

Romania

Anca Grigorescu and Cristina Randjak
bpy GRIGORESCU

www.practicallaw.com/2-502-1529

TAX AUTHORITIES

1. What are the main authorities responsible for enforcing taxes on corporate transactions in your jurisdiction?

The tax authority responsible for enforcing taxes on corporate transactions in Romania is the National Agency for Fiscal Administration (*Agenția Națională de Administrare Fiscală*) (ANAF).

ANAF is regulated by the Ministry of Finance and carries out enforcement action through:

- The General Department for Public Finances of Bucharest.
- Local general departments for public finances (one in each county).

2. Is it possible to apply for tax clearances or obtain guidance from the tax authorities before completing a corporate transaction? If yes, provide brief details, including whether clearance or guidance is binding.

ANAF provides non-binding guidance in respect of the accurate application of the Romanian fiscal legal provisions, either on request of the taxpayer, or on its own initiative.

In addition the taxpayers can obtain the following binding advance tax rulings from ANAF:

- **Advance tax solutions (*soluție fiscală individuală anticipată*).** This sets out the fiscal consequences of certain situations described by the taxpayer that may arise in future. Taxpayers typically apply for this individual advance tax ruling when the relevant legal provisions are unclear, or their proposed activity is highly complex. Before filing a request for an advance tax solution, the taxpayer can apply in writing for a preliminary discussion. Following the preliminary discussion, ANAF will establish the number of tax solutions necessary to properly regulate the taxpayer's future fiscal situation. To request an advance tax solution, the taxpayer must file:
 - a standard request form, containing the taxpayer's identification data;
 - documents illustrating the taxpayer's present and future activities; and
 - a detailed presentation of the facts in relation to which the advance tax solution is required.

The fee for an advance tax solution is EUR1,000 (about US\$1,385), paid in Romanian new leu, at the exchange

rate established by the National Bank of Romania at the payment date.

An advance tax solution will be issued within 45 days from the application date. If additional information or documents are required, this term may be extended, by a term equal to the period between the request and response date.

- **Advance pricing agreements (*acord de preț în avans*).** This determines the transfer pricing rules that will apply during a fixed period of time to transactions between affiliated taxpayers. An advance pricing agreement can be modified following the request of the taxpayer or ANAF, but only with the taxpayer's agreement.

The fees for issuing and modifying an advance pricing agreement are as follows:

- for large taxpayers (as defined by law): EUR20,000 (about US\$27,715) for issue and EUR15,000 (about US\$20,786) for modification;
- for other taxpayers: EUR10,000 (about US\$13,857) for issue and EUR6,000 (about US\$8,314) for modification.

If the consolidated value of the transactions exceeds EUR4 million (about US\$5.5 million), or the taxpayer becomes a large taxpayer (as per the Romanian legislation) during the term of the agreement, the fees will be the ones established for large taxpayers.

An advance pricing agreement is issued for a maximum of five years, but can be extended beyond this. The issue term is typically:

- 12 months for advance pricing agreements issued by the Romanian authorities; and
- 18 months for advance pricing agreements issued by the Romanian authorities in conjunction with other tax authorities.

Either of these binding advance tax rulings becomes non-binding if:

- The taxpayer fails to observe its terms and conditions.
- The taxpayer does not agree with it, and notifies the tax authority accordingly within 15 days from its communication.
- The substantial fiscal provisions on which the advance tax ruling is based are amended.

In addition, if the request for an advance ruling is rejected for any reason, the taxpayer is entitled to fee reimbursement.

MAIN TAXES ON CORPORATE TRANSACTIONS

3. What are the main transfer taxes and/or notaries' fees potentially payable on corporate transactions? In relation to each tax/fee identified, explain briefly:

- Its key characteristics.
- What triggers it.
- Who is liable.
- The applicable rate(s).

Registration fees

Corporate transactions can give rise to various registration requirements. If the acquisition or disposal of shares alters a company's share structure, for example, in relation to limited liability companies, this change must be registered with the National Trade Register Office. This gives rise to registration fees, which are usually minimal but depend on the nature of the transaction. The company to which the change relates is liable to pay the fees.

