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Tax & Legal Weekly Alert

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Amendments to the procedure for solving VAT refunds were brought after the threshold for VAT refunds granted with subsequent tax audit was increased from 10,000 to 45,000 lei. Also there was a need to update the conditions for establishing the level of fiscal risk – page 2.

Legal Updates

Publishing of the new EU Directives on public procurement.

New EU Directives on public procurement have been published in the Official Journal of the European Union on 28 March 2014. Therefore, in a term of 20 days as of the date of publication, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (Official Journal no. 94/65) and Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors (Official Journal L 94/243) shall come into force – page 3.

New „telecom legislation package" voted by the European Parliament.

The European Parliament voted on 3 April 2014 a proposal within the new telecom legislation package that envisages the regulation of the net neutrality concept, together with other amendments in this field – page 4.

New rules on public support in the renewable energy.

The European Commission has adopted, in principle, Guidelines regarding the applicable criteria for the assessment of state aid for environmental protection and energy 2014-2020. The version of the document was published on the European Commission website for informative purposes and will be subject to amendments until its publication in the European Union Official Journal. The new Guidelines will replace, with effect from 01.07.2014, the Community Guidelines on state aid for environmental protection, published in the European Union Official Journal no. C82 dated 01.04.2008 – page 5.

The procedure for solving VAT refunds was amended

Amendments to the procedure for solving VAT refunds were brought after the threshold for VAT refunds granted with subsequent tax audit was increased from 10,000 to 45,000 lei. Also there was a need to update the conditions for establishing the level of fiscal risk.

In brief, the amendments brought are the following:

1. **Establishing the level of fiscal risk**
   Taxpayers with offenses recorded in their fiscal file, as well as taxpayers which are considered as such by the tax authorities will be classified at high level fiscal risk. Their VAT refunds will be solved with a prior tax audit.

2. **Refund of VAT amounts up to 45,000 lei**
   VAT refunds of up to 45,000 lei will be solved with subsequent tax audit in case of taxpayers which are not classified at high level fiscal risk.

   In this case the decision for refund is issued in maximum 5 days from the date of submission of the return.

3. **Subsequent tax audits**

   In such situation taxpayers will be subject to a risk analysis in order to be selected for the performance of this tax audit.

   By exception, randomly, taxpayers without risk may be selected for tax audits.

   Additionally, the specific deadlines for performing the subsequent tax audit were eliminated. Thus, the subsequent tax audit may be performed anytime within the statute of limitation (5 years or 10 years in case of criminal offenses).

4. **Forms used for solving VAT refunds**

   Following the amendments presented, the forms mentioned in the procedure for solving VAT refund requests were modified.

   The amendments brought to the procedure presented will be applicable starting with the VAT returns submitted for March 2014 (for monthly VAT taxpayers) or starting with the first quarter / semester of 2014 or the entire year 2014 (in case of taxpayers using the quarter / semester or year as fiscal period).

Order no. 491/2014 was published on April 7, 2014 in the Official Gazette no. 249.

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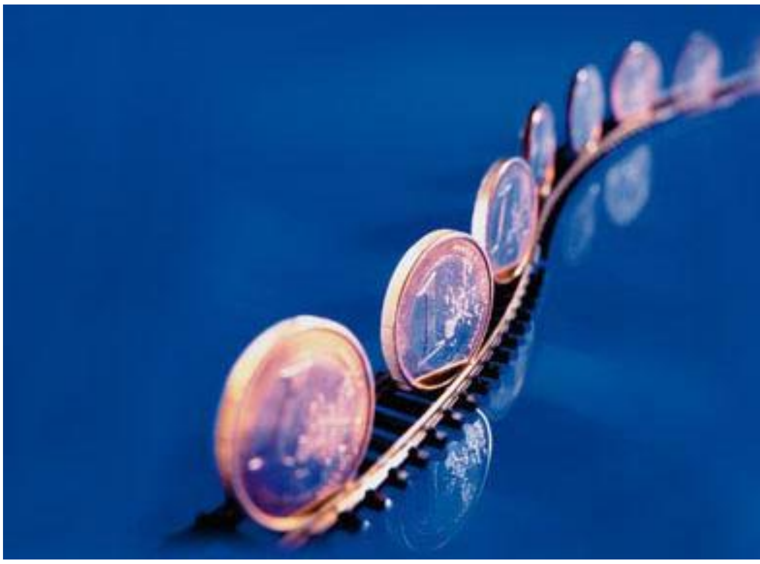

