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Mirela Buliga\*

 <https://orcid.org/0009-0003-1639-7073>

## THE TAXATION OF DIGITAL NOMADS UNDER ROMANIAN LAW: WHAT IS THE CATCH?

**Abstract.** Promoted as an attractive country for digital nomads (ranked on the 3<sup>rd</sup> place in the Digital Nomad Index<sup>1</sup>), Romania adopted the Law no. 69 of 29 March 2023, which brought changes to the tax regime for digital nomads.

According to the new provisions, the so-called “digital nomads” are exempt from income tax and compulsory social contributions (health and pension contributions) for a limited timeframe. This article examines, exclusively from the income tax perspective, the features of digital nomads to which the tax provisions apply and the conditions under which the income tax exemption applies.

**Keywords:** digital nomads, Romanian tax law, double tax treaties, taxation

## OPODATKOWANIE CYFROWYCH NOMADÓW W PRAWIE RUMUŃSKIM – GDZIE WYSTĘPUJĄ WĄTPLIWOŚCI?

**Streszczenie.** Promowana jako kraj atrakcyjny dla cyfrowych nomadów (3 miejsce w Indeksie Digital Nomad), Rumunia przyjęła ustawę nr 69 z 29 marca 2023 r., która wprowadziła zmiany w reżimie podatkowym dla cyfrowych nomadów.

Zgodnie z nowymi przepisami tzw. „cyfrowi nomadowie” przez ograniczony czas są zwolnieni z podatku dochodowego i obowiązkowych składek na ubezpieczenia społeczne (składki zdrowotne i emerytalne). W artykule zbadano, wyłącznie z punktu widzenia podatku dochodowego, cechy cyfrowych nomadów, do których mają zastosowanie przepisy podatkowe oraz warunki, na jakich obowiązuje zwolnienie z podatku dochodowego.

**Słowa kluczowe:** cyfrowi nomadzi, rumuńskie prawo podatkowe, umowy o unikaniu podwójnego opodatkowania, opodatkowanie

\* Academy of Economic Studies Bucharest, mirela.buliga@drept.ase.ro

<sup>1</sup> The Digital Nomad Visa Index is a comprehensive ranking system evaluating and ranking countries based on their suitability for digital nomads. This index considers various factors critical for remote workers who travel and live in different countries. For more details, see: <https://visaguide.world/digital-nomad-visa/digital-nomad-index/>.



## 1. WHO ARE DIGITAL NOMADS?

The concept of digital nomads is not new. In 1997, *T. Makimoto* and *D. Manners* (Beretta 2022, 6) in a book titled *Digital Nomad* predicted that the development of technology would enable people to work remotely.

Twenty years later, the digital nomad is defined as “an emerging sub-population of nomadic workers with a distinct motivation for travel, world adventure and independent remote work. The motivation most often associated with digital nomad’s mobile lifestyle is travel adventurism and escape from the office atmosphere” (Kostic 2019, 205).

Contrary to the case of digital workers (typical remote workers), a short degree of permanence is specific to digital nomads. A digital nomad is always a remote worker, but a remote worker is not always a digital nomad, as the latter lacks interest in staying longer in the same jurisdiction. In other words, the digital nomad is a category of mobile professionals who perform their work remotely from anywhere in the world, taking advantage of digital technologies (Gadzo 2022) and of the fair and open Digital Environment (Mănescu 2024, 289–304).

## 2. THE EXPERIENCE OF OTHER COUNTRIES

After the COVID-19 pandemic, many states have introduced provisions tailored to attract digital nomads.

For example, Estonia<sup>2</sup> implemented in 2020 the Digital Nomad Visa that allows digital nomads to live and work in Estonia for up to one year. This visa is open for individuals who can work online and independently of location, and depends on several conditions to be met: (i) the ability to work remotely using telecommunications technology; (ii) the ability to present an active employment contract with a company registered outside Estonia, or to conduct business through their own company registered abroad; or (iii) the ability to work as a freelancer for clients outside Estonia. In addition, the individual’s income must meet the minimum threshold (4,500 EUR gross of tax) during the six months preceding the application.

Another country with a similar solution is Croatia, which introduced the so-called “digital nomad visa,”<sup>3</sup> which is, in fact, a residence permit, in accordance with which the digital nomad is defined as a third-country national who is employed or works via communication technology for a company or their own company that is not registered in Croatia or do not work or provide services to employers

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<sup>2</sup> See: <https://www.e-resident.gov.ee/nomadvisa/> (accessed: 15.09.2024).