Notaries' fees

Certain transactions must be notarised, either on agreement by the parties or as required by law. Notaries' fees will therefore apply. Notaries' fees vary depending on the type and nature of the transaction. The parties can agree how to settle these fees. Typically, agreements relating to corporate transactions do not require notarisation. For example, notaries' fees typically arise on the transfer of immovable property (see *Question 14, Notaries' fees*), but as a rule will not arise during a share sale (see *Question 11, Advantages*).

4. What are the main corporate and/or capital gains taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:

- Its key characteristics.
- What triggers it.
- Who is liable.
- The applicable rate(s).

Corporate profit tax (CPT)

CPT is charged on the net profits of:

- Romanian legal entities.
- Foreign legal entities in certain circumstances (see *Question 7, CPT*).
- Romanian resident individuals associated with Romanian legal entities, in relation to the income they obtain in Romania and abroad from an association without legal personality.

The standard rate for CPT is 16%. This applies to the taxable profit, that is, the difference between:

- The income obtained from any source by the taxpayer during one fiscal year, less any non-taxable income.

- The expenses incurred in realising this income during one fiscal year, plus any non-deductible expenses.

In April 2009, minimum CPT rates were introduced that apply to all Romanian and foreign legal entities that conduct business through a permanent establishment in Romania, irrespective of whether they have made any profit. Minimum CPT is charged annually, according to the taxpayer's income during the previous fiscal year. For an annual income of:

- Below RON52,001 (about US\$17,414): minimum CPT is RON2,200 (about US\$737).
- From RON52,001 to RON215,000 (about US\$72,000): minimum CPT is RON4,300 (about US\$1,440).
- From RON215,001 (about US\$72,000) to RON430,000 (about US\$144,000): minimum CPT is RON6,500 (about US\$2,177).
- From RON430,001 (about US\$144,000) to RON4.3 million (about US\$1.4 million): minimum CPT is RON 8,600 (about US\$2,880).
- From RON4,300,001 (about US\$1.4 million) to RON21.5 million (about US\$7.2 million): minimum CPT is RON11,000 (about US\$3,683).
- From RON21,500,001 and RON129 million (about US\$43.3 million): minimum CPT is RON22,000 (about US\$7,367).
- Over RON129 million: minimum CPT is RON 43,000 (about US\$14,400).

If the CPT due by a taxpayer exceeds the minimum CPT rate, the taxpayer pays the higher rate.

There are certain exemptions from CPT.

5. What are the main value added and/or sales taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:

- Its key characteristics.
- What triggers it.
- Who is liable.
- The applicable rate(s).

Value added tax (VAT)

Generally, all companies with operations in Romania with an annual turnover of at least EUR35,000 (about US\$48,502) are subject to VAT of 19%. VAT applies to the taxable base amount of transactions carried out by the business in question.

Specific VAT schemes apply to certain businesses, including:

- Jewellery dealers.
- Travel agencies.
- Second-hand goods dealers.

Reduced rates apply to certain transactions, for example:

- VAT only applies at 9% to:
 - services related to the access into museums, exhibitions and so on;
 - the delivery of books, magazines, orthopaedic products, medicines; and
 - accommodation in hotels or similar facilities;
- VAT only applies at 5% to the delivery of housing facilities as part of social policy, under specific terms and conditions.

There are also certain exemptions from VAT for certain products and services, and for certain taxpayers (see *Question 15, VAT*).

VAT can be deducted or reimbursed, under specific terms and conditions.

Excise duties

Excise duties are imposed on the production in, or import into, the European Union (EU) of certain products, including:

- Alcohol.
- Tobacco.
- Energy-related products.
- Energy.
- Coffee.

Excise duties rates are fixed per unit of measurement, for example, kilogrammes, litres or tonnes.

6. Are any other taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:

- Its key characteristics.
- What triggers it.
- Who is liable.
- The applicable rate(s).

Customs duties

Customs duties apply to the import or transit of certain goods. Rates typically range from 0% to 30% depending on the goods' value at ad valorem rates. Custom clearances and exemptions apply to certain categories of goods.

