BACKGROUND

Over the last years, the eShop business has been booming in Romania. According to reports and estimates of the biggest players in the Romanian electronic commerce, online shopping value exceeded the threshold of EUR 1.8 billion in 2016, almost 30% more than in 2015, when there was a threshold of EUR 1.4 billion. On average, this would mean that Romanians spend approx. 5 million each day for shopping via the Internet. In addition, the 1.8 billion figure refers only to physical products sold online and not to services (payment of utility bills, air tickets, tickets to shows or events, hotel reservations, holidays and travel) so if we add the last ones, the total value of online purchases would increase considerably.

Influenced by this trend, a number of Romanian, as well as foreign companies are considering their entrance on the scene of the eShop business. To be successful, many factors must be observed and constantly improved. The key drivers from the business perspective are high quality goods, customer service, technologies and marketing. But there are also legal and tax aspects that should be observed and set up in a right way.

To provide indication of the main areas to be observed in the legal and tax fields, we would like to present you this eBook. It was prepared not only for the newcomers, to introduce them the main pitfalls that should not be forgotten, but also for the experienced players who might want to double check whether the approach currently applied is correct. The brochure was not meant to offer a comprehensive guide on how to run an eShop in Romania, but it rather provides a brief overview of issues that the eShop will come across while carrying out its daily activities.

And what can we do for you in this area? Our team of experienced legal and tax consultants is prepared to offer assistance with correct legal and tax set up of your eShop to be selling on the Romanian market. We may help you not only with the eShop establishment and required registrations. More importantly, we may assist you with designing the purchase and sales flows, solving the issues connected with e.g. contractual documentation, consumer protection, information duty, personal data protection, creating relevant legal and tax documentation, tax compliance, if relevant, and many others.
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Before opening an eShop in Romania, i.e. before commencement of offering goods or services to customers via an eShop, legal requirements of Romanian and EU law have to be taken into account. The legal regulation of eShops comprises mainly the obligation of formal establishment of the operator of the eShop, general contract requirements, requirements relating to consumer protection and also personal data processing.

1. Formal establishment

An eShop can be operated by a legal person, Romanian or foreign.

Romanian entities need to obtain a trade authorization from the Trade Register covering the intended scope of activity carried out through the eShop. The activity which needs to be authorized for this type of business is **CAEN Code 4791 - Retail by order houses or via the Internet.**

Foreign entities residing in the EU, which are entitled to operate an eShop in their country of residence/establishment, may run an eShop in Romania, having a duty to register as tax payer if certain values are exceeded.

2. Legal system governing the contract

To secure proper fulfilment of all statutory obligations, the operator of the eShop should be aware which legal system governs relationships with its customers (e.g. rights and obligations of the parties to the contract, claims of the customer in case of defects or limitation periods).

In case the eShop is operated by a Romanian based entity which offers goods or services to Romanian customers, Romanian law would be probably the first choice.
Law governing the contract can be established on the basis of an EU regulation No. 593/2008 and which determines the law decisive for consumer contracts. First of all, the difference is made between contracts entered into by two entrepreneurs within their business activity and consumer contracts, i.e. contracts between an entrepreneur and a consumer. The consumer is a natural person concluding a contract outside his trade, business or profession.

As a general rule, consumer contracts are governed by the law of the country of residence of the consumer. The EU law, however, allows parties to choose the governing legal system. Nevertheless, such a choice cannot deprive the consumer of protection provided by the legal system applicable under the general rule. The EU law further contains some exceptions from the general rule, applicable, for example, to contracts on provision of services, if the place of performance lies outside the country of the consumer’s residence, insurance and transport contracts.

If a contract concluded through an eShop is not a consumer contract, the choice of the governing law is possible without any limitations. In case of lack of such a choice, the EU regulation contains rules for determination of the applicable legal system.

So for eShops, which intend to sell goods or services to Romanian customers, the following conclusion can be made: the contract concluded with consumers through an eShop will be governed by the Romanian law. Non-consumer contracts will be governed by the law of the seller’s/provider’s residence, if no other choice is made.

3. Consumer protection

Consumer protection in Romania stems partially from the EU harmonization; therefore, provisions similar to the Romanian regulations can be expected also in other EU countries. On the other hand, EU countries are allowed to apply some additional consumer protection arrangements, so rules applicable in each EU country (including the Romania) should be crosschecked. For an eShop, especially provisions relating to consumer contracts (and particularly to distance contracts) are relevant. A distance contract is a contract (i) concluded without simultaneous physical presence of the parties (ii) by using one or more means of distance communication (e.g. the Internet).

