

Tax & Legal Weekly Alert

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Legal Updates

New rules regarding the GC support scheme for E-RES producers:

In view of approving the amendments brought in 2013 to Law no. 220/2008 for establishing a support scheme for energy production from renewable sources, on 14 March 2014 Law no. 23/2014 for the approval of Government Emergency Ordinance no. 57/2013 for the amendment and supplementation of Law no. 220/2008 for establishing a support scheme for energy production from renewable sources was published in the Official Gazette of Romania no. 184.

The new law approves the provisions of the Government Emergency Ordinance no. 57/2013, however it also sets forth important amendments regarding: (i) the scope of work of the support scheme; (ii) the yearly mandatory quotas of energy generated from renewable sources that benefits from the support scheme; (iii) the granting of additional green certificates; (iv) the repealing of the limitation on accreditation established by GEO no. 57/2013, as well as other amendments that can be of interest

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New rules regarding the GC support scheme for E-RES producers

In view of approving the amendments brought in 2013 to Law no. 220/2008 for establishing a support scheme for energy production from renewable sources ("**Law 220**"), on 14 March 2014 Law no. 23/2014 for the approval of Government Emergency Ordinance no. 57/2013 for the amendment and supplementation of Law no. 220/2008 for establishing a support scheme for energy production from renewable sources (hereinafter referred to as "**Law 23**") was published in the Official Gazette of Romania no. 184.

The main amendments brought to the support scheme based on green certificates ("**GC**") refer to the following:

1. Scope of work of the support scheme

The scope of work for the provisions of Law 220 has been extended by way of including in the notion of a refurbished hydro power station the newly installed hydroelectric group of a pre-existent hydro power station or of a hydro-technical facility previously utilized for energy purposes.

Moreover, the restriction regarding photovoltaic power plants located on agricultural land shall be applicable only to those power plants located on this type of land from 31 December 2013 and not before, as opposed to the previous provisions that referred to the date GEO no. 57 entered into force (i.e. 1 July 2013).

Furthermore Law 23 expressly stipulates that the power generated by power stations located on any type of vehicle is not subject to the provisions of Law 220.

2. Reduction of GCs for biomass power plants

According to the provisions of Law 23, the electricity generated by power stations that utilize biomass deriving from forestry wastes shall no longer benefit from additional GCs. Thus the number of GCs granted to such power stations has been reduced from three GCs to two GCs for each MW/h generated and delivered into the national power system.

3. Deferral from trading of GCs

As opposed to the provisions of GEO no. 57, Law 23 states that the deferral of GCs applies only to trading operations, not to their issuance by the Transmission and System Operator ("**OTS**"). Consequently, the deferred GCs shall be issued by the OTS to the producers in a number established by Law 220, with no possibility to trade such deferred GCs. However, the new provisions are inconsistent, as the next paragraph still refers to the process of "recovering deferred green certificates".

It is also important to mention that the deferral of GCs shall only be applicable to producers accredited by the National Regulatory Authority in the Energy Field ("**ANRE**") before 31 December 2013.

4. Repealing of the limitation established by GEO no. 57 on accreditation and amendment of the annual mandatory quota of E-RES energy benefitting from GCs

Law no. 23 repeals the provisions of GEO no. 57 which established that ANRE shall grant accreditation to power stations that generate electricity from renewable sources only up to the annual total value of such installed capacities established yearly through Government decision.

Thus, the accreditation of those power plants which will benefit from the GC support scheme shall no longer be limited to the yearly updated values established by the National Action Plan in the Renewable Energy Field.

However, the provisions regarding the yearly mandatory quotas of electricity that will benefit from GCs have been amended in that the yearly quotas for years 2014 – 2020 have been repealed and for these years the quotas will be established according to a new mechanism.

Thus, the new provisions establish that for years 2015-2020, the yearly mandatory quota of electricity generated from renewable resources that will benefit from GCs shall be established yearly and approved through a Government decision, at the proposal of the Energy Department of ANRE, within 60 days from when ANRE communicates its proposal to the Government.

By contrast, for year 2014, ANRE had to calculate and publish the E-SRE quota that benefits from GCs. The quota has been published and has a value of 11.1% (as opposed to 15% as previously regulated by Law 220).

5. Validity period of GCs

The validity period of green certificates has been decreased from 16 months to 12 months from the issuance date by the OTS.

6. The reporting obligation and GCs acquisition obligation

The reporting obligation and GC acquisition obligation for power suppliers, as well as for producers (for final consumption, other than own technological consumption, and for power delivered to consumers connected through direct lines to the power station) shall now be a yearly obligation, instead of a quarterly obligation as provided by the previous regulation of Law 220.

Considering that the reporting and GCs acquisition obligations are to be fulfilled on a yearly basis, ANRE shall also verify the fulfilment of such obligation on a yearly basis.

7. Guarantee Fund

The provisions of Law 220 referred to a Guarantee Fund as the manner in which the state shall fulfil its obligation to acquire the unsold GCs from the producers, upon their request, acting as a buyer of last resort. The acquisition of the unsold GCs was supposed to be performed through the Guarantee Fund by the commercial operator of the electricity market. However such a fund has not been incorporated.

Through the entry into force of Law 23, all references to the Guarantee Fund have now been removed. As a consequence, the provisions referring to the acquisition of unsold GCs upon the producers' request have also been repealed.

8. Applicability of the reduction measures of the number of GCs

The reduction measures of GCs shall be applicable to power stations accredited after the Government decision approving such measures has entered into force. However, the measures themselves shall be applicable only starting from 1 January of the year subsequent to the year the decision enters into force

It should be noted that the deferral of the GCs and the reduction measures shall not be applicable in any way to the same accredited power plant, as the area of application of these provisions is entirely different.

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