Typically, the person declaring the goods at the customs is liable to pay customs duties.

7. In what circumstances will the taxes identified in Questions 3 to 6 be applicable to foreign companies (in other words, what "presence" is required to give rise to tax liability)?

Registration fees

Foreign companies selling shares owned in a Romanian company are subject to registration duties in Romania (see *Question 3, Registration fees*).

Notaries' fees

Notaries' fees apply regardless of whether the foreign company has any presence in Romania (see *Question 3, Notaries' fees*).

CPT

A foreign legal entity is subject to CPT if it (see *Question 4, Corporate profit tax (CPT)*):

- Performs activities through a permanent establishment in Romania.
- Performs activities in Romania through an association without legal personality together with foreign individuals.
- Obtains income from selling participation rights in a Romanian company.
- Obtains income from or in relation to Romanian real estate. This includes:
 - income from the lease or the transfer of the right to use Romanian real estate;
 - proceeds from the transfer of any rights over Romanian real estate, including proprietary rights;
 - proceeds from the transfer of the participation rights in a company, if at least 50% of the value of the company's fixed assets are Romanian real estate (either held directly or through companies acting as agents);
 - income from exploiting Romanian natural resources, including proceeds from the transfer of any right in connection with these natural resources.

Generally, the seller must pay CPT that arises on its income from selling participation rights in a Romanian company or in relation to Romanian estate. However, the buyer is liable if it is a Romanian company (or a foreign company with a permanent establishment registered in Romania for fiscal purposes at the time of the transaction).

VAT

Any foreign company can incur VAT if it performs certain transactions (see *Question 5, VAT*).

For certain transactions performed on or in relation to Romanian territory, foreign companies can be required to either:

- Register directly for VAT purposes in Romania (for EU entities).
- Appoint a fiscal representative to comply with its obligations under the Romanian law (non-EU entities).

Excise duties

Excise duties may apply if a foreign company produces or imports products in the EU (see *Question 5, Excise duties*).

Customs duties

Foreign companies can be liable to pay customs duties when importing goods into Romania (see *Question 6, Customs duties*).

DIVIDENDS

8. Is there a requirement to withhold tax on dividends or other distributions? If yes, provide brief details.

Romanian companies that pay out dividends must withhold tax on dividends. The tax rates are as follows:

- 16% for dividends distributed to Romanian individuals, foreign companies or non-resident individuals.
- 10% for dividends distributed to another Romanian company. This does not apply if the recipient of the dividends owns at least 15% (10% starting in the year 2009) of the participation rights in the company distributing the dividends, for the two years preceding the distribution.
- 10% for dividends distributed to a company or permanent establishment based in either:
 - the EU; or
 - a European Free Trade Association country (Iceland, Liechtenstein or Norway).

An exemption may apply to this tax if certain requirements are met, relating to:

- The company's structure.
- The company's affiliation.
- How long one company has held shares in another.

SHARE ACQUISITIONS AND DISPOSALS

9. What taxes are potentially payable on a share acquisition/ share disposal?

Registration fees

If the acquisition or disposal of shares alters a company's share structure, for example, in relation to limited liability companies, this change must be registered with the National Trade Register Office and a registration fee will apply (see *Question 3, Registration fees*).

CPT

Income obtained by a company from a share disposal is subject to CPT (see *Questions 4, CPT and 7, CPT*).

VAT

The transfer of shares is exempt from VAT.

10. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

There are no exemptions or reliefs available to the liable party.

11. Please set out the tax advantages and disadvantages of a share acquisition for the buyer.

Advantages

The key tax advantages of a share acquisition are that:

- Assets previously acquired by the target company continue to depreciate after the acquisition.
- Any losses of the target company incurred before the acquisition can be used for tax off-setting purposes after the acquisition.
- A share sale is exempt from VAT (see *Questions 5, Value added tax (VAT), 7, VAT and 9, VAT*).
- No notaries' fees apply to a share acquisition, irrespective whether the target company holds real estate (see *Question 3, Notaries' fees*).
- No CPT on real estate transfers applies to a share acquisition, irrespective of whether the target company owns Romanian real estate (see *Questions 4, Corporate profit tax (CPT) and 7, CPT*).
- Registration fees only apply to the extent that the target company's share structure is altered (see *Questions 3, Registration fees and 9, Registration fees*).

