a building over such land. The beneficiary will have an ownership right over the building and a right to use over the said land.

The duration of the superficies agreement is limited to 99 years. At the expiration of the duration, the ownership over the building may be kept by the investor, together with the acquisition of the ownership right over the land, if such was agreed between the parties under the superficies agreement.

The ownership over the building may be generally transferred to a third party, together with the superficies right over the land.

Superficies agreement should be concluded under authentic deed and should be registered with the Land Register in order for the superficies right to be valid against third parties.

Concession

Land may be acquired also from the Romanian State or a public authority for a specific investment through concession. Land concession can be granted following a specific procedure that generally involves a public tender for the development of a specific project.

The duration of the concession agreement is limited to 49 years. At the expiration of the duration, the investment (i.e. construction on the land) may be kept only in case of private ownership of the state and only if specific conditions are fulfilled. For public owned land, neither the ownership over the investment, nor the land can be kept after the expiration of the contract.

Concession is a formalistic procedure that needs to be followed exactly, in order to preserve the validity of the concession. Concession rights should be recorded in the Land Register.

Mortgaging real estate

Mortgages over real estate properties are created under authentic deeds and must be recorded in the Land Register to have an effect towards third parties. Mortgages are created over land/buildings as a whole or over the share owned by any of the co-owners. Mortgage can be created also over a building erected on land taken under a superficies agreement.

The creation of mortgages over a future asset is subject to compliance with specific regulations regarding mortgage credit for real estate investments, based on the prior registration with the Land Register of the building permit and the partial delivery and acceptance minutes.

Renting real estate properties in Romania

In order for a company to perform renting activities in Romania, it should include such activity in its bylaws and register it as such with the Trade Registry. An operating permit is also required to be obtained from the city hall. Other legal requirements may apply depending on the specificities of the renting activities. For instance, in case the landlord allows the tenant to open a registered office on the rented premises, the landlord should have in place a know your client policy.

Renting a real estate property in Romania can be achieved through a lease agreement concluded between the landlord and the tenant.

The duration of the lease cannot exceed 49 years. Subletting is permitted unless otherwise expressly agreed by the parties in the lease agreement.

The lease agreement may be registered with the Land Register in order for the lease to be held valid against the new owner of the property (in case of transfer of ownership over the property).

Lease agreements do not require notarization for their validity. However, the lease agreements that are concluded as authenticated deed or that are registered with the tax authorities by landlords are directly enforceable by the landlord against the tenant for the due and unpaid rent.

General

Set out below are the main provisions within the Fiscal Code regarding real estate. The current definition of real estate property refers to land, buildings or constructions built or incorporated into a land area



Taxation of investments through a Romanian company

On the sale of real estate by a local company the capital gain is included in the taxable profit of the company, subject to 16% profit tax (if in an overall profit position). Capital losses on sale of real estate may be offset against regular profits of that company.

The sale of shares in a Romanian company by another Romanian company is also subject to 16% profit tax, unless more than 10% of the shares are held for more than one uninterrupted year at disposal date. If the shares in a company are sold by a non-resident corporate shareholder, they are also generally subject to tax at 16%, with the exception of cases where more than 10% of the shares are held for more than one year. In order for such exemption to apply, a double tax treaty should exist with the jurisdiction of the non-resident corporate shareholder.

Capital gains obtained by non-residents from the sale of shares held in a Romanian company are also taxable in Romania. However, participation exemption applies for capital gains derived by a non-resident legal entity from participations of at least 10%, held for a minimum period of one year, in a Romanian company, provided there is a double tax treaty in place between Romania and the country of residence of the seller. Also, the income may be subject to treaty protection.

Taxation of income obtained from transfer of real estate by Romanian and/or non-resident individuals

Transfers of Romanian real estate property are subject to transfer tax. The tax transfer is calculated based on the sale price. The applicable tax rate depends on the duration of the ownership, as follows:

- 3% applicable on the transaction value, if the property was held for less than 3 years
- 1% applicable on the transaction value, if the property was held for more than 3 years
- The tax is calculated and charged by a public notary. The seller is liable for the payment of the tax.

No income tax is due for ownership over estates acquired under special laws, for donations between third-degree relatives, donations between spouses, and for inheritances, provided the procedure is finalised within two years (income tax of 1% is levied if the succession procedure is not completed within those two years).

Income tax due for transfer of ownership is calculated at the value declared by the parties in the transfer documents and withheld by the public notary. If the value declared by the parties is lower than the minimum value established through market research conducted by the Chamber of Notaries Public, the public notary notifies the transaction to tax authorities. The tax remittance deadline is day 25 of the month following the one when the income was withheld.

