

Romania

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TAX AUTHORITIES

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

The tax authority responsible for enforcing taxes on corporate transactions in Romania is the National Agency for Fiscal Administration (*Agencia 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 or necessary to apply for tax clearances from the tax authorities before completing a finance transaction? If so, briefly describe:

- The circumstances in which clearance may be claimed.
- Whether obtaining clearance is mandatory or optional.
- The procedure for obtaining clearance.

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.

3. Is it necessary to disclose the existence of any finance transactions to the tax authorities? If so, briefly explain:

- The circumstances in which disclosure is required.
- The manner and timing of disclosure.

The existence of a finance transaction must be disclosed to the tax authorities on their request. This is likely to happen during a tax audit.

TAXES ON CORPORATE LENDING/BORROWING

4. What are the main corporate taxes potentially chargeable on interest and other amounts receivable under a loan? In each case, explain briefly:

- Its key characteristics.
- How it is calculated.
- How it is triggered.
- The applicable rate(s).

Corporate profit tax (CPT)

CPT is charged on the net profits of Romanian legal entities, and certain foreign legal entities. 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.

CPT will apply to the profits of Romanian-resident legal entities arising from interest, because interest received on a loan forms part of a company's income (*Fiscal Code*). Different rules apply in case of non-residents.

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 a 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.

5. What corporate tax reliefs are available for borrowing costs (including interest and other amounts payable under a loan)? In each case, explain briefly:

- Its key characteristics.
- How it is calculated.
- How it is triggered.
- The applicable rate(s).

CPT

Interest payable under a loan counts as expenses for tax purposes, and can therefore be taken into account when calculating profit tax, under certain circumstances.

If the loan is granted by:

- A banking institution, leasing company (in relation to its leasing operations), credit institution or financial non-banking institution, the interest is fully deductible.
- Any other entity, the deductibility of interest is limited to:
 - the National Bank of Romania's reference interest rate, for loans granted in Romanian new lei;
 - 6%, for loans granted in a foreign currency.

However, if a borrower's debt to equity ratio (*Fiscal Code*) exceeds three, its interest expenses are not deductible, but can be carried forward to following financial years until they have been deducted in full.

Losses incurred by unfavourable exchange rate differences in relation to loans received in a foreign currency are treated in a similar manner to interest expenses (*see above*).

6. What corporate, transfer, stamp or other taxes are payable on the transfer of a debt under a loan? In each case, explain briefly:

- Its key characteristics.
- How it is calculated.
- How it is triggered.
- Who is liable.
- The applicable rate(s).

Corporate profit tax

CPT applies to any profit arising out of any loan transfer. (*see Question 4, Corporate profit tax (CPT)*).

Registration fees

Registration fees can apply in certain instances. For example, if a finance transaction alters a company's share structure, 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. For example, transfers of immovable property are typically notarised. Notaries' fees will therefore apply. Notaries' fees vary depending on the transaction. The parties can agree how to settle these fees.

Stamp duty

Stamp duty can arise, depending on the type and the nature of the transaction. The parties can agree how to settle these fees.

7. Is there withholding tax on interest or any other payments under a loan? If so, provide brief details of:

- When it applies.
- The applicable rate(s).
- Any exemptions.

Withholding tax

Withholding tax applies to interest payments received by non-resident and resident entities. The party paying the interest must withhold the tax.

Generally, withholding tax is 16%. However, this is reduced to 10% (and 0% from 1 January 2011) for income arising from interest paid by a Romanian company, provided that the beneficiary of the income is a company or permanent establishment that:

- Is based in the EU or a European Free Trade Association country (Iceland, Liechtenstein or Norway); and
- Has held at least 25% of the participation rights in the paying company for the two years preceding the interest payment date.

For a comparative summary of withholding tax on interest, see table, *Withholding tax on interest on corporate debt* in this handbook.

8. Do any particular tax issues arise on the provision of a guarantee? If so, provide brief details.

The same tax issues arise on provision as a guarantee as for payments of interest (see *Question 6*).

BOND ISSUES

9. For corporate taxation purposes, are bonds treated any differently from standard corporate loans? If so, provide brief details of the differences, referring to *Questions 4, 5, 7 and 8* as appropriate.