Disadvantages

The buyer of a company's shares takes over the tax liabilities of the acquired company.

12. Please set out the tax advantages and disadvantages of a share disposal for the seller.

Advantages

The key advantage of a share disposal for the seller is that all its tax liabilities in connection with the target company can be transferred to the buyer.

Disadvantages

The seller should be aware that the income that it receives from a share disposal can generate profit, which will be subject to CPT (see *Question 4, Corporate profit tax (CPT)*).

13. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

Parties typically use mergers as this can create tax neutrality, depending on the purpose of the specific transaction (see *Questions 19 to 21*).

ASSET ACQUISITIONS AND DISPOSALS

14. What taxes are potentially payable on an asset acquisition/ asset disposal?

Registration fees

The transfer of assets, for example, real estate, may be subject to registration fees (see *Question 3, Registration fees*).

Notaries' fees

Notaries' fees can arise if the asset acquisition involves the transfer of immovable assets (please refer to *Question 3, Notaries' fees*).

CPT

Capital gains derived by a Romanian company from the sale of real estate assets are subject to CPT of 16% at the time of the sale (see *Question 4, Corporate profit tax (CPT)*).

VAT

Asset deals are subject to VAT (see *Question 5, Value added tax (VAT)*).

Excise duties

Depending on the assets that are being transferred, excise taxes may apply (see *Question 5, Excise duties*).

Customs duties

If the asset sale involves an import of goods into Romania, the importer will typically pay customs duties (see *Question 6, Customs duties*).

15. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

VAT

There are statutory exemptions from VAT:

- Certain transactions performed in Romania, for example, the delivery of buildings.
- Exports and other similar transactions, for example:
 - the delivery of goods shipped or transported outside the EU;
 - the delivery of goods within the EU by a person who provides a valid VAT code issued by the fiscal authorities of its EU member state.

In addition, VAT does not apply to share sales (see *Question 11, Advantages*).

Customs duties

Certain assets are exempt from customs duties.

16. Please set out the tax advantages and disadvantages of an asset acquisition for the buyer.

Advantages

The key advantage of an asset acquisition for the buyer is that unlike in a share sale, it does not take over the seller's tax liabilities.

Disadvantages

The main disadvantages of an asset acquisition for the buyer are that:

- The depreciation of an asset registered by the seller cannot be transferred to the buyer together with the asset. This also applies to any losses incurred by the seller in relation to the asset, which in a share sale could be offset by the buyer (see *Question 11, Advantages*).
- Registration and notaries' fees may apply, depending on the types of asset transferred (see *Question 3*).

- Generally, the acquisition of an asset will be subject to VAT (see *Question 5, Value added tax (VAT)*).

17. Please set out the tax advantages and disadvantages of an asset disposal for the seller.

Advantages

The advantage of an asset disposal for the seller is that the seller is in principle liable for any registration and notaries' fees that arise on sale of the asset (see *Question 16*).

Disadvantages

The key disadvantages of an asset disposal are that:

- The seller cannot ensure the transfer of all tax liabilities in connection with the company to the buyer.
- The income obtained by the seller from the asset disposal could generate profit, which will be subject to CPT (see *Question 4, Capital profits tax (CPT)*).

18. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

In the case of a transfer of real estate, the parties effect the transaction by using a special purpose vehicle (SPV) holding title to the real estate. Instead of the real estate being sold directly, the shares in the SPV are sold.

LEGAL MERGERS

19. What taxes are potentially payable on a legal merger?

Registration fees

Mergers must be registered with the National Trade Registry, so registration fees will apply (see *Question 3, Registration fees*).

Notaries' fees

Notaries' fees can apply. For example if the merged company purchases an immovable asset from one of the original companies, this purchase agreement will be notarised. The notaries' fees are likely to be 1% of the value of the transferred asset. See *Question 3, Notaries' fees*.