Taxation of sale of shares in the case of Romanian and/or non-resident individuals

Capital gains obtained by individuals from sale of shares are taxed in Romania under the following rules:

1. In situations where the shares are **NOT traded through** intermediaries defined according to the relevant Romanian legislation, investment management companies, self-managed investment companies and alternative investment fund managers, Romanian tax residents or non-residents who have a permanent office in Romania which has the quality of intermediary, the net capital gain will be subject to capital gains tax at the flat rate of 10%.
2. In situations where the shares **are traded through** intermediaries defined according to the relevant Romanian legislation, investment management companies, self-managed investment companies and alternative investment fund managers, Romanian tax residents or non-residents who have a permanent office in Romania which has the quality of intermediary, the income tax to be withheld is determined by the intermediary entities at each transfer by applying a rate of:
 - 1% on each gain from the transfer of securities that were acquired and disposed of in a period longer than 365 days, inclusive, from the date of acquisition;
 - 3% on each gain from the transfer of securities that were acquired and disposed of in a period less than 365 days from the date of acquisition.

The obligation of calculating and paying the income tax from the transfer of securities lies with the taxpayer. Income obtained by individuals is also subject to capped health fund contribution (10%) if the total personal yearly income (excluding salary income) exceeds certain thresholds (between at least 6 minimum gross salaries which amount currently to 19,800 RON per year, and 24 minimum gross salaries per year - currently RON 79,200).

Any net loss resulting from the transfer of securities, other than shares and transferable securities in non-listed companies can be carried forward for up to five consecutive tax years, within the limit of 70% of the net annual gain.

Foreign individuals are generally subject to the same tax treatment as Romanian individuals. However, based on the fiscal residence of the individual, treaty relief may be available. Depending on the details of the transaction, the taxpayer has the obligation to compute, withhold and pay the capital gains tax from sale of shares. To fulfil this requirement, non-residents may appoint a Romanian fiscal representative or a tax agent.



Direct investment by foreign companies

In the event of a direct investment, under Romanian law, any profit (including capital gains) related to Romanian real estate earned by a non-resident company is subject to 16% profit tax. Under most of the currently applicable double tax treaties concluded by Romania, capital gains obtained by non-residents from real estate property located in Romania are generally taxable in Romania. Ownership of real estate does not necessarily constitute a permanent establishment (PE) in Romania, however, a case-by-case analysis should be undertaken.

Generally, all Romanian companies are subject to quarterly profit tax payments, with annual offset. Most companies (including those investing in real estate) may opt for a prepayment tax system (quarterly prepayments made, based on last year's profit tax adjusted by the inflation rate). However, in case of foreign companies, income from sale of shares and real estate located in Romania will be due by the 25th of the month following the quarter in which the transaction took place.

Foreign legal persons are required to submit annual profit tax returns, even if the profits is exempt from tax in Romania under the more favourable provisions of eligible double tax treaty. They may appoint a tax agent for meeting the above requirements for payment of profit tax and the submission of tax returns.



Taxation of rental income

If the landlord is a company, the net rental income is taxed at 16% profit tax. Expenses incurred that are directly related to the obtainment of the rental income are generally tax-deductible from the taxable revenue as a whole, although there are some special rules that might make some expenses non-deductible. In their Articles of Association, companies should have “rental activity” listed as their object of business in order to let real estate property.

Also, a minimum Turnover tax has been recently adopted, entering into force as of 1 January 2024.

Taxpayers having i) a turnover of more than EUR 50 mil. in the previous year, and ii) whose CIT is lower than the minimum turnover tax, will have to pay CIT at the level of the minimum turnover tax.

The minimum turnover tax is calculated as 1% of the Total revenues with certain adjustments (e.g. non-taxable revenues, depreciation of assets acquired as of 1 January 2024, etc) and is compared with the CIT. The taxpayer is required to pay the higher of the two amounts.



Depreciation

The depreciation method to be used for buildings is the straight-line method. Other methods, such as the accelerated depreciation or reducing balance methods, are not applicable for buildings.

The Official Fixed Assets Catalogue, published under government decision, states the useful lives to be used for tax purposes. Ranges are provided for classes of fixed assets, from which the taxpayer can choose the useful life. The depreciation rates applicable to buildings vary according to the type of building. For office buildings, the depreciation period is between 40 and 60 years, while for other commercial buildings the depreciation period is between 32 and 48 years. Improvements made to buildings by the owner will generally follow the depreciation period of the building. Improvements in a leasehold property are generally depreciable over the remaining contractual period. It is possible to identify various components of the building, which can be depreciated separately.

Accounting revaluations are considered when computing the depreciable amount of fixed assets.