Among these rules, it is possible to highlight provisions imposing information obligation on the trader towards the consumer, provisions regulating the process of concluding the contract and provisions regulating the content of the contract (prohibited provisions, termination of the contract, quality guarantee and the consumer's claims from defects of the performance etc.). The operator of the eShop should secure that the web page where the eShop is located contains all the information required by law and that the contract concluded through the eShop respects all the consumer’s rights.

The Romanian Authority in this area is the National Authority for Consumer Protection.
3.1. Information duty

Before conclusion of a contract, i.e. generally before an order through the eShop is finished, the consumer should be informed about:

- The identity of the trader
- His address, contact details
- Registration Number, Vat Number
- Specification of the goods or services offered, final price of the goods and services (including all taxes and fees)
- Means of payment and delivery, delivery costs
- Claims arising from faulty performance or warranty and conditions for their application
- Length of duration of the contract
- Ways to terminate it (steps, period for withdrawal and procedure of withdrawal included), costs of distance communication, amount of eventual advance payments
- ANSPDCP registration number
- Competent body for settlement of consumer disputes etc.

All the information provided before conclusion of the contract should form part of the concluded contract. The most suitable way to fulfil this duty is to include the information into the general commercial terms. The general commercial terms should be easily accessible on the web page where the eShop is placed. Before placing the order, the customer should acknowledge the general commercial terms.

3.2. Process of conclusion of the contract

Consumers should be informed about particular steps of concluding the contract and before final placing of the order should have a chance to verify and eventually correct the data inserted into the order. The trader should also inform the consumer where the concluded contract is available for the consumer, about languages in which the contract can be concluded or any rules of behaviour bounding on the trader.

After the order is placed by the consumer, the trader is obligated to immediately confirm receipt of the order also by one of the means of distance communication (for example by an e-mail).
3.3. Content of the contract

The contract concluded through the eShop is regulated by the applicable law. For a private contract, the principle of contractual freedom usually applies, nevertheless in case of consumer contracts; the freedom is to a significant extent limited in favour of the consumer.

First of all, certain provisions are explicitly prohibited by law and cannot be applied by the trader. Arrangements establishing disproportional unbalance between rights and obligations of the trader and of the consumer are prohibited in general.

In addition, the contract cannot contain arrangements restricting or excluding consumers’ rights from faulty performance, allowing the trader to withdraw from the contract without any reason, allowing the trader to change unilaterally rights and obligations of the parties to the contract, disallowing the consumer to file an action at court and forcing him to sue the trader at an arbitration court not being bound by the consumer protection provisions etc.

Romanian law contains also some provisions protecting consumers that are applicable for all sales contracts, not only distance contracts. It is worth mentioning that under these provisions the consumer is entitled to raise claims from faulty performance within 24 months from takeover of the goods (or within the warranty period stated on the cover). These provisions also determine the respective claims consumers have in case of faulty performance.

In case of distance contracts consumers also have the right to withdraw from the contract without any reason within 14 days from takeover of the goods (it is sufficient that the consumer dispatched the withdrawal announcement within this term). For avoidance of disputes, it is recommended to offer to the customers a template withdrawal form. When this form is used by the customer, the trader is obligated to confirm its receipt within undue delay. The consumer must return the goods obtained on the basis of the contract within 14 days from the withdrawal. Within the same period, the trader is obligated to return the price paid by the consumer together with delivery costs in the manner the price was paid or in a manner agreed on with the consumer.

4. Personal data processing

When placing the order, the traders often require from customers and customers provide to the trader certain personal data, such as name, address, phone number, e-mail address, date of birth, sex. Such personal data serve mainly for invoicing and delivery of the goods and services, however, some traders use the personal data also for other purposes, such as marketing, advertising, references, statistics etc. Processing of personal data is regulated and when a trader processes personal data, statutory obligations have to be fulfilled.
Processing of personal data constitutes any operation or set of operations systematically conducted with the personal data. It includes collecting of the data, saving, making them available, editing, searching, using, handing over, publishing, exchanging, liquidating etc. The operator of the eShop becomes the so called “controller” of the personal data.

Processing of personal data is allowed only with the prior consent of the person whose personal data are being processed, only for the purpose for which they were obtained, only for as long as a legitimate reason for their processing exists and only with regard to data that are necessary for fulfilment of the purpose of their processing (exceptions apply).