CPT

In principle, mergers are tax neutral. However, an asymmetric merger can generate tax liability, depending on its structure. CPT can arise in the same way as during share sale (see *Question 9, CPT*).

20. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

If a Romanian legal entity transfers assets and liabilities to another Romanian legal entity (through a merger, spin-off or other company reorganisation), and the latter holds at least 15% (10%

starting in 2009), of the participation rights in the first legal entity, the cancellation of these participation rights is not subject to CPT (see *Question 8*).

The transfer of companies' assets and liabilities because of a merger is VAT exempt (see *Question 11, Advantages*).

21. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

Once a merged company is created, the losses of an original company cease to exist and cannot be carried forward. Therefore, if a merger involves a loss-making company and a profit-making company, the parties will structure the merger so that the profit-making company is merged into the loss-making company, rather than the other way around.

Asymmetric mergers are usually avoided, if possible, because of their potential tax liability (see *Question 19, CPT*).

JOINT VENTURES

22. What taxes are potentially payable on establishing a joint venture company (JVC)?

Registration fees

The creation of a JVC does not trigger the existence of a new and separate taxpayer. However, a JVC must be registered with ANAF before it can perform any activity, which can incur a registration fee.

CPT

Generally, companies forming a JVC are subject to CPT, individually, in respect of the income generated by their respective activity (see *Question 4, Corporate profit tax (CPT)*). One of the joint venture partners is appointed as being responsible for meeting the JVC's CPT obligation, and therefore is liable to pay CPT on behalf of all the joint venture partners.

23. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

There are no exemptions or reliefs that apply to JVC tax liability.

24. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

There are no specific structures commonly used for minimising taxes in relation to JVCs. However, a JVC could be established abroad, for example, the UK, to take advantage of a more flexible tax system.

COMPANY REORGANISATIONS

25. What taxes are potentially payable on a company reorganisation?

In principle, company reorganisations are tax neutral. If a company is reorganised through a spin-off, share sale or asset sale, the transfer of its assets and liabilities is not subject to CPT and the assets continue to depreciate. However, if the reorganisation takes place as a merger, CPT can arise (see *Question 19, CPT*).

26. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

See *Question 20*.

27. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

For company reorganisations carried out as share sales, asset sales and legal mergers, see *Questions 13, 18 and 21*.

RESTRUCTURING AND INSOLVENCY

28. What are the key tax implications of the business insolvency and restructuring procedures in your jurisdiction?

VAT

Before 1 January 2010, an insolvent taxpayer had to apply reverse charge rules when issuing an invoice. Since 1 January 2010, these rules no longer apply. Therefore, if an insolvent taxpayer issued partial or advance invoices during 2009 and VAT on these invoices becomes due after 1 January 2010, the taxpayer must reassess the partial or advance invoices according to reverse charge rules. The taxpayer must pay VAT on the difference between the value of delivered goods or supplied services and the amounts invoiced during 2009.

SHARE BUYBACKS

29. What taxes are potentially payable on a share buyback?

Share buybacks are not common in Romania.

30. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

See *Question 29*.

31. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

See *Question 29*.

PRIVATE EQUITY FINANCED TRANSACTIONS: MBOs

32. What taxes are potentially payable on a management buyout (MBO)?

Private equity financed transactions are not common in Romania.

33. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

See *Question 32*.

34. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

See *Question 32*.

REFORM

35. Please summarise any proposals for reform that will impact on the taxation of corporate transactions.

Since April 2009, minimum CPT rates have applied (see *Question 4, Corporate profit tax (CPT)*). This has had a severe impact on Romanian business, because many small companies have decided to suspend or even cease trading to avoid the tax. Therefore, it is expected that these minimum CPT rates will be revised. The government has already initiated discussions for a legislative project for reducing the categories of taxpayers to which the minimum CPT should apply.

The Romanian parliament is currently reviewing a VAT reform proposal, under which VAT payers will only have to pay VAT on an invoice when cashing in the amount specified in that invoice, regardless of the invoice issue date.