Land is not subject to depreciation.



Revaluation of fixed assets

Companies are allowed to revalue their fixed assets at the end of each year, according to their own accounting policies. As from 1 May 2009, the step-up in value is not effective for tax purposes when calculating depreciation expense. The same principle applies when the building is sold or written-off. So, there is no longer a tax benefit for revaluations. This rule applies for all revaluations performed after 1 January 2004.

Companies are required to treat part of the revaluation reserve built by revaluations as a taxable item together with each depreciation of revaluation surpluses (quarterly) or with the asset expense (if the asset is sold or written off).

Companies need to keep separate records to reflect the distinct computation of the fiscal and the accounting regulations.

Loss carry forward

As of the year 2024 or the modified fiscal year starting in 2024, the annual tax losses established by the profit tax return are recovered from the taxable profits made, up to the limit of 70%, in the next five consecutive years.

The annual tax losses related to the years preceding the year 2024 or the year starting in 2024 remaining to be recovered as at 31 December 2023 are recovered from the taxable profits made as of the year 2024, up to the limit of 70% of the respective taxable profits, for the remaining period of recovery from the seven consecutive years following the year of recording those losses.

The recovery of the annual fiscal losses is made in order of their registration, at each payment term of profit tax.

Limitations on tax deduction of financing costs

Starting 1 January 2018, there is no distinction anymore between the tax regime of intra-group or bank financing, irrespective of the company capitalization or its debt-to-equity ratio, since the tax deduction rule has been normalized for all investors and all financing sources. Briefly, an “excess borrowing costs” rule applies currently to Romanian legal entities, which means that a company that seeks financing solutions for either investment purposes, working capital needs or finance hedge will deduct only EUR 1.000.000,00 plus 30% of a tax-adjusted EBITDA (for FY 2018 the threshold was of EUR 200,000 plus 10% of a tax-adjusted EBITDA). The non-deductible excess borrowing cost is carried forward and may be deducted in subsequent years (subject to applying the same cap annually). The excess borrowing costs include net interest expenses and net foreign exchange losses. The non-deductible exceeding borrowing costs can be carried forward indefinitely. The computation base (adjusted fiscal profits) is determined as the gross accounting profit, minus non-taxable revenues, plus the corporate income tax (“CIT”) expense, exceeding borrowing costs and deductible tax depreciation.

The above-mentioned interest deductibility rules also apply to financial institutions, but not to independent entities (i.e. entities that are not part of a consolidated group for financial accounting purposes and do not have related parties and PEs), which can fully deduct exceeding borrowing costs. Equally important is that the above cap affects also all historical interest and net foreign exchange losses, which have accrued and were not deducted during development stages. Deduction of these costs may be postponed indefinitely or taken in immaterial amounts annually, depending on the company profitability.

Consequently, all real estate vehicles that become operational further to the investment stage or that undergo group buy-outs should update their medium to long-term budget simulations and consider their financing mechanisms or capital structures, to make sure that their deferred tax asset may be realized. Such tax costs may translate in higher cost of debt related to either inter-company, external bank lending or private equity funds.

Starting with 1st January 2024, the deductibility of exceeding borrowing costs resulting from transactions/operations with affiliated entities, which do not finance the acquisition/production of fixed assets under construction/assets to be established by order of the Ministry of Finance, will be limited to EUR 500,000 threshold. This limit does not apply to credit institutions, Romanian branches of credit institutions, non-banking financial institutions, Romanian branches of non-banking financial institutions and investment companies.

The limit of EUR 1 million to which deductions can be made is maintained, in a fiscal period, at the total excess costs of indebtedness resulting from transactions/operations carried out both with the respective affiliated entities and with non-affiliated entities.

Turnover tax

As of 1 January 2023, the micro-enterprises tax regime has become optional and can be applied by a company having a turnover of less than EUR 500k per year. Certain other conditions need to be fulfilled (e.g. at least one employee). Micro companies are taxed on their turnover, at a rate of 1%. Starting 1 November 2023, the micro companies tax rate is increased to 3% for companies who either have a turnover of more than EUR 60k or undertake activities under specific NACE Codes (e.g. NACE Code 5510 - Hotel service, etc.).

Once the threshold is exceeded, such companies become profit taxpayers and pay the regular 16% profit tax.

The implication for real estate special purpose vehicles is that development costs registered as expenses in the initial development period can no longer be carried forward and offset against future taxable profits.

Tax consolidation

The fiscal consolidation system for CIT has been included in Romanian legislation starting January 1st 2021. A tax group may consist only of Romanian legal entities and/or persons which must be CIT payers with their registered office in Romania.

