

Non-resident employers and Romanian employees – practical aspects

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Foreign companies ask themselves quite often whether they can hire Romanian employees for certain activities in Romania without actually having an establishment in Romania.

In principle, this can be done.

Applicable law

Obviously, an employment contract is necessary. This must observe the mandatory regulations for the employee's protection applicable at the place of employment, wherefore the employment contract should be subjected to Romanian law.

Tax/ Social insurance

Certainly, the activity implies the declaration and payment of social contributions and income tax in Romania. There are two possibilities for this purpose:

1. The foreign employer submits the declaration itself directly or by means of an authorized representative and pays the income tax, as well as the social contributions for the resident employee;
2. Based on an **agreement** between the foreign employer and each resident employee, the declaration and payment of the tax and social contributions are performed by the Romanian employee himself.

We will detail below the **second alternative**.

Agreement

Based on the concluded employment contract, an agreement regarding the declaration and payment of the income tax and social contributions will be prepared. This must include information regarding the employment relationship, as well as regarding the employer (among others the so-called CAEN Code of its main activity).

The agreement provides, under references to the applicable legal provisions, that the calculation, declaration and payment of the income tax, as well as of the employer and employee's contributions to the social insurance have to be performed by the employee. Therefore, the employee takes over the fulfillment of the employer's obligations.

Obligations of the employee

The employee must be registered with the local fiscal authority from his/ her residence (tax return 020), whereas certain specific instructions must be observed, according to the regulations of the fiscal administration ANAF. The tax return will be submitted together with the agreement concluded with the employer.

Based on this agreement, the employee has the obligation to monthly submit the form 112 for the declaration of the payment obligations regarding the income tax and the social contributions. Certain instructions from ANAF should be observed, e.g. how to fill in the sections "Identification data of the "taxpayer" and "Identification data of the insured person". This way, the natural person is allocated to an employer that declares the social contributions and the income tax; in the same time this is the person that fulfills these obligations, as well.

Both for the registration and for the monthly declaration and payment, the employee **can be assisted by local tax consultants on behalf of the employer**; most employers make use of such support in practice.

The payment of income tax and social contributions

The income tax and the social contributions must be paid until the 25th of the following month. We underline that the employee has to pay to the state budget both his/ her individual social contributions and employer's social contributions. In practice, the employer transfers to the employee not only the net salary (like for resident employees), but also the amount representing the income tax and all social contributions.

Advantages and risks for the employer

The above-mentioned construction brings advantages to companies with international activities, since it avoids administrative burden. Otherwise, the company would have the obligation to directly register in Romania for tax purposes, respectively to establish a branch or other secondary seat. Therefore, it is particularly attractive interest in the first phase of the market entry (especially for setting up the distribution structure). In the same time, it provides Romanian employees with the benefits of belonging to the Romanian social insurance system and all rights resulting from this.

However, there are **two associated risks** emerging for the employer:

1. First of all, depending on the particularities of the activity carried out by the employees, a risk of a so-called **fiscal permanent establishment** may arise. For the employer, this would trigger the obligation to pay, according to the Romanian legislation, income tax (corporate tax) for the activity carried out in Romania and to organize accounting according to Romanian rules. This risk should be assessed in each particular case before the beginning of the project.
2. Since the employee takes over, contractually, the responsibility of paying the contributions on behalf of the employer, **the agreement should be prepared carefully** in order to ensure the fulfillment of the obligations.

As a result, right from the preparation phase both multidisciplinary consulting and a healthy relationship of trust with the employees are necessary.

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