

INFORMATION - Romania

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In Romania, there are no use and enjoyment rules applicable with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons in accordance with Article 59a of Directive 2006/112/EC.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

In Romania, VAT becomes chargeable when the supply takes place. As an exception, VAT becomes chargeable:

- a) when the invoice is issued, if the invoice is issued before the chargeable event;
- b) when payment is received, for payments made before the chargeable event;
- c) when the cash is withdrawn, in case of supplies of goods/provision of services through automatic vending machines, gambling or other similar machines.

A Cash Accounting Scheme may be applied in Romania, but only for transactions where the place of supply is Romania. Taxable persons who have established their business in Romania and are registered for VAT purposes in Romania, may opt for the cash accounting scheme if their turnover is below RON 2,250,000 (approximately EUR 500,000) in the previous calendar year.

Reference to the above may be found in Article 282, para. (2), letters a), b) and c) and Article 282, para. (3) - (10) of the Romanian Fiscal Code.

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In Romania, continuous supplies of services are deemed to be completed on the date specified in the contract for the payment of the service supplied or on the invoice date, the settlement period may not exceed one year.

In addition, the Romanian VAT legislation provides that the supplies of services for which successive payments/settlements are performed (e.g. consultancy, expertise, research, construction works and other similar services) take place at the date on which work reports, timesheets or other similar documents are issued or, depending on the contractual agreement, accepted by the beneficiary.

Reference to the above may be found in Article 281, para. (7) and (8) of the Romanian Fiscal Code.

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

The price between the parties should be set at market value in case: (i) the consideration is lower than the market value and the recipient of the supply does not have the right to fully deduct VAT; (ii) the consideration is lower than the market value and the supplier does not have the right to fully deduct VAT; (iii) the consideration is higher than the market value and the supplier does not have the right to fully deduct VAT.

Reference to the above may be found in Article 286, para. (1), letter e) of the Romanian Fiscal Code.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

Bad debt relief (BDR) is not available in Romania with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

BDR is available in Romania in case the consideration of the supply of goods/provision of services cannot be cashed due to the bankruptcy of the beneficiary or as a result of implementation of a reorganization plan accepted and confirmed by a court decision, whereby the creditor's claim is modified or cancelled. BDR is allowed, starting as of the date of issuance of a court decision confirming the reorganization plan, and in case of the beneficiary's bankruptcy, starting on the date of the court order closing the procedure under the insolvency law, and this court order is final/final and irrevocable, as applicable. If subsequent to the court decision confirming the reorganization plan, the amounts related to the receivables which were cancelled or modified by the reorganization plan are paid, the adjustment will be canceled through the VAT return corresponding to that fiscal period.

Reference to the above may be found in Article 287, letter d) of the Romanian Fiscal Code.

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In Romania, no reduced VAT rates apply with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

The reduced rate of 9% is applied to certain transactions such as: supply of foodstuff, restaurant and catering services, accommodation, while the reduced rate of 5% is applied to supply of buildings as part of social policy, tickets to museums and supply of books. Reference to the above may be found in Article 291, para. (2) and (3) of the Romanian Fiscal Code.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

Starting from 1 January 2017, the standard Romanian VAT rate was decreased to 19% (Art. 291, para. (1), letter b) of the Romanian Fiscal Code.

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

Romania has not implemented a rule under its domestic legislation whereby taxable persons are released from the payment of VAT where the amount due is insignificant.

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

In Romania, taxable persons are required to issue invoices for: (i) supplies of goods/provision of services; (ii) intra-community supplies of goods; (iii) distance sales; (iv) payments received before the supply took place. As an exception, for the supply to individuals for which there is an obligation to issue a fiscal receipt/other specific documents and the beneficiary does not request an invoice, the issuance of the invoice is optional.

Reference to the above may be found in Article 319 para. (5), (6), (10) and (11) of the Romanian Fiscal Code.

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

Invoices should contain all mandatory elements provided by Romanian VAT legislation. The provisions of the VAT Directive regarding the content of the invoice (art. 226) are also implemented in the Romanian VAT legislation. The invoice can be issued in any language. The Romanian tax authorities can ask for it to be translated into Romanian upon a tax audit.

Reference to the above may be found in Article 319 para. (12)-(14), (20)-(23), (29) and (36) of the Romanian Fiscal Code and in 92 and 97 of the Methodological Norms for the application of the Fiscal Code.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

The general time limit to issue invoices is the 15th day of the month following the chargeable event. In case of payments received before the supply took place, there is also an obligation to issue an invoice by the 15th of the month following the one when the payment was received.

Reference to the above may be found in Article 319 para. (15) - (16) of the Romanian Fiscal Code.

Invoicing Obligations - Summary Invoices - VAT Directive 2006/112/EC - Articles 217-249

In Romania summary invoices may be issued for several supplies of goods or services for which the chargeable events occur over a period not exceeding one calendar month, and addressed to the same customer. Summary invoices must be accompanied by documents issued at the date of supply of goods or services.

