

FISCAL INCENTIVES GRANTED TO THE INVESTORS

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Government Emergency Ordinance no. 92/1997 on stimulation of direct investments, published in the Official Gazette no. 386/30th of December 1997
- Law no. 241/1998 for the approval of Government Emergency Ordinance no. 92/1997 on stimulation of direct investments, published in the Official Gazette no. 483/16th of December 1998
- Government Decision no. 94/1998 on the approval of methodological norms for the enforcement of Government Emergency Ordinance 92/1997 on stimulation of direct investments, published in the Official Gazette no. 89/25th of February 1998
- Government Ordinance no. 66/1997 on regime of foreign investments in Romania, made by purchasing government securities, published in the Official Gazette no. 226/30th of August 1997
- Law no. 332/2001 on promoting direct investment having a significant impact, published in the Official Gazette no. 356/3rd of July 2001

I. Persons deemed investors in Romania

According to the legal regulations in force, a natural person or legal person, resident or non-resident, with domicile or head office in Romania or abroad investing in Romania in any of the modalities stipulated by law (a direct investment or a portfolio investment) is deemed investor.

Foreign investors have the possibility of establishing trade companies with an entirely foreign capital in Romania. Subject to compliance with Romanian law, foreign investors have the possibility of establishing in Romania branches, subsidiaries, agencies or other secondary offices.

II. Forms of investments in Romania

According to the legislation regarding direct investments in Romania (Emergency Ordinance no. 92/1997 as further completed and amended), a natural person or legal person may invest in Romania under a variety of legal forms.

Romania law provides for **two types of investments in Romania**: direct investments and portfolio investments.

Direct investment means:

- Participation in establishment or development of a business enterprise in any of the legal forms provided by law;
- Acquisition of interest in the stock in joint-stock company or limited liability company, except portfolio investments;
- Setting up or development in Romania of a branch by a foreign corporation by:
 - cash contribution, in local or convertible currency;
 - in kind contribution of immovable property or/and tangible and intangible movable property;
 - participation in increasing the assets of a company, by any legal financial modality.

Portfolio investment means the acquisition of securities on the organized and regulated capital markets, which do not grant a direct participation rights in the company's management.

Buying of state bonds, both from the primary market and from the secondary market is portfolio investment; this type of investment is subject to the legal regime regulated by the Government Ordinance no. 66/1997, as further amended and completed.

III. Specifications regarding guarantees and incentives granted to investors in Romania

1. Investors may choose freely legal forms of performing the investments, subject to compliance with the legal provisions and of the types of contribution to capital of trade companies.

2. Investors may choose freely the type of activity they will perform in Romania, by taking into consideration the regulations establishing the

regime of acquiring the authorization and of the state monopoly valid for certain activities.

3. Natural or legal persons investing in Romania benefit from right to transfer abroad the incomes obtained, with no restrictions, after the payment of the fees and taxes provided by law, according to the regulations regarding the currency regime.

4. Law provides for the protection of investments against expropriation, nationalization or other measures having a similar effect, except the situation in which they are necessary for a reason of public utility, are non-discriminatory, are performed according to the express provisions of the law and with the payment of a prior, real and adequate damage.

5. Investors benefit from a series of customs and fiscal incentives.

6. Investors benefit from assistance on performing administrative formalities.

7. Non-resident persons investing in Romania benefit from the rights to conversion in currency of the investment of amounts in lei due to them from investment and also to the transfer of currency in the country of origin, according to the regulations on currency regime.

8. Law provides for the investors' right to elect the arbitration or judicial competent courts for the settling of potential litigations.

9. According to law, investors benefit also from the following incentives:

- possibility of carrying forward of the losses registered during a financial year on the account of the taxable profit of the next financial years;
- possibility of use of accelerated amortization;
- possibility of deduction the expenses for commercial and advertising from the taxable profit;
- possibility of employing foreign citizens, according to the legal provisions in force.

Any investor, resident or non-resident legal person may get any real rights on movable or immovable property.

But, regarding lands, their purchasing by non-residents is forbidden by Constitution.

If it is not provided otherwise, investors shall have the same rights and obligations, regardless of being residents or non-residents, Romanians or foreigners.

Law no. 241/1998 stipulates that, in the case in which a bilateral agreement for mutual promoting and protecting of investments, ratified according to law, or any other law would entitle an investor, foreign natural or legal person, to a more favorable treatment than that provided for in the Government Emergency Ordinance no. 92/1997, the respective investor shall only benefit by that treatment.