CONTRIBUTOR DETAILS

Anca Grigorescu and Cristina Randjak

bpv GRIGORESCU

T +40 21 264 16 50

F +40 21 264 16 60

E anca.grigorescu@bpv-grigorescu.com

cristina.randjak@bpv-grigorescu.com

W www.bpv-grigorescu.com

PLC Corporate

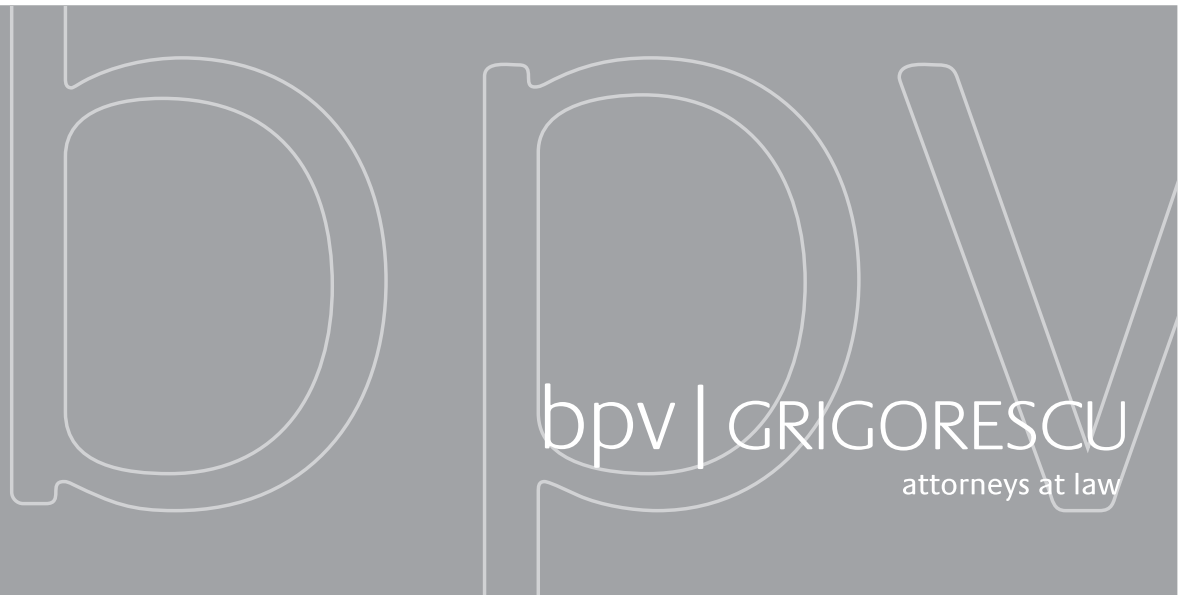
PRACTICAL LAW COMPANY



“We at European Legal Solutions LLP have found the package provided by PLC to be a complete solution, from the daily update service to the standard documents with guidelines. In particular the ^{PLC}FirmStyle and ^{PLC}FastDraft enhancements greatly assist in the painless preparation of documents in our house style.”

Darren Dale, Principal, European Legal Solutions LLP.

PLC Corporate is the essential know-how service for corporate lawyers. Never miss an important development and confidently advise your clients on law and its practical implications. www.practicallaw.com/about/corporate



bpv | GRIGORESCU
attorneys at law

In Excellent Partnership[®] in Romania and in Central and Eastern Europe

bpv | GRIGORESCU is a prominent independent law firm in Romania and a founding member of the alliance of independent law firms bpv | LEGAL, providing high-quality services to clients throughout Central and Eastern Europe.

We have a thorough approach to each practice area and aim to provide the most exhaustive advice. bpv | GRIGORESCU advises comprehensively in the areas of:

Banking and Finance, Corporate and M&A, Dispute resolution, Employment, EU and Competition Law, Intellectual Property, Procurement, Energy and Regulatory, Real Estate and Construction, Tax.

We believe that what distinguished us from other firms is our thorough attitude to legal advice, supported by our energy and commitment towards building long-term business relationships with our clients. We are excellence-bound in every aspect of our practice.

www.bpv-grigorescu.com

bpv | GRIGORESCU