Reference to the above may be found in Article 319 para. (17) of the Romanian Fiscal Code and in Point 95 para. (6) of the Methodological Norms for the application of the Fiscal Code.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

E-invoicing rules in Romania are in line with Directive 2006/112/EC.

Reference to the above may be found in Article 319 of the Romanian Fiscal Code and in Point 98 of the Methodological Norms for the application of the Fiscal Code.

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Where batches containing several electronic invoices are sent or made available to the same recipient, the details common for all invoices may be mentioned only once. However, such details should be accessible for each individual invoice.

Reference to the above may be found in Article 319 para. (28) of the Romanian Fiscal Code.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

In case the taxable base shall be reduced (due to events such as: total or partial cancellation of contracts for supply of goods/provision of services, total or partial refusal regarding the quantity of price of the goods/services supplied, or where the price is reduced after the supply takes place) and the supplier does not issue a correction invoice, the beneficiary of the supply must issue a self-invoice by the 15th of the month following the one the event takes place. In case of discounts, the obligation of issuing a self-invoice arises by the 15th of the month following the one in which the customer benefited from the respective discount. The issuance of correction invoices by the supplier, after customer issued a self-invoice, will not trigger any additional adjustments of the taxable base.

Reference to the above may be found at Article 319 para. (3) of the Romanian Fiscal Code.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

There are no provisions which are applicable under a Stand-still Scheme in the Romanian VAT legislation or subject to common practice in Romania that may be relevant for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

VAT Treatment of vouchers

Single-purpose vouchers (SPV's) are defined as vouchers for which all the relevant information regarding the applicable VAT treatment are known at the moment of sale (i.e. can be redeemed against an identified good/service and the VAT rate is known). Amounts cashed for the sale of single purpose vouchers (SPV) represent advance payments (the VAT chargeability takes place at the date the advance payment is made). SPVs covering the entire value of the good/service follow the same treatment of the pre-paid cards. In this respect, the decision of the CJEU, case C-520/10 (Lebara), has been implemented: a "telecommunications services operator which offers telecommunications services consisting in selling to a distributor phonecards which display all the information necessary for making international telephone calls by means of the infrastructure provided by that operator and which are resold by the distributor, in its name and on its own behalf, to end users, either directly or through other taxable persons such as wholesalers or retailers, carries out a supply of telecommunications services for consideration to the distributor. On the other hand, that operator does not carry out a second supply of services for consideration, this time to the end user, where that user, having purchased the phonecard, exercises the right to make telephone calls using the information on the card."

Multi-purpose vouchers (MPV's) are defined as vouchers, others than single-purpose vouchers, for which not all relevant information regarding the applicable VAT treatment are known at the moment of sale and/or the goods/services are not identified. If the person selling the multi-purpose voucher is the one who is carrying out the supply of goods/services, the amounts received from the sale of the voucher are not considered advance payments for the supply of goods/services that can be obtained in return. VAT becomes chargeable at the moment when the supply of goods/services takes place. If the person selling the multi-purpose voucher does not carry out the supply of goods/services in return, it is considered that the amounts received from the sale of the voucher are out of scope of the tax. In this respect, the decision of the CJEU, Case C-419/02 (BUPA Hospitals Ltd) has been implemented. Reference to the above may be found at Point 25, paragraph (5), (6) and (7) of the Methodological Norms for the Application of the Fiscal Code.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (E-learning activities)

Educational activities as per the Law on education no. 1/2011 (as subsequently amended and completed), the professional training of adults, as well as supplies of services and goods closely related to these activities, performed by public institutions or other authorized institutions are VAT exempt in Romania. The VAT exemption does not apply to the studies or research by schools, universities or any other education institution. Reference to the above may be found in Article 292, para. (1), letter f) of the Romanian Fiscal Code and at Point 42 of the Methodological Norms for the Application of the Fiscal Code.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

Betting, lotteries and other types of gambling carried out by persons authorized under the law to carry out such activities are VAT exempt in Romania. Reference to the above may be found in Article 292, para. (2), letter c) of the Romanian Fiscal Code.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

There are no further exemptions in the Romanian VAT legislation under which the supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may fall.

VAT Registration Process

As regards the registration under the MOSS scheme, the following applies:

A. Non-EU resident entity

Non-EU resident entities shall submit an electronic declaration of commencement of their activity in Romania comprising the name of the applicant, postal address and electronic address, including the web page, and the tax identification number. Additionally, an affidavit confirming that the non-EU resident entity is not VAT-registered in the EU must be also submitted to the relevant Romanian tax authorities.

No appointment of a VAT representative/agent is required for non-EU resident entities. Reference to the above may be found in Article 314 of the Romanian Fiscal Code.

B. EU resident entity

The EU resident entity shall submit an electronic declaration of commencement of its activity in Romania.