Income related to long-term bonds (for example, from the gratuitous transfer, assignment, withdrawal or liquidation of financial investments) evaluation is taken into account when calculating taxable profit.

However, expenditure arising from long-term bonds is not deductible, other than the expenses incurred in their sale or assignment.

10. What stamp, transfer or similar taxes are payable on the issue and/or transfer of a bond? In each case, briefly explain:

- Its key characteristics.
- How it is calculated.
- How it is triggered.
- Who is liable.
- The applicable rate(s).

No stamp, transfer or similar taxes apply to the issue and/or transfer of a bond.

11. Are any exemptions available? If so, provide brief details.

There are no applicable exemptions.

PLANT AND MACHINERY LEASING

12. What are the basic rules for enabling the lessor or lessee of plant and machinery to claim capital allowances/tax depreciation?

Movable and immovable assets are subject to tax depreciation if they:

- Are used in production, goods delivery or services supply.
- Have a value over RON1,800 (about US\$602).
- Have a length of use that exceeds one year.

Who can claim depreciation depends on how the leasing is classified. Romanian legislation classifies leasing into two types:

- **Financial leasing.** In the case of financial leasing, the lessor can claim tax depreciation, and the lessee can deduct the leasing rate. A lease agreement is considered a financial lease agreement if:
 - the risks and benefits of the ownership right over the asset transferred by the lease agreement are also transferred when the lease agreement enters into force;

- the lease agreement expressly stipulates that there is a transfer of ownership; and
 - the lessee has an option to purchase the asset at the moment of the expiry of the agreement, and the residual value of the asset, expressed in percentages, is at least equal to the difference between the asset's usual maximum functioning term and the term of the lease agreement;
 - the lease period (including any possible extensions) exceeds 80% of the usual maximum functioning term of the asset, as referred to in the lease agreement; and
 - the full amount of the leasing rate, other than ancillary expenses, is at least equal to the asset's initial value.
- **Operational leasing.** In the case of operational leasing, the lessee can claim tax depreciation, and the lessor can deduct the leasing rate.

Operational leasing refers to any lease agreement that transfers the risks and benefits of the ownership rights to the lessee, except for the risk of capitalisation of the asset at its residual value (the remaining value after the deduction of all leasing rates).

Special tax depreciation rules govern sale and leaseback of assets. In case of the financial leasing, the lessee continues to benefit from the tax depreciation in this situation.

13. What is the rate of capital allowances/tax depreciation; does it depend on the type of assets?

The tax depreciation rate depends on the type of assets and the type of tax depreciation.

The law establishes a catalogue of regular use periods for all types of asset. When applying a certain rate of tax depreciation, the taxpayer must opt for a determined depreciation period within the legally established time period, and observe this time period until the asset has fully depreciated.

There are three types of tax depreciation:

- **Linear-balance depreciation.** This is determined by dividing the registration value of the asset to its ordinary use period.
- **Declining-balance depreciation.** This is calculated by multiplying the depreciation ratio by:
 - 1.5 if the ordinary use period is between 2 and 5 years;
 - 2 if the ordinary use period is between 5 and 10 years; and
 - 2.5 if the ordinary use period exceeds 10 years.
- **Accelerated-balance depreciation.** This is a maximum of 50% in the first year. In the following years, the depreciation ratio is calculated in a similar manner with the linear-balance depreciation ratio, considering the remaining value and the remaining use period.

14. Are there special rules for leasing to lessees that do not carry on business in your jurisdiction?

There are no special rules for leasing to lessees that do not carry on business in Romania.

15. How are rentals taxed?

The income arising from rentals is taken into account when calculating CPT (see *Question 4, Corporate profit tax (CPT)*).

16. Is a ruling or clearance necessary or common? If so, provide brief details.

In practice, contracts often include a mixture financial leasing, operational leasing and rental clauses. The tax treatment of the contract will can vary considerably depending on how these clauses are assessed (see *Questions 12 and 15*).

Therefore, taxpayers often ask for guidance from the tax authorities in relation to how the contract will be qualified. Typically, taxpayers will ask for non-binding guidance rather than a binding advance tax ruling, because advance tax rulings are rarely issued in practice. See *Question 2*.

