

ROMANIA

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AT A GLANCE

Name of the tax	Value Added Tax
Local name	Taxa pe Valoare Ad•ugat•
Date of introduction	1 January 1993
Date of EU accession	1 January 2007
Administered by	Ministry of Finance (www.mfinante.ro)
<u>VAT rates</u>	
Standard	24%
Reduced	9% and 5%
Other	Exempt with and without credit supplies
VAT Number format	RO 12345678
VAT return periods	Monthly if the achieved turnover exceeds the threshold of EUR 100,000; quarterly if the achieved turnover is under the EUR 100,000 threshold
Thresholds registration	EUR 65,000
Recovery of VAT by non established businesses	Yes

HISTORY OF VAT

Introduced in Romania through Order no. 3/1992, approved by Law no. 130/19 December 1992, applicable as of 1 January 1993.

VAT rate evolution:

1 July 1993 - 31 December 1994 – 18%

1 January – 31 January 1998 – 18%

1 February 1998 - 31 December 1999 – 22%

1 January 2000 – 1 July 2010 – 19%

1 July 2010 – present – 24%

SCOPE OF VAT

The Value Added Tax (VAT) is an indirect tax borne by the final consumer of goods/ services. It was introduced for the first time in France in 1954 and the model was quickly taken over by other countries, including Romania. A percentage of the VAT collected amongst Member States goes to the EU budget as income.

Supplies of goods or services with the place of supply in Romania are subject to Romanian Value Added Tax. Supply includes all forms of supply. It is not restricted to the provision of goods and services by way of sale and may equally apply to other forms of transaction. Supply with the place of taxable supply in Romania is either a taxable or VAT-exempt supply. However, certain actions carried out for no consideration are deemed to be supplies: e.g., certain free-of-charge supplies of goods, private use of business assets.

REGISTRATION

Romanian entities

Romanian entities carrying out economic activities in excess of the small undertakings threshold of EUR €65,000 (approximately RON 220,000) are required to register and account for Romanian VAT. If the annual turnover is below EUR 65,000 such entity is not required to register for VAT purposes.

However, the taxable person may opt for the application of the normal tax regime.

If a Romanian entity exclusively carries out VAT-exempt operations without deduction right, it cannot register for VAT purposes.

Also, if a taxable person (either Romanian or non-resident) performs intra-Community acquisitions/supplies of goods in Romania, it is required to register for VAT purposes before performing such transactions.

On a related note, if a Romanian taxable person performs intra-Community acquisitions/supplies of services in Romania, it is required to register for VAT purposes before performing such transactions.

Non-Romanian entities

Any foreign entity that is neither VAT-established nor VAT-registered in Romania, and performs operations which are taxable from a VAT perspective and which entitle it to VAT deduction, except for

operations for which the customer is liable to settle VAT liability, has to register for VAT purposes in Romania before performing such operations. To deal with its VAT affairs, a foreign entity may either appoint a VAT representative with joint and several liability to the tax authorities (compulsory for non-EU entities), or register directly with the Romanian authorities (option available only for entities from other EU countries).

If a non-Romanian entity is not registered for VAT in Romania but sells and delivers goods from another EU Member State to customers in Romania that are not VAT-registered (distance sales), where the value of those sales exceeds the threshold of EUR €65,000 per year, the non-Romanian entity is required to register and account for VAT in Romania.

If a business is established outside the European Union and performs electronically supplied services for non-taxable customers established in the EU and the effective use and enjoyment of those services takes place in Romania, such entity will have to register for Romanian VAT.

The fine for not registering or late registration for VAT purposes ranges from RON 1,000 to RON 5,000 (i.e. approximately EUR 243 to EUR 1,220). Taxable persons established within the EU that are obliged to register for VAT purposes, have the option to register directly or by appointing a tax representative, whilst taxable persons not established within the EU have the obligation to register in Romania for VAT purposes through a tax representative.

VAT RATES

The Romanian standard VAT rate is 24%.

