



Thinking beyond borders: Management of extended business travelers - Romania

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Key message

A person's obligation to pay Romanian income tax is determined by residence status for taxation purposes and by the source of income derived by the individual. Income tax is levied at a flat tax rate of 10 percent (as of 1 January 2018), applied to each type of income, with the exception of dividends for which the applicable tax rate is 8 percent. Moreover, starting from 1 January 2023, capital gains from the transfer of securities and from operations with derivative financial instruments, as determined according to the specific provisions of the Tax Code, by made through Romanian tax resident entities or non-residents with permanent establishments in Romania are subject to withholding tax. The income tax rate at which individuals will pay for transfer of securities and from operations with derivative financial instruments made through intermediaries (Romanian tax residents or non-residents with a permanent establishment in Romania) is: (i) 1% on the capital gains from each transfer of securities disposed of / the operation of derivative financial instruments held for more than 365 days after the acquisition date or (ii) 3% on the capital gains from each transfer of securities disposed of / carrying out operations with derivative financial instruments held for a period less than 365 days after the acquisition date

1 Key message

Extended business travelers are likely to be taxed on employment income relating to their Romanian workdays.

02

Income tax

2 Income Tax

2.1 Liability for income tax

A person's obligation to pay Romanian income tax is determined by the tax residence status. A person can be either deemed a resident or a non-resident for Romanian tax purposes.

Generally, a tax resident of Romania is defined as an individual who has their domicile in Romania, or has their center of vital interest in Romania, or spends more than 183 days in Romania during any 12-month period ending in the calendar year concerned. A tax non-resident is generally someone who doesn't meet any of the three tax residence conditions mentioned above.

As a general rule, Romanian tax residents are liable to Romanian tax on their worldwide income, whereas Romanian tax non-residents are liable to Romanian tax only on Romanian-sourced income.

However, the non-Romanian individual who qualifies as a Romanian tax resident according to Romanian tax legislation may remain liable to Romanian income tax only on the Romanian-sourced income, provided they are deemed as a tax resident in a country/jurisdiction with which Romania has concluded a tax treaty, and if they can obtain a valid tax residence certificate issued by that country/jurisdiction within the meaning of the relevant Tax Treaty.

Employment income is generally treated as Romanian-sourced compensation to the extent that the individual performs services while physically located in Romania.

2.2 Tax trigger points

Technically, there is no minimum threshold/number of days that exempts the employee from the requirements to file and pay tax in Romania. Under Romanian domestic legislation, non-resident individuals deriving dependent activities in Romania are liable for Romanian personal income tax from the first day of activity in Romania. However, to the extent that the individual qualifies for relief in terms of the dependent personal services article of an applicable double tax treaty, there will be no tax liability. The treaty exemption will not apply if a Romanian entity is the economic employer.

2.3 Types of taxable income

For extended business travelers, the types of income that are generally taxed are Romanian-sourced employment income, as well as other Romanian-sourced income and gains from taxable Romanian assets (such as real estate). Fringe benefits and broadly non-cash employment income are deemed to be employment income and are taxed similarly.

2.4 Tax rates

Net taxable income (a deduction is generally available for compulsory employee social security contributions) is taxed at a flat rate of 10 percent. In principle, non-residents are also subject to a flat tax rate of 10 percent with few specific exceptions (e.g. dividends, capital gains).

03

Social Security

3 Social Security

3.1 Liability for social security

Exemption from Romanian social security contributions may be available where a totalization agreement has been concluded between Romania and the individual's home country/jurisdiction, or where EC Regulation 883/04 is applicable. Residents of an EEA member state are entitled to the same deductions for calculating the taxable income as Romanian residents (e.g. social contributions paid in the home member state), only if: the resident of an **EEA member state** provides **supporting** documents with respect to the social contributions paid and the individual **cannot claim deductions of these contributions in the state of residence**.

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Compliance obligations

4 Compliance obligations

4.1 Employee compliance obligations

Generally, annual tax returns are due by 25 May following the tax year-end, which is 31 December.