The system is optional and the ownership condition requirement to hold, directly or indirectly represents at least 75% of the value/number of participation titles or voting rights for an uninterrupted period of at least one year prior to the beginning of the consolidation. If applied, it is mandatory to be kept for at least 5 years.

One of the members is designated as the responsible legal entity that will calculate, declare, and pay the CIT for the group, with the tax determined by summing the individual calculations of each member.





Tax incentives

Tax reductions for maintained or increased equity

Romanian entities that are CIT payers, subject of micro-company tax regime or subject to specific tax shall benefit from certain tax reductions (2%, 3% or between 5% and 10%) if a minimum level of equity is maintained or if equity is increased with a certain percentage. Thus, the taxpayers can apply the tax reduction starting with tax year 2021, until tax year 2025 and for the taxpayers having the tax year different from the calendar year until the fiscal year that ends in 2026.

Tax incentives for the real estate sector

Entities in the real estate sector with expressly mentioned NACE codes (e.g. developers, constructors, architects, etc.) and acting as employers may benefit during January 1st 2019 - December 31st 2028, from 10% income tax exemption and partial social security charges exemption in respect to minimum gross wage of (currently) RON 4,000. Starting 1 November 2023, income tax exemption remains however the social security exemptions were partly eliminated (the health contribution tax exemption (CASS) and employment insurance contribution (CAM) have been removed).

Exemption of reinvested profits

Reinvested profits in certain assets (i.e. new technological equipment, computers and peripheral equipment, software etc.) that are used for business purposes is CIT exempt by following specific conditions.

Transfer pricing rules

The Romanian transfer pricing rules are aligned with OECD principles. Transfer pricing rules require that transactions between domestic and cross-border related parties (defined as having a minimum 25% direct or indirect shareholding or common control) be carried out at market value, otherwise adjustments may be performed.



Real estate operations

VAT treatment

Under the current Romanian VAT law, rental/leasing of real estate property is deemed as a VAT exempt operation without deduction right. However, the landlord/lessor has the option to apply VAT for any such operations, by way of submitting a notification for taxation to the tax authorities.

The Romanian VAT legislation provides that the sales of plots of non-buildable land, based on the town planning certificate and of buildings qualifying as old from a VAT perspective are subject to the VAT exemption without deduction right. However, the owner has the option to apply the taxation regime for these types of transactions, by way of submitting a notification for taxation to the tax authorities in this respect.

The supply of plots of building land, based on the town planning certificate or buildings qualifying as new from a VAT perspective is subject to the taxation regime, as follows:

- **Reduced VAT rate of 5%** - for supplies of dwellings and houses delivered as part of social policy, including old people's homes, retirement homes, orphanages and rehabilitation centres for children with disabilities. This category includes also dwellings and parts thereof supplied as housing with a maximum useful surface of 120 square meters, excluding outbuildings. The reduced rate applies if the value of the house acquired by individuals is less than 450,000 RON, exclusive of VAT.
- **Taxation under the reverse charge mechanism** – for supplies of plots of building land or new buildings, if both, the purchaser and supplier, are registered for VAT purposes in Romania. More specifically, under this scenario, the supplier has the obligation to issue invoices without VAT, while the beneficiary will have to account for VAT under the reverse charge mechanism.
- **Standard VAT rate of 19%** - for supplies of plots of building land or new buildings, in case the conditions for the application of either the reduced VAT rate or reverse charge mechanism are not fulfilled.

However, please note that starting 1 January 2024 the VAT rate mentioned above will increase from 5% to 9%.

From a VAT perspective, a building (or parts thereof) qualifies as new, if it is sold by the end of the year following its first usage/occupation. A construction that has been transformed, whereby the value of the transformation exceeds 50% of the building's value after transformation, is also considered a new building. Building land represents any unimproved/improved land on which constructions can be erected on, according to the town planning certificate.

The supply of land on which a building is erected, but where a demolition process is in progress would be treated from a VAT perspective as a sale of land.

VAT deduction right

Any taxable person registered for VAT purposes in Romania has the right to deduct the VAT related to its acquisitions, if the goods/ services are purchased for the purposes of performing taxable transactions.

Taxable persons performing acquisitions related to the construction of real estate envisaged to be used for performing operations both with and without deduction right will be able to fully deduct the input VAT during the investment process. Nevertheless, depending on the actual use of the investments with respect to the construction of real estate, the deducted input VAT has to be adjusted accordingly.

The VAT deduction right is also granted for the acquisitions of immovable assets performed from taxpayers within the enforcement procedure and/or from taxable persons that undergoing the bankruptcy procedure, provided that the supply is taxable by law.