Reference to the above may be found in Article 315 of the Romanian Fiscal Code.

To identify in the MOSS system, a qualified digital certificate is required in accordance with the provisions of Law no. 455/2001 regarding the digital signature. A MOSS registration request should be made and contain the following elements: taxable person business name, postal address, email address, including webpage, national tax registration number (for the EU scheme) and a declaration confirming that the taxable person is not registered for VAT purposes within the European Union (for the non-EU scheme). Also, the taxable person should mention the identification details of any fixed establishments in other Member States.

Access to web-portal and contact details of the local VAT Authorities

General information may be found following Romanian National Agency for Fiscal Administration www.anaf.ro, under section "Info UE" - "Mini One Stop Shop (M1SS) - English version".

The web link to register for M1SS system is <https://login.anaf.ro/vdesk/hangup.php3>

Helpdesk can be contact on the bellow contact details:

E-mail: m1ss.ANAF@mfinante.ro

Telephone: +40 21.305.70.80

Regional General Directorate of Public Finance Bucharest - Fiscal Administration for Non-resident Taxpayers

Prof. Dimitrie Gerota street, no. 13, district 2, Bucharest, Romania

Contact person: Sorina Eliza MARIN, head of office MOSS

e-mail: sorina.marin.MB@mfinante.ro

Appointment of a VAT Agent

In case of electronic services provided by a taxable person not established in the EU to non-VAT taxable persons established in the EU, if the supplier opts for the special scheme and choose Romania as their Member State of Identification, for the purpose of registration it is not necessary to appoint a tax representative.

Reference to the above may be found in Article 314 para. (3) of the Romanian Fiscal Code.

Penalties for non-compliance (Failure to register and late registration)

Failure to submit a statutory tax registration statement will trigger a fine from RON 1,000 to RON 5,000 for the medium and large taxpayers and a fine from RON 500 to RON 1,000 for other taxpayers.

Reference to the above may be found in Articles 336, para. (1), letter a) and para. (2), letter d) and 338, para. (3) of the Romanian Fiscal Procedural Code.

Penalties for non-compliance (Non-payment and late payment of VAT)

For late payment of VAT the following penalties apply:

a) late payment interest of 0.02% per each day of delay; and

b) late payment penalty of 0.01% per each day of delay.

Reference to the above may be found in Articles 174, para. (5) and 176, para. (2) of the Romanian Fiscal Procedural Code.

Failure to report/errors in reporting the tax liabilities assessed through tax assessment decisions by the tax authorities will trigger a penalty for reporting failure of 0.08%/day of delay. At the request of the taxpayers, the penalty for reporting failure may be reduced by 75% provided that the tax liabilities imposed through tax assessment decisions are settled or deferred for payment. In case the tax liabilities are due to tax evasion acts, the penalty for reporting failure will increase by 100% (Article 181 of the Romanian Fiscal Procedural Code).

Penalties for non-compliance (Non-submission and late submission of VAT returns)

Failure to submit or late submission of VAT returns will trigger a fine from RON 1,000 to RON 5,000 for the medium and large taxpayers, and a fine from RON 500 to RON 1,000 for other taxpayers.

Failure to submit the VAT Recapitulative statements, as provided by law, will trigger a fine from RON 1,000 to RON 5,000.

Reference to the above may be found in Articles 336, para. (1), letter b) and para. (2), letter d), 337, para. (1), letter a) and para. (2) letter a) and 338, para. (3) of the Romanian Fiscal Procedure Code.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

No penalty applies for incomplete/incorrect VAT returns. The Romanian Fiscal Code provides for a specific procedure for correcting incomplete/incorrect VAT returns. However, where the incomplete/incorrect information gives rise to additional VAT due, late payment charges would apply. The fine for submission of incorrect or incomplete VAT Recapitulative statements is from RON 500 to RON 1,500.

Also, for additional tax obligations (underpaid VAT), whether notified by the taxpayer or by the tax authorities, interest and penalties are due from the date on which VAT had to be paid by law to the date payment is made.

Reference to the above may be found in Articles 173-183 and 337 of the Romanian Fiscal Procedural Code.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

Incorrect VAT invoices may give rise to additional VAT liabilities, late payment interests and penalties or, as applicable, penalties for reporting failure, if the exchange rate for converting the VAT amount into RON is not correctly assessed. The penalties for non-compliance vary depending on the nature of the non-compliance. Failure to present documents/records upon the request of the Romanian tax authorities is subject to a fine between RON 4,000 and RON 10,000 for the medium and big taxpayers and a fine from RON 2,000 to RON 5,000 for the other taxpayers, and for the private individuals. The taxpayers have the possibility to pay half of the minimum fine within 48 hours.

Reference to the above may be found in Articles 174, 176, 336 para. (1) letter r) and para. (2) letter e) and 338, para. (3) of the Romanian Fiscal Procedural Code.