

Tax & Legal Weekly Alert

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Legal Updates

The legal regime applicable to employee inventions

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Recent enactments issued by the National Energy Regulatory Authority in the energy field

On 26 June 2014 the president of the National Energy Regulatory Authority (“**ANRE**”) has issued two regulations having a direct impact on the production of renewable energy: Order no. 49 regarding the approval of the Methodology for determining the mandatory annual quotas of electrical energy produced by renewable energy sources and which benefit of the promotion system of green certificates; and Order no. 48 regarding the approval of the Regulation on the accreditation of the electrical energy producers from renewable energy sources for the enforcement of the promotion system by green certificates – [page 3](#)



The legal regime applicable to employee inventions

Law no. 83/2014 regarding the employee inventions (hereinafter referred to as "**the Law**") was published in the Official Gazette no. 471 dated 26 June 2014, and the provisions have entered into force as of 29 June 2014. The scope of the Law includes inventions created by the employees of a legal entity, either of public or private law and which can be legally protected by a patent or a registered utility model.

The entitlement to the rights over such an invention belongs to:

- 1) **The employer**, in the case of inventions that have resulted from the duties of the inventor, expressly referred to as such in the individual employment agreement and in its job description or set by means of other binding agreements, which regulate an inventive mission for the inventor.
- 2) **The employee**, in case of:
 - a. Inventions that were created either during the performance of the employment agreement or within a two years period as of the termination of the said employment agreement, as the case may be, as a result of acknowledging or of making use of the employer's experience, by using resources of the employer, as a result of the training acquired by the employed inventor on the care and expense of the employer or by using information resulting from the employer's activity or provided by the latter, **if the employer does not claim its rights over the invention.**
 - b. Inventions that do not fit in any of the categories mentioned at points (1) and (2) a. above, according to the provisions of Law no. 64/1991 regarding patents.

In what regards the **claim of the employer over the inventions** which, although do not result from an inventive mission regulated under the employment agreement, have as a result the knowledge or usage of the employer's experience or information and of the training obtained at the employer, according to point (2)a. above, **the Law** establishes that:

- a. the employer is entitled to decide on such determination of the invention and is also entitled to claim rights over the invention;
- b. the claim of the employer, which also has the competency to decide related to the category for an invention, has to be notified to the employee in a 4 months term, if the internal regulation does not stipulate a longer term;
- c. the inventor is entitled to challenge how the invention was determined to be part of a certain category with the competent court of justice, within a 4 months term;
- d. in the event that the rights for such an invention are claimed by the employer, the inventor has the right to a remuneration established by the employer based on a criteria established by the Law.

The Law also regulates the following matters related to **the trade secret**:

- a. Inventions at points (1) and (2) a. can be also considered trade secrets, consisting of the **obligation of both the employer and the employee not to disclose or make the invention public, without the written approval of the other party;**
- b. The disclosure liability is engaged as per the contractual provisions agreed by the parties in the employment agreement, in case a the confidentiality obligation is regulated;
- c. In the lack of a confidentiality obligation regulated under the employment agreement and if a prejudice has been created, the liability is engaged under the conditions of general civil liability, as per the provisions of the Civil Code.

We are at your disposal for identifying and finding solutions for any matters that may be of interest for your company.

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Recent enactments issued by the National Energy Regulatory Authority in the energy field

On 26 June 2014 the president of the National Energy Regulatory Authority (“**ANRE**”) has issued two regulations having a direct impact on the production of renewable energy.

The first enactment issued by ANRE is Order no. 49 regarding the approval of the Methodology for determining the mandatory annual quotas of electrical energy produced by renewable energy sources and which benefit of the promotion system of green certificates („**Order ANRE 49**”).

The Order ANRE 49 has been published in the Official Gazette no. 474 at 27 June 2014 and has entered into force at the same date. We mention that the Order ANRE 49 has explicitly repealed the previous enactment applicable on this matter, respectively the Order of the president of ANRE no. 45/2011 and that it mainly regulates the following aspects:

- the calculation method for the annual mandatory quota of electrical energy produced by renewable sources benefiting of the promotion system of green certificates;
- the calculation of the mandatory annual quotas of green certificates;
- the calculation method of the number of green certificates correspondent to the failure to comply with the obligation of acquiring mandatory quota of green certificates for the year under analysis, by the economic agents having the obligation to acquire green certificates;
- the calculation method of the amount of money correspondent to the failure to comply with the annual mandatory quota of acquiring green certificates.

The second enactment issued by ANRE is the Order no. 48 regarding the approval of the Regulation on the accreditation of the electrical energy producers from renewable energy sources for the enforcement of the promotion system by green certificates („**Order ANRE 48**”).

The Order ANRE 48 has been published in the Official Gazette no. 477 dated 28 June 2014 and has entered into force on 1 July 2014. This new enactment has explicitly repealed the previous regulation applicable for this matter, respectively the Order of the president of ANRE no. 42/2011 and determines mainly the following aspects:

- the stages of the accreditation process and the content of the documentation correspondent to the accreditation;
- the conditions of accreditation;
- the method for enforcing the promotion system of green certificates;
- the rights and obligations of the economic operators having their electrical plants accredited;
- the conditions for the amendment, suspension and withdrawal of the accreditation.

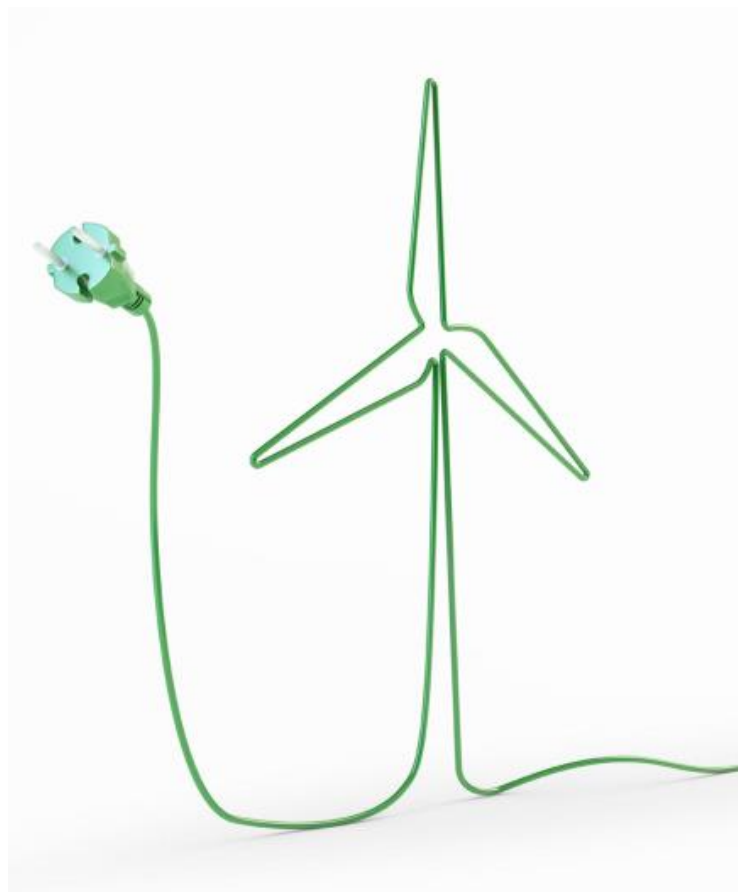
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