Input VAT adjustment for real estate assets

Where the landlord/ lessor does not opt to tax the rental fees/ lease instalments, while input VAT was deducted on acquisition/ construction of the real estate property, VAT should be adjusted annually within the adjustment period for 1/20 of the VAT costs incurred on the acquisition, manufacture or construction of those goods.

If the real estate property is sold within the VAT exemption regime, while VAT was deducted upon acquisition/ construction, the input VAT should be adjusted one-off for a period of 20 years for the remaining adjustment period.

The adjustment should be performed in accordance with the percentage of the real estate property rented/ leased/ sold within the VAT exempt regime, insofar as such transactions are performed within the 20 years adjustment period.

VAT transfer of business

The partial or total transfer of assets performed during a spin-off or merger is outside the scope of VAT if the beneficiary is a taxable person established in Romania.

Under certain conditions, also the partial or total transfer of assets performed to a Romanian established company through a sale or contribution in kind qualifies as a VAT neutral transfer of business. Specifically, the operation is seen as a transfer of business if the transferred assets form, from a technical point of view, an independent structure capable of carrying out economic activities. Also, the beneficiary must continue the economic activity which was transferred to him and not immediately liquidate it or sell the assets which were transferred to him. In addition, the beneficiary is regarded as the assignor's successor for purposes of adjustment of the VAT deduction right.

In case the taxation regime is applied for transfer of business, the tax authorities will allow the VAT deduction if the taxation regime was not applied for tax optimisation reasons.

VAT refund

Established businesses in Romania

Although, based on the Romanian legislation the input VAT recovery should be performed within 45 days of the date of filing the VAT return or 90 days from their submission (in case the resolution of the application requires a tax inspection), in practice the VAT refund process is a lengthy procedure (especially in Bucharest), subject to a prior tax inspection. The company can benefit from a fast VAT refund, if it achieves a low score in the risk analysis performed by the tax authorities.

The VAT receivables could be offset against other payable taxes and social contributions due by the company or could be assigned to another taxpayer.

Non-Romanian businesses

A company established in another EU Member State could claim a refund from the Romanian tax authorities of the VAT paid for goods/ services acquired in Romania, based on the 9th EU Directive (VAT refund for taxable persons established in the EU). The VAT refund is granted under certain

conditions and if the operations performed by the company in Romania do not entail a VAT registration requirement or a fixed establishment of the company in Romania.

In addition, Romania implemented the refund procedure based on the 13th EU Directive for VAT related to purchases performed in Romania by non-EU established businesses under reciprocity conditions. In principle, a non-EU business will be entitled to benefit from a VAT refund, under the 13th EU Directive, for the VAT paid on goods/ services purchased in Romania, if its operations herein do not entail a VAT registration requirement or a fixed establishment in Romania.

Domestic withholding taxes (WHT)

A 16% withholding tax rate generally applies on certain income sourced from Romania by non-resident companies, such as interest, commissions, services performed in Romania, management and consulting services (irrespective of where they are performed), etc.

According to the new provisions the tax rate applicable for dividends derived by non-residents from Romania, is reduced from 16% to 8%. The new tax rate is applicable to dividend income distributed starting on 1 January 2023.

The EU Parent-Subsidiary Directive is applicable to dividends distributed by Romanian companies to other Romanian companies or companies that are resident in other EU member states (holding for more than one year at least 10% of the share capital of the Romanian company distributing the dividends). This implies that dividend distributions to qualifying shareholders are no longer subject to dividend withholding tax.

The EU Interest and Royalties Directive is also applicable so that no withholding tax may be levied for interest and royalty payments made between related parties, provided the conditions of minimum 25% direct association and a two-year holding period are met.

The aforementioned domestic withholding tax rates can be reduced by double tax treaties provided the beneficiary of the payment makes a fiscal residence certificate available, its copy or any other document attesting to its tax residency, as well as a statement that it is the beneficial owner of the income (the latter applies to dividends, interest and royalty payments).

Other potentially material taxes and charges are due on the construction of buildings, as well as on the transfer of land from one designated category of usage to another. Reference is made to the separate section on local taxes.

Notary and cadastral fees

Notary fees are applicable on the transfer of real estate property, depending on the value of the transaction, but amount generally to approx. 0.5% of the value of the transaction.

A fee is also due to the National Agency for Cadastre and Land Registration for changing the owner amounting 0.5% of the value of the agreement in case the buyer is a company and 0.15% in case the buyer is an individual.

Accounting requirements for Romanian companies

Accounting Law No 82/1991 (last republished in 2008) governs general accounting for Romanian companies. Legal companies, other than credit institutions, insurance companies and entities regulated by National Securities Commission, apply the Order No 1802/2014 approving Accounting Regulations regarding the individual annual financial statements and the consolidated annual financial statements. Order No 1802/2014 is in compliance with the 4th and 7th EU Directives.