The following types of goods and services are subject to a reduced VAT rate of 9%:

- entrance fee for visits to castles, museums, memorial houses, historical monuments, architectural and archaeological monuments, zoos, botanical gardens, fairs, exhibitions, cultural events, and cinemas;
- textbooks, books, newspapers, and magazines, except for those exclusively destined for advertising purposes;
- any type of prosthesis, except for dental prostheses;
- orthopaedic products;
- medicines for human and veterinarian use;
- accommodation in hotels or similar facilities, including the rental of lands for camping purposes;
- supply of II types of bread, as well as other bakery products;
- supply of white flour, brown flour, rye flour;
- supply of wheat and rye.

On 15 December 2008, a reduced VAT rate of 5 % was introduced for the sale of housing units which:

- are designed for retirement homes for the elderly or pensioners, children's homes, as well as for centres dedicated to children with special needs;
- have a usable surface area of up to 120 square meters (and the land on which they are built does not have a surface area exceeding 250 square meters), and a value of less than RON 380,000. The reduced VAT rate of 5 % may be applied only once for each individual or family, meaning that an individual or couple may not benefit from a 5 % VAT rate if they previously purchased a residence which was subject to this 5 % VAT rate; and
- are supplied to city halls to be used for social housing purposes.

Exports are VAT-exempt with deduction right (the taxpayer is allowed to deduct the input VAT related to the export operation).

Services ancillary to export operations (such as international transport of merchandise, loading and unloading of goods, etc.) are also VAT- exempt with deduction right.

PLACE OF SUPPLY RULES

Goods

In general, if goods are exported to a customer (business or private) outside the EU, then no VAT is charged. Goods exported from Romania are VAT-exempt with deduction right, i.e. the taxpayer may deduct the input tax incurred with respect to exported goods. As for intra-Community supplies, the seller should make sure that in all cases it keeps proof of dispatch/delivery to support the exemption.

Services

If you are a business established in Romania and supply services to a foreign business customer (B2B), the supply of services is generally taxable in the country of the recipient under the reverse charge mechanism. If, however, you supply services to a private consumer (B2C), the services are generally taxable in the country of the supplier and therefore subject to Romanian VAT.

The following exceptions apply to the B2B and B2C main rules as described above:

- services involving real estate (taxable in the country where the real estate is located);
- restaurant and catering services (taxable in the country where these services are performed; other rules apply if these services are performed on board a ship, aircraft, or train);
- passenger transport (taxable in the country where the transport services are actually performed);
- services with regard to admission to cultural, artistic, sporting, scientific, educational, entertainment, and similar activities, such as fairs and exhibitions, along with ancillary services (taxable in the country where those activities are physically carried out);
- short-term hiring of transportation vehicles (for ships maximally 90 days/for other means of transport maximally 30 days; taxable in the country where the vehicle is actually put at the disposal of the customer).

The following exceptions apply to the B2C main rule:

- intermediary services (taxable in the country where the underlying transaction is taxable);
- intra-Community transport of goods (taxable in the country of departure).

For other types of goods transported for non-taxable customers, the place of service is the place where the transportation is actually performed.

- transportation-related services (taxable in the country where the services are physically carried out);
- services involving movable tangible goods (taxable in the country where the activities are actually carried out);
- services performed electronically by a VAT entrepreneur not established in the EU to non-taxable customers (taxable in the country where the service customer is located).

The following services performed for non-taxable customers that are established or resident outside the EU are taxable in the country where the customer is established:

- the transfer of licenses and similar rights;
- advertising services;
- services performed by consultants, as well as data-processing and information-provision services;
- the obligation to refrain, in whole or in part, from pursuing a business activity;

- banking and insurance services;
- supply of staff;
- hiring out of movable property, with the exception of means of transport;
- operating natural gas and electricity-distribution systems;
- telecommunications services;
- radio and television broadcast services;
- electronically performed services.

When goods are imported into Romania from outside the EU by a Romanian VAT-registered entity, payment of import VAT is actually made to the customs authorities, except for taxpayers that applied and obtained certificates for suspension of VAT payment in customs (special procedure provided under law for companies meeting certain criteria).

Also, companies benefiting from VAT exemption on imports of products destined to be onward-dispatched to other EU Member States are required to guarantee the VAT-related amount for the goods, at customs, until they prove to the tax authorities that the goods were actually dispatched to the other EU Member State.

As mentioned above, for services rendered to taxable persons the general rule is that services are taxable in the place where the taxable person acting as such established its business or in the place where a fixed establishment is located, if the services are provided to a fixed establishment.