Before granting the consent, the customer has to be informed about the purpose of processing the data (the purpose must be laid down by the controller before processing of the data is commenced), who will be processing the data, what kind of data will be processed, for how long the data will be processed and about rights of the data subject regarding access to, correction of, or destruction of the data etc. It is therefore advisable to put an “I agree” button into the form where the customer inputs his personal data, together with the required information. The controller is also obliged to adopt measures preventing leakage and abuse of the personal data of the customers and such measures have to be documented. Employees of the controller are bound by the statutory confidentiality duty as regards the data and the security measures adopted for their protection.

The controller of the personal data is also obliged to register at the Romanian Personal Data Protection Office only in some specifically cases.

Using the electronic address of the customers for sending mass marketing and other business massages is allowed only under the condition that the customer has the possibility to sign off the mailing list easily.
1. Tax Registrations

Conducting a business on the territory of Romania is usually connected with various tax registrations. The corporate income tax registration and value added tax registration are the most common for an eShop.

1.1. Corporate income tax registration

Provided that the eShop carries out its activities through a company established for this purpose in Romania, it is liable to register for corporate income tax purposes within 30 days from the establishment of the company, i.e. from its registration in the Commercial Register.

If, on the other hand, the eShop would have no physical presence on the Romanian territory, the liability to corporate income tax registration and related duties would not arise.

Nevertheless, even if no Romania based company is set up to operate the eShop, it is highly recommendable to pay close attention to any activities the eShop carries out on the Romanian territory. Certain activities carried out by the foreign eShop on the territory of Romania could lead to creation of its Romanian permanent establishment. Once created the permanent establishment would be liable to corporate income tax duties in Romania.

It would a difficult exercise to provide a full list of activities that would or would not lead to permanent establishment creation. To come up with a relevant conclusion on this issue, both the Romanian tax legislation and the Double Tax Treaty, concluded between Romania and the country of which the entity operating the eShop is a tax resident, should be analyzed.
To provide an indication of situations both leading and not leading to Romanian permanent establishment creation, few examples are described below.

- **Situations that do not lead to permanent establishment creation in Romania**
  - Possession of a warehouse that is used solely for the purposes of storage, display or delivery of goods or merchandise belonging to the foreign e-shop
  - Maintenance of a fixed place of business solely for the purpose of carrying out activities which have a preparatory or auxiliary character for the foreign eShop, e.g. existence of a collection point for goods returned by the customers, provision of marketing research activities

- **Situations that might lead to permanent establishment creation in Romania**
  - Location of a server on which the website used to perform the internet sale in Romania is placed
  - Presence of a person on the territory of Romania acting on behalf of the foreign eShop who has and habitually exercises an authority to conclude contracts in the name of the eShop

1.2. **Corporate income tax filing obligations**

Once registered for corporate income tax purposes, the eShop is liable to file its Romanian corporate income tax return on a quarterly basis and one annual corporate tax return. The quarterly corporate tax returns must be submitted by the 25th of the month following the end of the quarter, while the annual corporate tax return should be submitted by the 25th March of the following year. The corporate income tax liabilities (self assessed by the eShop) are payable within the filing deadlines detailed above.

1.3. **Microenterprise tax**

Newly established **companies** are subject to microenterprise tax instead of corporate income tax, under certain conditions: (i) the turnover is under EUR 500,000; (ii) more than 80% of turnover from activities other than consulting & management; (iii) the share capital is under RON 45,000.

The tax rate is either: (i) 1% of the turnover, if the company has at least 1 employee; (ii) 2% of the turnover, if the company has no employees.
The tax returns should be submitted on a quarterly basis by the 25th of the month following the end of the quarter. The microenterprise tax liabilities (self assessed by the eShop) are payable within the filing deadlines. This tax regime is not applicable to permanent establishments, only to Romanian companies.

1.4. VAT registration

Provided that the eShop has registered seat, place of business or fixed establishment in Romania, the threshold for mandatory VAT registration is the turnover of RON 220,000 (approx. EUR 48,000) in a calendar year.

A foreign taxable person that realizes long-distance sales (i.e. sale of goods through eShop) in the Romania to Romanian final customer has to register for VAT purposes if the total value of the goods supplied to the Romanian customers reaches RON 118,000 (approx. EUR 26,000) in a calendar year.