Municipal tax system in Romania

Local taxes are established by the Fiscal Code. The local authorities are allowed to adjust local taxes annually.

Local/county councils and the General Council of the Municipality of Bucharest are allowed to set the tax rate a maximum of 50% in excess of the ranges provided by the Fiscal Code on an annual basis.

For agricultural land uncultivated for two consecutive years, as well as for untidy urban buildings and land, the local council may increase the land tax or the building tax up to 500%, in accordance with the conditions established by the decision of the local council.

The tax is adjusted annually with the inflation rate, until 30 April of the year in question and not once in three years, as it was previously performed. Late-payment interest accrues at 1% of the amount past due, calculated for each month or part thereof.

Building tax

Owners of buildings should pay building tax, except for cases where an exemption applies. The building tax rate is established by the local authorities with distinctions made between residential and non-residential destination.

For residential buildings owned by individuals or legal entities, the tax is computed by applying a rate between 0.08% and 0.2% on the taxable value of the building, determined according to the legislation in force. The taxable value of a building varies, depending on the surface area, type of construction, location, etc.

On the other hand, for non-residential buildings owned by individuals, the tax is computed by applying a rate between 0.2% and 1.3% on the taxable value of the building (ie, the acquisition value for buildings acquired within the past five years preceding the reference year; the value of the construction works, in the case of new buildings constructed in the past 5 years preceding the reference year; or the value from the valuation report, as the case may be).

In case of non-residential buildings, owned by individuals, for which the value of the building cannot be determined according with the aforementioned rules (eg., no valuation report) the building tax is determined by applying a 2% tax rate to the taxable base determined according to the law for residential buildings.

In case of mixed usage, the tax is either determined proportionally or at full residential rates (eg, where no economic activity, or other economic circumstances detailed by the law).

For non-residential buildings owned by legal entities, the tax is computed by applying a rate between 0.2% and 1.3% on the taxable value of the building (eg, the last taxable value registered in the fiscal authorities' records; the value from the valuation report; the acquisition value for buildings acquired during the previous year; the value of the construction works, in case of new buildings, constructed in the previous year).

In case the building owner, legal entity, did not update the taxable value of the building in the last three years, the building tax rate is increased to 5%.

For non-residential buildings owned by both individuals and legal entities, used for agricultural activities, the building tax is calculated by applying a rate of 0.4% to the taxable value of the building.

The tax on buildings is due for the entire fiscal year by the person who owns those assets at 31 December of the previous fiscal year, irrespective of whether these assets are alienated during the reference year.

Building tax is payable twice a year, by 31 March and 30 September. The payment in advance, by 31 March of the year, may lead to a tax reduction of up to 10%, based on a decision of the local council.

The Fiscal Code stipulates that building tax is applicable on the value assessed in the leasing contract and payable by lessee for buildings subject to a financial leasing contract.

Land tax

Owners of land are subject to land tax, which is established at a fixed amount per hectare, depending on location and rank.

The tax on land is due for the entire fiscal year by the person who owns those assets at 31 December of the previous fiscal year, irrespective of whether these assets are alienated during the reference year.

Property tax is payable twice a year, by 31 March and 30 September. The payment in advance, by 31 March of the year, may lead to a tax reduction of up to 10%, based on a decision of the local council.

The Fiscal Code stipulates that for land subject to a financial leasing contract, land tax is payable by the lessee.

Charges for permits and authorisations for constructions

Planning certificate

The Planning certificate is priced at a fixed amount per square metre, depending on the location, and is payable at the beginning of the construction. The tax for obtaining the certificate for urbanisation for the countryside is 50% less than the one available in urban areas.

Building permit tax

Construction authorisation tax is calculated as 1% of the authorised value of the investment. Residential buildings can benefit from a 50% reduction of this tax. This tax should be paid before the delivery of certificates, notices and authorisations for construction. When the assets are brought into operation, the local authorities reconcile the construction authorisation tax value by comparing the authorised value with the real value of the assets.

Tax for the authorisation of the organisation of construction site works. This tax is assessed at 3% of the value of construction organisation works.

Extension of availability tax

In order to extend the availability of the planning certificate and building permit, a 30% tax of the initially paid tax is due.

Other fees for constructions

- A fee to the Construction Inspectorate, amounting to 0.5% of the value of the expenses incurred for performing authorised constructions (ie. buildings and installations), as well as of the modernisation, transformation, consolidation and repair work on these constructions should be paid.
- A fee of 0.5% of the expenses incurred, as cited in the statement of works, needs to be paid to the Constructors' Social Security House.
- A fee for representing the value of the stamp of the architecture of 0.50% of the value of the investment should be also paid.