Generally, if a taxable person buys certain services outside Romania and the services are deemed to be supplied in Romania according to the general rule, it will be required to apply the reverse charge mechanism.

Under the reverse charge mechanism it is required to account for a notional amount of VAT as output tax on the VAT return covering the period in which payments are made and recovering this VAT as input tax on the same return.

If a taxable person can recover all of the VAT, the reverse charge has no cost effect and is a VAT compliance matter only. However, if the taxable person is partly exempt there may be a VAT cost depending on the level of recovery allowed under the partial exemption method.

Reverse charge applies to a range of services, for which the taxable place is Romania when supplied by a taxable person not established in Romania (even though VAT-registered for some types of operations) to a taxable person established in Romania.

The following services are treated as supplied where physically performed and are subject to reverse charge where the supplier is not established for VAT purposes in Romania:

- admission to cultural, artistic, sporting, scientific, educational, entertainment, or similar activities, such as fairs and exhibitions, and where appropriate, supply of ancillary services;
- catering and restaurant services, excepting the services performed on board of ships, airships and trains;
- work on immovable property.

According to the provisions of the Romanian Tax Code as of 1 January 2010 Romania has opted to apply the use and enjoyment rules to the following types of services:

- ancillary transport services, such as loading, unloading, handling and similar services;
- valuation and work on movable tangible property;
- passenger transport and transport of goods, services performed in Romania.

According to the new provisions, the three types of services mentioned above will be considered to have their place of supply in Romania, as long as these services are used and enjoyed in Romania and supplied to taxable persons established outside the European Union.

TIME OF SUPPLY RULES

The chargeability event occurs at and represents the time when the tax authorities are entitled to request the input VAT. For intra-Community supplies of goods, VAT chargeability occurs on the date when the invoice is issued, but no later than the 15th day of the month following the one in which the intra-Community supply took place. The same rule is valid for intra-Community acquisitions. For other supplies, VAT chargeability occurs on the earlier of:

- the date when an invoice is issued for this transaction or
- the date when the supply of goods/services takes place or
- the date when an advance payment is received for this supply.

EXEMPTIONS

Romanian VAT legislation also provides for a range of operations that are VAT-exempt without deduction right, i.e. which do not give the right to deduct related input VAT. Transactions which are VAT-exempt without deduction right mainly include:

- hospital care, medical treatment, including veterinary treatment, and closely-related operations carried out by duly authorized units;
- services performed as part of their profession by dentists and dental technicians, as well as the delivery of dental prostheses by dentists and dental technicians;
- transport of sick or injured persons in vehicles specially designed for this purpose;
- deliveries of organs, blood, and milk of human origin;
- educational activities carried out by authorized units, including activities of dormitories and canteens organized in connection therewith, vocational training of adults, as well as supplies of services and deliveries of goods closely related thereto that are performed by public institutions or other acknowledged entities;
- tuition given privately by teachers, covering school, pre-university or university education;
- supplies of services and/or deliveries of goods closely related to social assistance and/or social protection, protection of children and youth performed by public institutions or other entities recognized as having a social character;
- services related to sports practicing performed by non-profit organisations for persons who practice sports or physical education;
- supplies of cultural services and culture-related goods, carried out by public institutions or non-profit cultural institutions;
- activities carried out by public national TV and radio stations, except for advertising or other similar commercial activities;
- postal public services;
- financial and banking services (subject to certain limitations related to the place where the customer is established);
- insurance and reinsurance services (subject to certain limitations);
- rental and leasing of immovable property, with some exceptions;
- supply of buildings or land (if option to tax is not expressed); supplies of new buildings and building land are not exempt;
- supply of services by independent groups of persons, who are carrying out an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering to their members the services directly necessary for carrying out such activity, where

those groups merely claim from their members the exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition;

- supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit organizations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;
- supply of services and goods, by organizations the activities of which are exempt, in connection with fund-raising events organized exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition;
- betting, lotteries and other forms of gambling.