Fields in which investment can be performed only on the basis of a license or authorization, as well as the general conditions in which licenses or authorizations may be granted are established by law.

Non-resident investors have the right to transfer abroad, subject to no kind of restrictions, after the payment of legal fees and taxes, the following incomes, in freely convertible currency:

- the dividend or benefit obtained from a trade company, Romanian legal person, in the situation in which they are shareholders or partners;
- income obtained in the case of a joint-venture as well as incomes obtained from selling of interest in the stock in joint-stock company or limited liability company;
- amounts obtained from the liquidation of a trade company, according to Law 31/1990 on trade companies, as further completed and amended, or by the liquidation of a trade company according to the procedure of bankruptcy regulated by Law no. 64/1995 on procedure of judicial reorganization and bankruptcy, as further completed and amended;
- the amounts obtained as damages, as a result of an expropriation or of the enforcement of other measure with a similar effect;
- other incomes according to the form of performing of the investment.

IV. Fiscal incentives for investors in disadvantaged zones

Persons investing in disadvantaged zones benefit by:

- exempt from payment of customs duties for raw materials and important parts, necessary for the performing of their own

production in that area, except the import of raw materials for the production, processing and preservation of meat;

- exempt from payment the fees levied for the modification of destination or taking out of the agricultural circuit of certain fields destined for the performing of the investment;
- access to a special development fund for the stimulation of exports, securing of external credits, financing of special programs.

According to the provisions of the Fiscal Code, in the case of legal persons that have obtained, before the 1st of July 2003, the certificate of permanent investor in disadvantaged zone, the exempt from profit tax afferent to new investments apply further on during the existence of the disadvantaged zone.

V. Fiscal incentives for investors in free zones

1. Fields and constructions in free zones may be subject to concession or rented to Romanian or foreign natural or legal person. The term of concession may be of maximum 50 years and is established taking into account the value of investment or the nature of activity.

2. Means of transportation, merchandises and other goods from abroad or destined to other countries, brought in or taken out of the free zones, are exempted from the payment of taxes and customs duties.

3. Romanian materials and accessories, entering in free zones and which are used for the producing of goods, are exempted from customs duties, subject to compliance with the export formalities.

4. Upon liquidation or restriction of activity performed in the free zone, foreign natural or legal persons may transfer abroad the capital and the profit, after the payment of all obligations to Romanian state and contractual partners.

5. Romanian goods used for constructions, repairs and maintenance of certain objectives in the territory of free zones are exempted from customs duties.

6. Goods from a free zone may be transported into another free zone without the payment of customs duties. These goods may be transited on the Romanian customs territory, subject to compliance with the legal provisions. Also, these goods may be brought in the country subject to fulfillment of the conditions and formalities on import, or, as the case may be, the temporary reception.

7. Specific activities performed in free zone by the authorized persons for this purpose are exempted from the value added tax.

8. Means of transportation, merchandises and other goods coming from abroad brought directly in the free zones are exempted from the payment of the value added tax.

Mentions regarding customs duties

These are paid for the import of goods. The rates of the customs duties are in connection with the nature of the goods taxed by the country of origin. The usual quotas range among 3 and 30%, but there are products having a higher quota. The quotas apply at the value of the goods in customs. A customs commission of 0.5% from the value in customs is paid for all the products that do not benefit from preferential quotas of the customs duty.

VI. Direct investment with a significant impact on economy

1. Concept

According to Law 332/2001 as further amended and completed, the direct investments having significant impact on economy are the investments with a value exceeding the equivalent of \$ 1 million, made in the forms and modalities provided by law and which contribute to the development and modernization of the economic infrastructure of Romania, determine a positive effect of drawing into economy and create new jobs.

2. Fields in which direct investments with a significant impact on economy may be performed

Such investments may be performed in all fields of activity, except the financial, banking, insuring-reinsuring fields, as well as of those regulated by special laws. The performance of such investments is made subject to compliance with the following **conditions**:

- a) not to violate environment protection norms;

- b) not to harm the interests of security and national protection of Romania;
- c) not to violate public order, health or good morals.

The new direct investments, grounded as being of major interest for the national economy, shall be presented to the Romanian Agency for Foreign Investments.