Real Estate in Romania – Tax and Legal Overview

We speak Real Estate
in your language

PwC in Romania

PricewaterhouseCoopers has been present on the Romanian market since 1991 and has developed a broad range of services which it continues to expand. With its in-depth knowledge of Romania's business environment, PwC provides the highest level of professional services to international and Romanian enterprises. Overseen by fifteen partners and employing over 900 specialists and support staff, PwC operates in Romania and Moldova from a network of five offices in Bucharest, Timisoara, Cluj-Napoca and Chisinau. The legal support is provided by D&B David si Baias, PwC's correspondent law firm.

The combination of local experience and a one-firm culture enables PwC to provide advice that is consistent with its global standards yet responsive to local conditions and requirements. Engagements are generally staffed by a combination of Romanian specialists, with knowledge of local conditions and regulations, and international consultants, with expertise in tackling issues faced by international enterprises and practice in operating in the Romanian environment. The key element of PwC's success in Romania is the quality of its staff, to whom the partners are committed to providing the most up to date management training throughout their careers.



Commitment to the real estate sector

PwC is devoted to the problems and developments of the real estate sector globally and in Romania in particular. We are the leading firm of auditors, advisors and lawyers who support the real estate companies, investment banks, investment funds, investment managers and other companies investing in real estate, developing and constructing real estate in Romania.

PwC has established a real estate services team in our Bucharest office to respond to the needs of the market. We have been the principal advisor on the major real estate projects involving foreign and domestic capital. The projects include tax and legal support, preparation of business plans, debt and equity finance raising, audit services, due diligence and transaction support.

Our team makes the most of our regional business model. We go to great lengths to make sure our knowledge and capabilities are consistently shared across Central and Eastern Europe. This enables us to add a further dimension to the way we approach the market and deliver insightful solutions to our clients in an efficient manner.

Service lines include

Assurance Services

- Audits in accordance to ISA or other generally accepted auditing standards;
- Compilation of financial statements in accordance to IFRS or other recognised accounting standards (US/UK GAAP);
- Compliance audits (Security Commission and National Bank of Romania);
- Internal audit;
- Financial and accounting reviews and investigations; regulatory consulting, Training in IFRS, Statutory Accounting Rules and others.

Advisory Services

- Deals: Business Recovery Services, Corporate Finance, Delivering Deal Value, Transaction Services, Valuations and Economics;
- Consulting: Strategy, Finance, Operations, Technology, People and Change, Risk, Dispute Analysis and Investigations (Forensic).

Tax Services

- all aspects of inbound investment into Romania, corporate structuring of investments and trading activities, international taxation, M&A, indirect taxation (customs and VAT), individual taxation and human resources advisory.

D&B
DAVID SI BAIAS
A connected law firm of PwC

Legal Services

Provided by D&B David si Baias, the correspondent law firm of PwC in Romania include legal transaction support for the acquisition/ sale of a real estate property or businesses as well as in connection with distressed assets or within insolvency procedure, legal assistance in construction projects, legal support for financing real estate projects as legal services tailored for the real estate market, but also for the production and retail industry that require an extensive knowledge of both real estate law and specificity of the business

Challenges

- **Increasing business transparency, providing additional control and comfort over your company's performance**

How we can help

To develop and compete successfully in the real estate sector, companies constantly have to build up their business. This requires a corresponding growth in outside investment and internal management resources. PwC audits and advises a significant number of the major real estate players in Romania and through our integrated Assurance team, we offer the following services:

Audit and assurance services

- Audit and limited review of statutory/IFRS financial statements, Group Reporting Packages
- Regulatory reporting audits

Capital Markets and Accounting Advisory Services

- Asset Monitor for institutions issuing bonds
- Convertible securities
- Accounting advice
- Business combination accounting
- Preparation of Financial statements
- EU funds/State Aid audit
- Closing procedures
- Financial diagnosis
- IFRS solutions
- Support in the implementation of Accounting and financial tools
- Corporate Social Responsibility and Environmental financial reporting

Internal audit

- Internal Audit planning
- Internal Audit Quality Assurance Reviews and benchmarking
- Training programs
- Business systems / automated/IT general controls

- Corporate Governance structures
- Business process and internal control optimization
- Outsourcing contract risk and compliance review
- Reporting according to various standards
- Assessment of financial and non-financial performance

Data Assurance

- Data Governance and Quality
- Advanced Analytics
- Assurance over data collection and reporting
- Data migration and transformation assurance
- Independent verifications
- Process analysis and controls design assessment

Cyber Security, Industrial Control and Data Privacy

- Improve the fundamentals
- Transform the program/Enable the business

- Operate & Sustain
- Respond & Recover
- Data privacy

Project Assurance

- Project Risk Assessment
- Pre-Implementation Review
- Special-Purpose Reviews
- Go-Live Assessment
- Post-Implementation Review



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Challenges

Maximising value from M&A Transactions

How we can help

We lead the sale or purchase of real estate or real estate companies as your lead, financial and commercial advisor from deal origination through to deal completion.