Some import operations are also VAT-exempt, as follows:

- imported goods that would have been VAT-exempt if supplied locally in Romania;
- goods brought into Romania by travellers or other individuals, under the conditions and within the limits provided according to legal regulations in force regarding the customs regime applicable to individuals;
- imported goods intended for sale under a duty-free regime, or in shops serving exclusively diplomatic representative offices and their personnel;
- goods imported by diplomatic missions and consular offices as well as by foreign citizens with diplomatic or consular status in Romania, if reciprocity conditions exist;
- goods imported by representative offices of international and intergovernmental organizations accredited in Romania, as well as by foreign citizens who are employees of such organizations, within the limits and in accordance with the conditions provided in the conventions establishing such organizations;
- goods imported by the forces of NATO Member States, for the use of those forces or of the civilian staff accompanying them, or for supplying their messes or canteens, where such forces take part in the common defence efforts;
- imports of natural gas made through the natural gas distribution system and import of electric energy.

RECOVERY OF INPUT VAT

Romanian entities

Romanian VAT-registered entities or VAT tax representatives in a refundable position have the option to require VAT refund by ticking the VAT refund box on the VAT return. If the recoverable VAT recorded in the VAT return amounts to less than RON 5,000, the taxpayer has to carry forward the respective amount until the threshold of 5,000 RON is attained.

Refund claims should be processed by tax authorities within 45 days from the day the VAT refund claims were submitted.

This period can be prolonged by the tax authorities for an additional period of 90 days if further crosschecks (i.e. on the suppliers/customers of the taxpayer) are performed by the tax authorities. In practice, VAT refund proves to be a paper heavy procedure and significant delays may result (e.g. up to 6-9 months).

Under the normal VAT refund procedure, a tax audit is performed by authorities prior to refund. The general provision regarding the duration of a tax audit mentions a limit of 3 months (or 6 months for large taxpayers, as defined by the law).

Non-Romanian entities

By introduction of the 9th Directive, the process of VAT reimbursement has been simplified. If before the implementation of the Directive the process was fairly paper-intensive and time consuming, presently, by the online application using codes for all products and services, the process has become far easier and more approachable.

There are 4 major criteria to take into consideration when submitting a VAT claim return: (i) quick assessment on whether the VAT was due; (ii) VAT code of the supplier; (iii) amount of the VAT claimed; (iv) proof that the VAT was actually paid.

The VAT claim return has to be backed up by explanatory documents like: (i) the original invoice; (ii) the contract; (iii) the proof of VAT payment (i.e. payment of the invoice to the supplier including VAT); (iv) proof of VAT registration in the home country.

The VAT claim return is submitted online on the website portal of the tax authority in the home country of the taxpayer. The return is then transmitted to the tax authority in the country of VAT claim, tax authority that will analyse the file and reimburse the VAT.

The legal deadline for submitting the return is 30 September of the current year for the previous year in which the goods or services were acquired. The term for analysing the file and reimbursing the VAT is 6 months from submitting the VAT claim return. This term can be prolonged up to 9 months if the tax authority requests additional documents and information.

The minimum amount that can be requested is EUR €200 in case of imports and EUR €50 in case of common goods or services supply.

The VAT claim return can include but is not limited to: (i) gas invoices; (ii) imports with effective payment in customs; (iii) all types of services; (iv) all types of goods; (v) vehicle lease; (vi) road taxes; (vii) accommodation; (viii) taxis; (ix) restaurant and catering, etc.

VAT registration in the home country is compulsory, as VAT can only be claimed by a VAT-registered taxpayer.

COMPLIANCE OBLIGATIONS

As a general rule, VAT returns must be filed on a monthly basis, by the 25th of the month following the month to which the return relates.

The tax period is usually the calendar month. For taxable persons registered for VAT purposes the previous year-end turnover of which did not exceed EUR €100,000, the tax period is the calendar quarter. However, companies having an annual turnover not exceeding EUR €100,000 (in RON equivalent) file VAT returns on a quarterly basis, by the 25th of the first month of each quarter in respect of the previous quarter.

Also, under certain conditions Romanian VAT taxpayers may ask for another VAT period (e.g. annual). For VAT purposes, the invoice is fundamental because it:

- documents the taxable transaction;
- contains information on the VAT system applied;
- allows tax authorities to perform controls for determining compliance obligations;
- allows customers registered for VAT purposes to exert the right of deduction.