The entity operating the eShop (both Romanian and foreign) may however apply for voluntary VAT registration. The process of registration is rather time consuming and requires preparing a file with consistent information about the Company, shareholders and administrators.

1.5. VAT filing obligations

Once VAT registered, a liability to file VAT returns through which the VAT liability or entitlement to VAT recovery are reported arises. Companies with turnover below EUR 100,000 fill VAT returns on a quarterly basis by the 25th of the month following the end of the quarter. Companies obtaining a turnover exceeding the threshold of EUR 100,000 should submit the VAT returns on a monthly basis by the 25th of the following month.

The amount of VAT liability consists of the VAT due on supply of goods and services carried out decreased by input VAT of the same period.

Aside from the VAT returns, tax payers are also obliged to submit other informative VAT returns: (i) the VIES return regarding the EU transactions (form 390) and (ii) the domestic informative return (return 394) which contains details such invoice number, identification of supplier or customer, tax base, VAT).

The VAT informative returns are filed within the same deadlines as are relevant for VAT returns filing. These returns are only a reporting tool that allows financial authorities to have more control over correct and complete reporting of VAT liabilities.
1.6. Other tax registrations

The liability to other tax registrations should be assessed with regard to the nature of the eShop and its operations. As relevant examples could serve registration to personal income tax from employment activities provided that the entity operating the e-shop has employees, obligation to pay local taxes if the entity operating the eShop operates vehicles or owns real estate properties in Romania etc.

2. Acquisition of goods

To be able to realize the customer supplies, the eShop will first acquire the relevant goods. The decision on the supplier of the goods to be sold by the eShop will most likely be business driven. Nevertheless, the VAT liabilities relevant to the purchase transaction must be assessed in line with the VAT legislation to avoid any negative consequences.

The diversity of purchase (of goods) transactions is almost unlimited. Below are commented on the most common ones.

2.1. Acquisition of goods in Romania

Provided that the eShop seated in Romania will acquire goods locally (i.e. from a taxable person registered for VAT in Romania), the eShop, as the purchasing party will be entitled to claim input VAT through its VAT return.

The relevant VAT may be claimed based on an invoice containing all the prerequisites defined by the VAT legislation.
However, for certain goods, the Romanian VAT legislation defines a VAT treatment that varies from the one described above. If for one transaction the purchase price of goods such as laptops, mobiles, tablets, video consoles without VAT exceeds RON 22,500 (~EUR 5,000) and if the goods are acquired by a Romanian VAT registered payer (i.e. the Romanian VAT registered e-shop) then so called local reverse charge mechanism applies.

Under the local reverse charge mechanism, the supplier transfers the VAT liability to the customer (i.e. Romanian VAT registered eShop). This means that the supplier applies no VAT on the delivery of the goods to the customer. The customer (i.e. Romanian VAT registered eShop) is consequently obliged to declare the output VAT relevant to the acquisition of goods in its VAT return. Simultaneously, the input VAT relevant to the purchase of the goods may under standard conditions be claimed through the VAT return. This reverse charge mechanism may be applicable also for real estate properties transactions.

2.2. Acquisition of goods from the EU

When acquiring goods from other EU member states, reverse charge mechanism applies to the purchasing party - VAT registered eShop in Romania.

Under the reverse charge mechanism, the supplier of the goods treats the delivery of the goods to a customer seated in another EU country as exempt from VAT. The purchasing party (i.e. the Romanian VAT registered eShop) is subsequently obliged to declare the output VAT relevant to the acquisition of goods from other EU member state through its Romanian VAT return. Simultaneously, the input VAT relevant to the purchase of the goods may under standard conditions be claimed through the Romanian VAT return.
2.3. Acquisition of goods from 3rd countries – import of goods

The import of goods to Romania by Romanian registered VAT payer is reported in his VAT return through the reverse charge mechanism and in the same time, the input VAT is paid to the customs authorities. The input VAT relevant to the purchase of the goods may under standard conditions be claimed through the Romanian VAT return.

The assessment and collection of VAT will be in the hands of the customs authority if the import to Romania will be realized by a person not VAT registered in Romania.

3. Sale of goods to customers

The sale of goods may create various situations from the VAT point of view. When concluding on the VAT treatment to be applied, many indicators will need to be evaluated, e.g. where are the goods located at the moment of sale, is/is not the eShop registered for VAT in Romania, are the goods sold to Romanian customer or to a foreign one and many others.
The text below comments on the VAT treatment of some of the situations that may arise on the sale of goods.

a. Romania seated and VAT registered eShop sells goods to Romanian customer (non taxable person); the goods are located on the territory of Romania at the moment of sale.