<sup>3</sup> How to apply for the digital nomad residence permit in Croatia – Guide for 2024: <https://www.expatincroatia.com/digital-nomad-visa-croatia/#law> (accessed: 15.08.2024).

in Croatia (Gadzo 2022). Furthermore, under domestic tax law, digital nomads are not taxed on the income obtained based on employment or self-employment activity for an employer located outside Croatia.

In January 2023,<sup>4</sup> Spain introduced the digital nomads visa as part of the Startup Act to attract and recover international and national talents that will allow individuals to reside and work in Spain for five years. This type of visa is available only for non-EU/EEA citizens, for both employees and self-employed with many clients worldwide and who receive income from different sources from online activities outside Spain. The tax regime provides for a decrease of income tax to 15% from the standard tax rate of 24%.

In 2021, Greece introduced a Visa for Digital Nomads, who are defined as third-country nationals, self-employed or employed, who work remotely using Information and Communication Technologies (ICTs) with employers or clients outside Greece to whom a visa is granted for a period of up to twelve months. Moreover, Greece also allowed European and non-EU workers to transfer their tax residence to its territory and granted them a 50% off on income tax of a Greek source for up to seven years (Pignateri 2023, 383–401). Of course, the trade and cooperation agreement between the European Union, the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland – concluded at the end of 2020 – has also helped in regulating digital trade (Mănescu 2021, 963–974) in general, as well as the way in which the digital nomads perform their activities.

Other countries – such as Brazil, Capo Verde, Cayman Islands, Costa Rica, Georgia, Hungary, Iceland, Malta, Mauritius, Mexico, Monserrat, Panama, Saint Lucia, or Seychelles – have designed programmes for digital nomads (Beretta 2022, 2–25), and the list is open.

### 3. DIGITAL NOMADS UNDER ROMANIAN LAW

In accordance with Law no. 22/2022,<sup>5</sup> under Romanian law, a digital nomad is defined as a foreigner (i) who is employed under a labour agreement concluded with a company registered outside Romania and who provides services using a information and communication technology, or (ii) who owns a company registered outside Romania through which the individual provides services using an information and communication technology, and conducts the activity remotely by using this technology.

<sup>4</sup> See: <https://schengenvisa.info.eu/digital-nomad-visa/spain/> (accessed: 15.08.2024).

<sup>5</sup> Law no. 22/2022 on the amendment of Government Emergency Ordinance no. 194/2002 on the foreigners' regime in Romania, published in Official Gazette no. 45/14 of February 2022.

The explanatory memorandum to Law no. 22/2022<sup>6</sup> states that the term “digital nomad” has emerged to define the category of employees who work remotely for an employer registered in one country but who wish to live and travel between countries while teleworking. Over time, the concept of digital nomads has evolved to include people who have registered a company but are able and willing to carry out economic activity remotely, living or travelling in a country other than the one in which they have registered their company.

This new concept under Romanian law is justified by the large number of digital nomads around the world,<sup>7</sup> so Romania aims to attract many people with this status to spend financial resources here. There is no estimated financial impact for Romania – with the only economic reference being made to Argentina – that planned to introduce this concept in 2021.

Under Romanian law, the concept of a digital nomad has the following features:

- it is a foreign individual defined<sup>8</sup> as a person who does not have Romanian nationality, the nationality of another Member State of the European Union or of the European Economic Area, or the nationality of the Swiss Confederation. Thus, the tax regime of digital nomads shall apply only to third-country nationals,<sup>9</sup> similar to the tax regime from Croatia and Spain;
- the individual is employed under an employment contract by a company registered outside Romania and performs work using an information and communication technology;
- the individual owns a company outside Romania and renders services using an information and communication technology.

The first remark related to the personal scope of the “digital nomad” concept is that self-employed individuals are excluded, although this is a category quite common in practice, as is shown by the practice of other countries that have extended the legal regime of the digital nomad concept to cover also self-employed individuals.

The exclusion of self-employed individuals is even more unjustified, because, as Pignatari (2023, 389) points out,

The concept of “employee” and “independent service provider” are becoming increasingly indistinguishable so that the dichotomy has lost its importance due to the emergence of new business models and new modalities of work within digital economy world. The very concept

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<sup>6</sup> See: [https://www.cdep.ro/pls/proiecte/upl\\_pck2015.proiect?idp=19549](https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=19549) (accessed: 16.08.2024).