Romanian VAT regulations require that the following elements appear on the VAT invoice:

- sequential number uniquely identifying the invoice;
- date of issue;
- supplier's VAT identification number, names, and addresses (plus the data of the Romanian tax representative, if any);
- purchaser's VAT identification number, names, and addresses (plus the data of the Romanian tax representative, if any);
- quantity and nature of goods supplied or nature of services rendered;
- date of supply or date of service completion;
- taxable amount of goods and services, for each rate, exemption or non-taxable operation, unit price exclusive of tax and any rebates, discounts, or other price reductions;
- indication, for each rate, of the due tax and the total amount of the due tax expressed in RON;
- reference to the other invoices or documents previously delivered when several documents or invoices were delivered for the same operation.

Additionally, in some cases (tax exemption, intra-Community acquisition with reverse charge mechanism, and new means of transportation supply) additional elements may be required. Please be reminded that electronic invoicing is allowed in Romania.

Based on the invoices, the taxpayer will prepare the VAT ledgers, which will further be used for preparing the tax return.

Apart from the VAT return mentioned previously, taxpayers are required to report all supplies of goods, provisions of services, acquisitions of goods and services, performed in Romania to/from other VAT-registered taxpayers in Romania. Reporting will be done via return 394 that shall be submitted to the tax authority no later than the 25th of the next month following the reporting period (which is the tax period for submitting the tax return as well).

SPECIAL CASES

VAT Grouping

The current Romanian VAT grouping system does not exclude from the scope of VAT (or exempt) transactions between group members. Instead, the system simply allows consolidation of the VAT returns of each member.

Such group may consist of two to five taxable persons more than 50 % of the shares of which are directly or indirectly held by the same persons.

Until 1 January 2012, such tax group could only consist of taxable persons qualifying as the so-called large taxpayers.

Tax authorities have the discretionary right to refuse any group registration or to terminate a person's group membership registration for revenue protection reasons.

Please be reminded that no foreign company can be included in a group.

Transfer of business as a going concern

The transfer of all the assets or of a part thereof, as a result of sale, or as per operations such as a de-merger or merger, whether made with payment or not, or as a contribution in-kind to the share capital of a company, is not deemed to be a supply of goods if the recipient is a taxable person. The recipient is considered to be the successor of the ceding entity with respect to the adjustment of the deduction right.

Option to tax

Concession, lease, and rental of immovable property are normally VAT-exempt without deduction right, but taxpayers may opt to tax these transactions (and consequently benefit from the deduction right of related input VAT), except for:

- accommodation within the hotel industry or similar industries, including rental of land suited for camping purposes;
- vehicle parking services;
- rental of machines which are incorporated into immovable goods;
- rental of safes.

Also, supplies of buildings (except for new buildings) and land on which they stand (except for building land) are treated as VAT-exempt, but taxpayers may opt to tax such operations.

Taxpayers must notify the tax authorities of their intention to tax the operations mentioned above.

RIGHTS OF TAXPAYERS AND OF VAT AUTHORITIES

Taxpayers' rights:

One of the rights that taxpayers benefit from is the right to deduct output VAT on:

- taxable transactions;
- transactions exempted from tax, with right of deduction.

The taxable person loses the right of deduction for goods that are undelivered and services that are unused.

Another right of the taxpayer is to offset recoverable VAT with any other payable tax to the State Budget.

Tax authorities' rights:

One of the rights tax authorities have is that they can automatically register any person that is required to register for VAT purposes and did not request this.

Another right of tax authorities is that they can apply late payment penalties and interest for pending payments. The interest is 0.04% for each day of delay, whilst the late payment penalty is 0.02% per day of delay.

EU RETURNS

Intrastat Returns

- VAT-registered businesses the annual arrivals of which amount to at least RON 500,000 are required to declare for the arrivals;
- VAT-registered businesses the annual dispatches of which amount to at least RON 900,000 are required to declare for the dispatches;
- VAT-registered businesses required to declare are selected based on their VAT returns for the previous year and the current year;
- The type of returns (i.e. standard or extended returns) depends on the actual value of the flows of goods.

EC Sales and Purchases List (Recapitulative Statements)

As of 1 January 2010, the EC Sales and Purchases Lists are to be filed on a monthly basis.