On the buy-side we:

- Identify acquisition opportunities in line with your investment criteria
- Approach targets' owners to assess their willingness to sell the property;
- Evaluate the strategic fit as well as the financial prospects;
- Conduct indicative valuation and provide assistance in the preparation of the non-binding offer(s)
- Run buy-side due diligence;
- Prepare and review legal documentation;

- Negotiate the transaction principles, valuation scheme, deal structure, conditions to closing, the risks identified in due diligence
- Assist to buyer to signing and closing the deal.

On the sell-side:

- Assist in the preparation of the marketing documentation which may involve more detailed segmental and transactional analysis then has been previously been undertaken;
- Conduct indicative valuation of the business and/or the property;
- Identify prospective investors
- Marketing the opportunity, by approaching to prospective investors;
- Perform vendor and sell-side due diligence;
- Prepare and review legal documentation;
- Negotiate the transaction principles, valuation scheme, deal structure, conditions to closing, the risks identified in due diligence;
- Assist the seller to signing and closing the deal.



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Challenges

Tax Services

How we can help

How we can help

Understanding the relevant tax issues and getting the right structure in place can add significant value to a Romanian real estate investment and is often a critical factor for a successful deal.

Our dedicated team of experienced real estate tax advisors:

- Share both local and international experience in advising investors, managers, developers, operators and occupiers in the real estate sector;
- Help in identifying risks and alternatives to property holding structures and debt financing;
- Analysis of investment and exit strategies;

- Provide practical guidance on dealing with the VAT recovery issues commonly encountered by property developers and investors in Romania;
- Provide practical advice on the optimal VAT treatment applicable to real-estate transactions, under various circumstances (e.g. VAT exempt versus subject to VAT);
- Provide practical advice on real-estate specific day-to-day VAT issues (e.g. application of the correct VAT rate, management fees, recharge of utilities, collaterals, pro-rata computations, retroactive VAT adjustment etc.);
- Assist you in identifying and managing the tax risks of investing and operating in the current competitive market environment.



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Challenges

How we can help

Valuation Services

How we can help We have a dedicated team of experienced real estate valuers that can provide a comprehensive array of valuation services and have the technical expertise, breadth and depth of industry knowledge to deliver complex arrangements. We are ready to offer the following services:

- Value analysis for financial reporting purposes in compliance with local and International Financial Reporting Standards and local and International Valuation Standards;
- Valuation for tax purposes; In compliance with the Romanian Fiscal Code, a revaluation of a building every three years maximizes the possible tax benefits.

- Develop value analysis models for real estate focused businesses as well as perform reviews based on agreed upon procedures of existing real estate value analysis models;
- Assist with real estate investment strategy pertaining to developments, acquisitions and disposals of real property;
- Conduct market feasibility studies;
- Develop highest and best use analysis.



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Challenges

Legal Services

How we can help

D&B David si Baias has a dedicated team of experienced real estate layers that provide top services in the real estate sector:

Real Estate Transactions

- Legal transaction support for real estate transactions (purchases / sales), drafting of contractual documentation and negotiation assistance;
- Performing title checks and legal due diligence analysis over real estate properties and business;
- Structuring complex transactions.

Constructions

- Legal advice during the development / construction of real estate projects and assistance in drafting and negotiating of construction contracts (including FIDIC);
- Legal advice in connection with the norms of urbanism and spatial planning, building permits and authorizations, reception, etc.;
- Drafting various contracts in connection with the development of real estate projects such as: service contracts, site management, architecture, mortgage, etc ;

Leases

- Drafting and negotiating lease agreements for commercial, office, industrial and logistics spaces;
- Legal advice on complex issues (indexation of rent, common expenses, arrangements, termination, etc.)

Real estate financing

- legal assistance for financing and refinancing real estate projects, reviewing and drafting documentation and assistance with negotiations;

Special projects

- Structuring the acquisitions of distressed assets and acquisitions within the insolvency procedure;
- Legal assistance regarding joint ventures and other types of partnerships specific for real estate investments;
- Legal assistance regarding the establishment, modification and operation of industrial parks.



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