<sup>7</sup> It is shown that in 2018, the number of digital nomads was estimated to be around 4.8 million, while 17 million aspired to hold this status in the future.

<sup>8</sup> By Art. 2 letter a) of G.E.O. no. 194/2002 on foreigners’ regime in Romania, republished in Official Gazette no. 421/05 of June 2008.

<sup>9</sup> Which means that this regime does not apply to EU/EEA/Swiss nationals working remotely while they stay in Romania.

of work is moving away from the need for a physical presence either on the employers premises or in the employers own jurisdiction. In this context, the question is whether it is appropriate to give different tax treatments to these two categories that, day after day, come closer, and their differences become less distinct.

Then, with reference to individuals who own a company outside Romania to which the services are provided, there is no detail on the type of activities carried out. The notion of a “company” is not defined, and ownership most likely covers the holding of corporate rights giving rise to dividends. However, the rendering of services could be carried out as a shareholder or could also cover the provision of dependent personal services (from an employment relationship) with one’s own company, in which case it is the presence of a digital nomad who performs activity under an employment contract.

#### 4. THE TAX PROVISIONS

To reflect the common law provisions on the concept of digital nomads, the Romanian Tax Code was amended by Law no. 69/29 of March 2023 to lay down a more appealing tax treatment. I will further analyse the tax treatment both in terms of domestic law provisions and with reference to the application of double tax treaties.

##### 4.1. Domestic tax provisions

The newly introduced provision (art. 228 (2) d) of Romanian Tax Code) stipulates that the following is non-taxable:<sup>10</sup>

- income from salaries or assimilated obtained by an individual with the status of a digital nomad,<sup>11</sup> from the activity he/she performs under an employment contract with a company registered outside Romania and who provides services using a information and communication technology *or* who owns a company registered outside Romania, where he/she provides services using an information and communication technology and may carry out the activity as an employee or the activity within the company remotely using an information and communication technology
- provided that the individual is present in Romania for a period or periods not exceeding in aggregate 183 days during any period of 12 consecutive months ending in the calendar year concerned.

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<sup>10</sup> There are similar provisions stating that digital nomads are exempt from compulsory social contributions.

<sup>11</sup> Defined according to the provisions of G.E.O. no. 194/2002 on the foreigners’ regime in Romania, published in Official Gazette no. 45/14 of February 2022.

These provisions are included in Title VI of the Romanian Tax Code on the taxation of non-residents and lay down an exception to the provisions according to which income obtained by non-resident individuals from a dependent activity carried out in Romania is taxable in Romania.

There are two categories of persons exempted from taxation, depending on the nature of the activity carried out by the digital nomad, analysed below.

#### **4.2. Income from salaries or assimilated earned by the digital nomads employed by a company registered outside Romania**

The income earned by digital nomads from salaries and assimilated income is subject to tax exemption. Although it is stipulated that income from salaries and assimilated income is earned for work performed under an employment contract, in accordance to Romanian domestic tax law, only the income from salaries is earned under an employment contract. Income assimilated to salaries may be derived in addition to an employment contract from other contractual relationships such as directors' fees derived under a management contract, which under the Romanian tax code have the same legal approach as salaries. There seems to be a contradiction between the nature of the income (from salaries) and the legal relationship that generates it (employment contract). It can be considered that the nature of the income takes precedence and that income obtained by directors can also be included in the category of exempted income, as it is assimilated in domestic tax law to salary income.

As has been shown, self-employed individuals are excluded from the notion of a digital nomad. However, if a person carries out a self-employed activity for the beneficiary, i.e. a company registered in another state, but which – according to the criteria of art. 7 para. (3) of the Tax Code – is of a dependent nature, it can be reclassified into dependent activity by the tax authority under the general anti-abuse rule of art. 11 para. (1) of the Romanian Tax Code. The outcome will be the exemption from tax of the independent activity reclassified into dependent activity under the digital nomads regime.

With reference to the employer, income from salaries and assimilated must be obtained from a company registered outside Romania. The digital nomad is a foreigner, a person with the nationality of a third country (non-EU or non-EEA). However, the employer only needs to be a company registered outside Romania, and it is possible to be registered in a EU or EEA country.

Then, the exemption from income tax is granted “if the individual is present in Romania for a period or periods not exceeding 183 days during any period of 12 consecutive months ending in the calendar year concerned.” In other words, the exemption does not apply for a period of 183 days but is subject to the physical presence of the digital nomad under 183 days in any twelve-month period ending in the calendar year concerned. If the digital nomad has a presence of more than

183 days in the performance of his/her activity (for a non-resident employer), he/she will be taxed retroactively from the first day of activity in Romania. Therefore, by limiting tax exemption on the salary income “under the condition” and not “for” a period of 183 days, the original objective – attracting digital nomads – is practically reduced.