Employment income must be declared, and income tax must be paid on a monthly basis by the 25th of the month for the previous month. No extension to the deadline is available.

All individuals who spend more than 183 days in Romania must submit a questionnaire for determining the tax residence of the individual upon arrival in Romania. Also, upon leaving Romania, all individuals who spend at least 183 days abroad within a period of 12 consecutive months are required to file a similar form

4.2 Employer reporting and withholding requirements

Where an individual performing activity in Romania is employed by a non-Romanian employer, that employer has no personal tax withholding or reporting obligations in terms of Romanian income tax due. It is generally the employee's obligation to declare and pay Romanian personal tax on a monthly basis.

In terms of social security, should social security contributions be due in Romania, it is the employer's obligation to calculate, withhold and pay the Romanian social contributions in Romania. In this respect, the non-Romanian employer must register in Romania for social security purposes.

Alternatively, the individual may take over the responsibility of declaring and paying Romanian social security contributions, based on an agreement concluded with the employer in this respect.

As of 2016, where the employer is resident of a country/jurisdiction which is not covered by the EC Regulation 883/04 or with which Romania has no bilateral agreement on social security coordination, it is the individual's responsibility to declare and pay the full social security contributions (including the work insurance contribution which is due by the employer).

The Romanian entity where the individual carries out activity has certain reporting obligations towards the local tax authorities at the commencement and at the end of the business trip.

Also, in case of assignments from an EU country to Romania, the employer has the obligation to notify the labor authorities through a specific labor notification (PWD notification).

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Immigration

5 Immigration

5.1 Work permit/visa requirements

A visa and/or a work permit must be applied for before the individual enters Romania, depending on the nationality of the individual. The type of visa required will depend on the purpose of the individual's date of entry into Romania. There are various exceptions to the rule. European Union (EU) nationals are not required to obtain visas or work permits in order to live and/or work in Romania.

Holders of a valid Schengen visa can enter in Romania and stay up to 90 days within 6-month period however the stay must not exceed the validity of the visa, provided that the Schengen visa is issued for at least 2 entries. This category of foreigners can enter in Romania as long as they have the right to re-enter in Schengen area (i.e. they did not use all entries conferred by visa).

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Other issues

6 Other issues

6.1 Double taxation treaties

In addition to Romania's domestic arrangements that provide relief from international double taxation, Romania has entered into double taxation treaties with more than 80 countries/jurisdictions in order to prevent double taxation and allow cooperation between Romania and overseas tax authorities in enforcing their respective tax laws.

6.2 Permanent establishment implications

There is the potential risk that a permanent establishment could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

6.3 Indirect taxes

As of January 2017, the value-added tax (VAT) applicable is 19 percent (standard VAT rate) on taxable supplies. VAT registration may be required in some circumstances.

6.4 Transfer pricing

Romania has a transfer pricing regime, and thus, related-party transactions must observe the arm's length principle.

6.5 Local data privacy requirements

Romania has data privacy laws.

6.6 Exchange control

Romania does not restrict the flow of Romanian or foreign currency into or out of the country/jurisdiction. Certain reporting obligations, however, are imposed to control tax evasion and money laundering. Domestic legislation requires financial institutions and other cash dealers to give notification of cash transactions over 10,000 Euros (EUR), suspicious cash transactions, and certain international telegraphic or other electronic funds transfers (there is no minimum amount). All currency transfers (in Romanian or foreign currencies) made by any person into or out of Romania amounting to EUR15,000 or more in value must be reported.

6.7 Non-deductible costs for assignees

Deductible costs for assignees include social security contributions covered by the EC Regulation or the applicable social security agreement, personal deductions (only for gross salaries under specific thresholds), contributions to private medical insurance, medical subscriptions, contributions to pension funds, fees paid for sports, artistic and cultural activities within certain thresholds. Any other costs may not be considered deductible for the assignee.

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