

INVESTING IN ROMANIA



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LEGAL BACKGROUND

Leasing operations carried out on Romanian territory, the types of leasing operators as well as the authorizing and functioning of leasing companies, are all regulated by Government Ordinance no. 51/1997 on leasing operations and leasing companies, republished, as further amended and supplemented, by Law no. 571/2003 on the Fiscal Code, as further amended and supplemented, as well as by Law no. 93/2009 on non-bank financial institutions.

LEASING COMPANIES

Pursuant to Law no. 93/2009, financial leasing activities are deemed as credit activities and can only be carried out by non-bank financial institutions incorporated as joint stock companies. The name of such company shall include the phrase non-bank financial institution or the abbreviation NFI. The main business scope thereof must be represented by the conduct of financial leasing activities, whereas the secondary business scope cannot include activities other than the credit activities expressly provided for by Law no. 93/2009. The minimum share capital of a non-bank financial institution carrying out financial leasing activities cannot be lower than the equivalent in lei of EUR 200,000 and such capital must be fully paid in upon the subscription thereof, including in the event of capital increase.

Operational leasing activities may be carried out in Romania by trading companies, Romanian legal entities established and functioning under the Company Law no. 31/1990, as further republished and amended. The main business scope of such companies

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must be the conduct of leasing operations. The share capital thereof will equal the equivalent in lei of EUR 200,000 and it must be fully subscribed and paid in upon establishment.

LEASING OPERATIONS: FORMS

The mechanism of leasing operations implies a tripartite structure: the lessor/sponsor, the user and the supplier, representing an alternative to the classical method of sale-purchase of goods with the payment of the price in installments.

Therefore, the lessor/sponsor transfers to the lessee/user, upon the request of the same, for

a definite period, the right of use over a good the owner of which the lessor/sponsor is, in exchange for a periodical payment, called the "leasing installment". Under a contract, the lessor/sponsor undertakes that at the end of the leasing period, it shall comply with the user's right to opt for one of the following:

- The acquisition of the good;
 - The extension of the leasing contract;
- or
- The termination of the contractual relations.

The good subject to the leasing operation can be also purchased by the lessee/user before the ending of the leasing period, but not earlier than twelve (12) months. In the event

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that the lessee/user chooses to acquire the good that represented the object of the leasing contract, upon the end of the leasing period, the transfer of the ownership right shall be made in exchange for an amount of money called "residual value". A particular form of leasing is the leaseback or sale and leaseback method. This leasing form implies the leasing, by an individual or legal entity, of goods to a leasing company, to use the same in a leasing system, with the obligation to later redeem such equipment.

Leasing operations may have as their object immovable goods by their nature or deemed as immovable by their scope, as well as movable goods, included in the civil circuit, as well as the software using right, provided that the holder of the copyright approves the leasing operation, with the exception of audio and video recordings, theatre plays, manuscripts, patents, copyrights and intangible goods.

Law no. 571/2003, as further amended, regulates two categories of leasing operations: financial leasing and operational leasing.

FISCAL ASPECTS

In the case of the financial leasing the lessee/user is considered, from a fiscal point of view, as the owner; in the operational one the lessor/sponsor shall hold said capacity. The amortization of the goods making the object of the leasing contract shall be made by the lessee/user, in the case of the financial leasing and by the lessor/sponsor in the case of the

operational one. In the financial leasing system the user shall deduce the interest; in the operational one, the user shall deduct the leasing installment.

If, pursuant to the law, a local tax is due with respect to the goods making the object of the financial leasing agreement (building and/or land, means of transport), the following rules will be applied throughout the entire validity term thereof:

- (a) the said tax is payable by the user;
- (b) the value accounted for in the calculation of the tax is the value of the goods specified in the contract, as such value is entered in accounting books in accordance with the legal provisions in force;
- (c) in the event that the leasing agreement terminates otherwise than by reaching the due date, the said tax is payable by the financing party.

In the case of operational leasing, the rule according to which taxes are payable by the owner, or by the lessor, respectively, becomes applicable again, yet the parties may mutually decide under the agreement that it is the user that will bear the payment thereof.

The incomes obtained by non-residents in the form of interest or due (leasing installment), set out by the contracting parties, in the case of the financial or operational leasing contracts, are subject to taxation in Romania by way of withholding, according to the provisions of the double taxation conventions or the internal legislation, as the case may be.