#### **4.3. Income earned by the digital nomads who own a company registered outside Romania**

This hypothesis also refers to income from salaries and assimilated that is earned by the digital nomad. This time, the digital nomad “owns a company registered outside Romania” and “can carry out the activity as an employee or activity within the company.” Thus, there are two possible scenarios: the digital nomad is employed in his/her own company and earns income from salaries, or the digital nomad performs “activity” in his/her own company. There is no detail on the type of activity performed, but – since only salary and assimilated income is exempt under the legal provision – the only option available is to perform activity as a director, which under the Romanian tax code is assimilated to salary income.

Again, there is the condition relating to physical presence in Romania for a period or periods not exceeding 183 days during any period of 12 consecutive months ending in the calendar year concerned. There is no limitation regarding the clients for whom the company is performing the activity, so they can even be clients from Romania, the only restriction being the performance of the activity for a company registered outside Romania.

#### **4.4. Is there a tax benefit when a double tax treaty is applied?**

As a rule, under Romanian domestic tax provisions, the income earned by non-residents from an activity carried out in Romania is taxable in Romania. If the conditions for the existence of the digital nomad are met, the same income is not taxable in Romania if the physical presence of the digital nomad is less than 183 days in any twelve-month period.

However, if a double taxation treaty applies, is there any tax benefit applicable to the digital nomad?

Romania has about 89 double tax treaties<sup>12</sup> in place which follow the OECD Model Convention regarding the allocation rules of taxation applicable to salaries. Thus, art. 15 para. (1) first sentence of the OECD MC provides the exclusive taxation right in the employee’s residence state (income beneficiary) as follows:

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<sup>12</sup> See: [https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili\\_r/Conventii/Conventii.htm](https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm) (accessed: 15.07.2024).

“subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that state unless the employment is exercised in the other Contracting State.” However, this rule applies only if the employee exercises his/her employment in his/her residence state or a third state (Reimer, Rust 2015, 1115).

For this analysis, of interest is the allocation of taxing rights provided by art. 15 para. (1), which states that “if the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other state.” However, art. 15 para. (2) of the OECD MC provides for the exclusive taxing rights of the residence state, even if the activity is carried out in the source state, if the three conditions of art. 15 para. (2) are met cumulatively, namely:

- a) the recipient is present in the other state for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state;
- c) the remuneration is not borne by a permanent establishment which the employer has in the other state.

The second and third rules provided by art. 15 para. (2) of the OECD MC are directly linked to the physical presence of the employer in the state of activity, but in the case of digital nomads, the employer is by default a company registered in a country outside Romania. It is not excluded that the employer, although registered outside Romania, may have a permanent establishment in Romania which bears the remuneration, in which case the income derived by the digital nomad is taxable in Romania regardless of his/her period of physical presence.

However, most likely, the provision of art. 15 (2) a) will be applicable – the employee must be present in the other contracting state for a period or periods that do not exceed a total of 183 days in any twelve-month period commencing or ending in the relevant fiscal year. If the test of physical presence of less than 183 days is met, Romania does not have the competence to tax the salary income for the activity carried out in Romania either under domestic tax law or under a double tax treaty.

Therefore, in the case of digital nomads to whom the provisions of a double taxation treaty apply, within the physical presence limits set by the Tax Code (less than 183 days), Romania has no competence to tax the earned income anyway.

Lastly, if one investigates art. 16 on the Director’s fees which might come into play for the activity carried out by the digital nomad in his/her own company, again the taxing right is not allocated to Romania but to the state where the managed company is located.

## 5. CONCLUSIONS

Romania has introduced the concept of a digital nomad and established a more favourable tax regime through the provisions of the Tax Code. However, the regime does not apply to the largest category of digital nomads, i.e. those who are self-employed. Then, if we are in the situation of digital nomads with the residence in a country with which Romania has concluded a double taxation treaty, there is no tax benefit: in any case, by applying the taxing rule provided by Article 15 or 16, the salary and assimilated income is not taxable in Romania. The only tax advantage is for residents of countries with which Romania does not have a double taxation treaty, in which case, for a period of physical presence of up to 183 days, the salary and assimilated income is not taxable in Romania under the provisions of the domestic tax provisions.

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