The Ministry of Trade and Economy, in cooperation with the Romanian Agency for Foreign Investments, ensure the coordination of the uniform enforcement of the government policy at central and local level in the field of stimulation and promoting of direct investments.

New direct investments whose value exceeds \$ 1 million or the equivalent in lei or other convertible currencies and that will be effectively accomplished within maximum 30 months from the date of the statistical registration with the Ministry of Trade and Economy benefit from certain incentives mentioned in Law no. 332/2001, as further amended and completed.

3. Foreign investors' rights

Foreign investors have the following rights:

- to transfer integrally abroad the profits due to them, subject to conditions of the currency regime from Romania, after paying the taxes, fees and other obligations provided for by the Romanian legislation;
- to transfer abroad, in the currency of investment, the amounts obtained as a result of the selling of interest in the stock in joint-stock company or limited liability company, as well as those resulted from the liquidation of investments, subject to conditions of the currency regime from Romania;
- to transfer abroad, in the currency of investment, the amounts obtained as damage, in the situation in which the investment shall be expropriated. The expropriation is made only for the cause of public utility.

Foreign investors shall have all the rights provided for in the bilateral agreements for mutual promoting and guaranteeing of investments, signed by Romania with their states of origin.

4. Sanctions

1. Voluntary liquidation in a period up to 10 years of companies that have performed direct investments with a significant impact implies their liability

to pay the established taxes according to law for the entire period of functioning of investment, as well as the increases for delays of the payment of taxes and fees that should have been paid in the absence of the incentives, calculated according to the legislation in force.

2. Alienation by the investor of the new goods, in a period smaller than 2 years from their bringing in the country or from their purchasing shall bring about the payment of the counter value of incentives it benefited of, as well as the increases for delays of the payment of taxes and fees that should have been paid in the absence of the incentives, calculated according to the legislation in force.

VII. Foreign investments in Romania achieved by purchasing state bonds

1. General concepts

The purchasing of state bonds from the primary market may be achieved subject to conditions established by the Ministry of Public Finances, by its designated representative, according to the regulations regarding state bonds, issued by the National Bank of Romania.

The transaction of the state bonds on secondary market may be performed on any open and organized state bonds market, exclusive by the mediation of the securities companies authorized for this purpose by the National Bank of Romania or by any other representative designated by the Ministry of Public Finances. The transactions on the secondary market may also be performed through a security exchange, authorized by the Ministry of Public Finances to conclude businesses with state bonds.

The Ministry of Public Finances may restrict the capacity of a foreign investor to transact, totally or partially the state bonds derived from an issuing or from all the issuing of such bonds. Such restrictions must be announced in the moment of the initial issuing for each state bond.

The National Bank of Romania shall study and highlight distinctively all the currency operations connected with the transactions with state bonds.

2. Incentives

Banking deposits, opened by foreign investors for the purpose of purchasing state bonds, as well as those established as a result of performing

certain transactions performed with state bonds or other securities, have a treatment equal to that applicable to the state bonds, in the situation of the requesting of repatriation, the amounts afferent to such deposits not being subject to taxation in Romania.

Any foreign investor may repatriate, at maturity, at the discounting of a transaction on secondary market or in any other moment after the discounting, entirely or partially, the initial investment, the capital gain derived from the transaction in Romania of the held state bonds, the interest afferent to deposits established in Romania from amounts resulted after the transaction of the state bonds on secondary market.

Repatriation of invested amounts and of the incomes made is made exclusively in freely convertible currency in which the initial investment was made. The operation for the repatriation of the invested capital and incomes made as a result of the portfolio investment performed by the purchasing of state bonds shall be performed on the basis of the confirmation of the initial currency transaction performed by the security company recognized as acting on behalf of the foreign investor and the initial transaction with state bonds.

Currency transactions regarding foreign investments in state bonds shall be subject to norms regulating the repatriation of amounts and foreign investments, established by the National Bank of Romania.

The repatriation of the investment made, of the capital gain, interest or bank rate resulted from the foreign investment in state bonds is free and it is not subject to taxation in Romania.

The fee on this portfolio investment shall be applied only for the initial purchasing of state bonds, thus, if the foreign investor reinvests the entire initial capital and the capital gain performed, then no fee on investment shall be applied.

The fee that applies, on purchasing, to the transactions with state bonds subject to conditions provided for in the Government Ordinance no. 66/1997 is of up to 1.5% from the total value of each of them.