RESTRUCTURING DEBT

17. What is the tax treatment of the borrower and the lender if interest or capital is unpaid or deferred?

Losses incurred when deleting uncertain or disputed debts from accounting documents are not deductible in relation to the amount that is not covered by reserves.

If uncertain or disputed debts are covered by reserves, they are deductible if they:

- Were incurred on or after 1 January 2004.
- Have been due for more than 270 days.
- Have not been guaranteed by another person or entity.
- Are owed by an entity that is affiliated to the taxpayer.
- Were included in the taxpayer's taxable income.

The reserves are established at a level of 30% of the debt.

As an exception, unpaid debts are deductible in the following cases:

- A bankruptcy procedure is terminated by means of a court judgment.
- The borrower, a natural person, has died and the debt cannot be recovered from his heirs.
- The borrower is dissolved or the debtor is liquidated.
- The borrower has major financial difficulties that affect its entire patrimony.

18. What is the tax treatment of the borrower and lender if a loan is:

- Written off or released (wholly or partly)?
- Replaced by shares in the borrower (debt for equity swap)?

If a loan is written off, expenditures incurred by the lender in relation to the loan are no longer deductible. However, the borrower registers income corresponding to the unpaid loan. In addition, a tax reassessment will be necessary (see *Question 2*).

A debt for equity swap does not generate a different tax treatment, but a tax reassessment will be necessary (see *Question 2*).

SECURITISATION**19. Briefly explain the key features of the tax regime applicable to securitisations, including details of any specific tax rules that apply or issues that arise in relation to securitisations.**

There is no special tax regime applicable to securitisations.

REFORM**20. Please summarise any proposals for reform that will impact on the taxation of finance transactions described above.**

No proposals for reform have been made public that will impact on the taxation of finance transactions described above.

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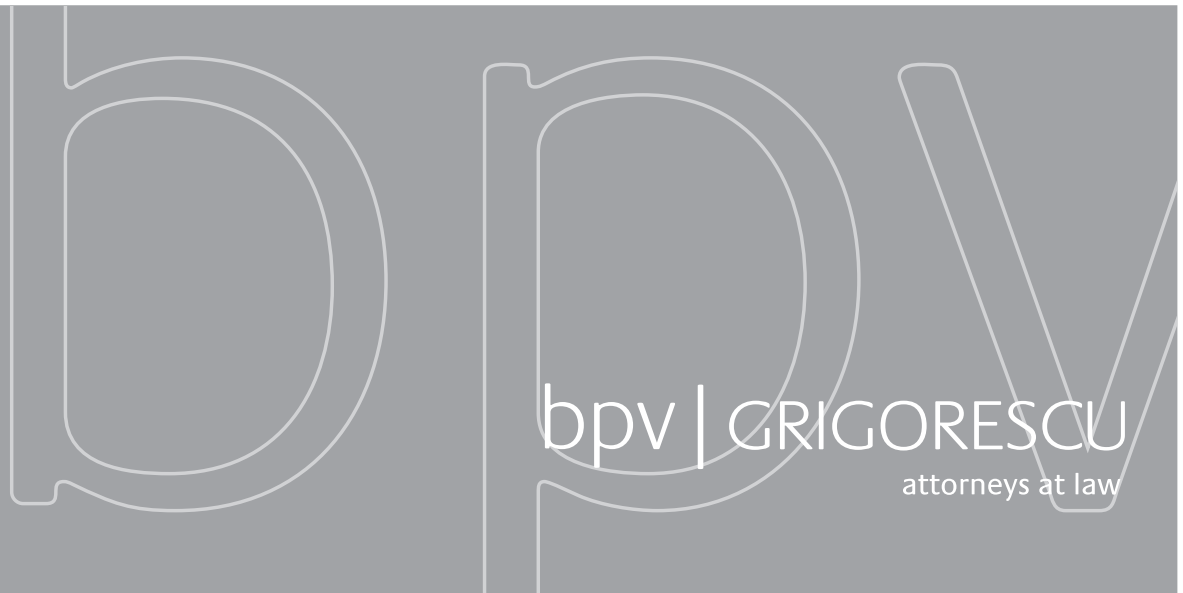
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