Under this scenario, the eShop will be liable to apply output VAT on the sale of the goods.

b. The Romanian seated and VAT registered eShop sells goods to an EU customer (non taxable person). The goods are located on the territory of Romania at the moment of sale.
Delivery of goods to the final customer (non taxable person) to other EU member state, where the goods are transported from Romania by the supplier or by third person engaged for this purpose (e.g. courier service, post office) by the seller, falls under distant sale regime (provided that the sold goods are not used goods, goods that are delivered with installation and assembly or new means of transport).

For the determination of the correct VAT treatment, in this situation, the overall value of the goods sold to the given EU member state by the eShop is decisive.

Romanian VAT will be applied and reported in the Romanian VAT return of the Romanian eShop on the sale of goods if the place of taxable supply will be in Romania. The place of the taxable supply will be in Romanian provided the overall value of goods (without VAT) sent by the eShop to the designated EU member state does not in both the given and the preceding calendar year exceed the amount set by the EU member state.

If the above mentioned threshold will be exceeded, the eShop will become liable to register for VAT in the other EU member state and apply the relevant VAT rate as defined by the VAT legislation of the given EU member state on the sale of goods to the customer. Subsequently, the eShop will be liable to comply with VAT reporting and payment obligations as defined by the VAT legislation of the other EU member state.

Even if the eShop will not fulfil the above conditions obligating it to VAT registration in the other EU member state the eShop will be entitled to VAT register voluntarily in the other EU member state. Also in this case the e-shop will be obliged to comply with VAT reporting and payment obligations defined by the other EU member state.

c. EU seated and VAT registered eShop sells goods to a Romanian final customer (non taxable person)
This scenario mirrors the one described in the above example. Therefore, the place of taxable supply will be in the other EU member state provided that the conditions given by the Romanian VAT legislation (and giving rise to obligatory Romanian VAT registration) are not fulfilled. Under this scenario the sale of goods to Romanian final customer (non taxable person) will be subject to VAT of the other EU member state.

If however the value of the goods sold to Romanian final customers (non taxable persons) in the given and the preceding calendar year exceeds RON 118,000 (approx. EUR 26,000) the EU eShop would become liable to VAT register in Romania. As a consequence, the EU eShop will be liable to apply Romanian VAT on the sales to Romanian final customers (non taxable persons) and comply with its Romanian VAT reporting and payment obligations.

d. The Romanian seated and VAT registered eShop sells goods to a third country customer (non taxable person). The goods are located on Romanian territory at the moment of sale.

Under this scenario, the sold goods exit from the territory of the EU and are released to export customs regime. Should this be the case the sale of goods to the final customer (non taxable person) would be exempt from VAT in Romania. Any duty and VAT could be assessed to the customer based on the legislation of the country of destination.
4. Tax documents declaring sale of goods

The eShop is liable to declare the sale of goods through an invoice, if the eShop is registered for VAT purposes in Romania. As required by the Romanian VAT legislation, the invoice must provide some minimal mandatory information, such as:

- Identification of the eShop (business name, seat, registration number, VAT number)
- Identification of the customer (name, address)
- Description of the goods sold
- Date of taxable supply (delivery date or date of advance payment receipt), date of issuance of the invoice
- Unit price of the goods sold excluding VAT and discount (if the discount is not included in the unit price)
- VAT base, VAT rate, amount of VAT in RON, total amount to be paid

In case of exchange or return of the goods a liability to issue a corrective invoice will arise. The invoice should contain the minimal mandatory information as detailed above usually with the minus sign and new invoice is issued for the new goods provided.

It is essential for the eShop (with no regard to the destination from where the goods are shipped) to be able to prove both the date of receiving the advance payment (in case of receiving advances from the customers) as well as the date of taxable supply (i.e. the date on which the customer overtakes the goods). Receipt of the payment can be proved by a bank account statement in case of card/bank transfer or by a confirmation from courier company in case of cash on delivery. The handover of the goods to the customer can be proved by a confirmation issued by the courier company proving that the goods were handed over to the customer or by a delivery note. Even though there is no legal obligation to issue delivery notes, it is a common practice in case of eShop sale.

Also, for sales made towards EU and non-EU clients, the eShops seated in Romanian should maintain specific transport attesting that the goods have left Romanian territory in order to claim the VAT exemption on these sales.

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