Publishing of the new EU Directives on public procurement

On 28 March 2014, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, as well as Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors have been published in the Official Journal of the European Union.

The new European legal framework introduces a series of amendments and new rules, which aim to simplify the public procurement procedures.

1. **Standardized European Single Procurement document;** The documentation required for a procurement procedure is reduced through a standardized European Single Procurement Document. This means that only the winning bidder will have to submit formal evidence (certificates and attestations). Consequently, the minimum deadlines to submit tenders are shortened.

2. **Mandatory use of electronic communication;** The deadline for the mandatory use of electronic communication is 54 months - transposition deadline of 24 months + 30 months.

3. **More possibilities for negotiation;** The current standard negotiated procedure will be replaced with a new procedure called the competitive procedure with negotiation. The new procedure will be very similar to the Competitive Dialogue.

4. **Facilitating access for small and medium sized enterprises (SMEs);** The contracting authorities are now encouraged to divide large contracts into lots through the *'apply or explain'* principle and they decide that it would not be appropriate to divide the contract into lots, the authorities should indicate the main reasons for this choice.

5. **Innovation partnership;** The new Directives introduce a new procedure, which partnership will aim towards the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, if they correspond to the agreed performance levels and maximum costs.

6. **Blacklisting of companies;** The public authorities will be allowed to effectively blacklist companies and prevent them from bidding for public contracts.

7. **Strategic use of public procurement;** Contracting authorities can now determine the most economically advantageous tender and the lowest cost using a *life-cycle costing approach*. In addition, contracting authorities can take into account criteria linked to the production process of the works, services or supplies to be purchased when awarding contracts.

8. **Introduction of a simplified regime;** In the new Directives, there is distinction between the current A ('*priority*')-services and B ('*non-priority*')-services. The current services provided in Annex B will be subject to the full set of rules in the Directives, unless listed in the 'new simplified regime' annex.

The new directives shall enter into force in a term of 20 days as of their publishing, the member states having the obligation to implement them in a term of maximum two years.

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New „telecom legislation package” voted by the European Parliament

"Internet neutrality" (also known as "*open internet*" or "*net neutrality*") is a concept regarding Internet services that enable users to "equally" access everything that this service can provide. To provide equal access means that Internet traffic is to be treated equally, without discrimination, regardless of source, recipient, viewed/accessed content, device used to access the Internet, etc.

The European Parliament passed new laws regulating this matter. The Parliament requires the existence of a set of explicit rules in this matter that prohibit Internet Service Providers (hereinafter referred to as "**ISP**") from limiting, blocking or slowing Internet traffic when an individual wants to access a particular content. The issue regarding elimination of charges for *roaming* services is also addressed under this legislative package.

ISPs will be able to continue to offer "privileged" Internet traffic of a higher quality but not to the detriment of the quality of other internet services. Also in this respect, the members of the European Parliament adapted a list of exceptional cases when an ISP can block or slow Internet access, considering that this possibility should be available only to enforce a court order or to prevent congestion of the networks or to maintain network security.

We believe that both ISPs and end users will be affected by this legislative package, considering the contractual relationship between them. Also, it is expected that the online media agreements will undergo amendments in view of observing the principle of Internet neutrality.

According to information made available, the legislative package will be apriority for the next European Parliament, which will be elected in May 22-25.

You can find here more information with respect to the measures imposed by the European Parliament on the net neutrality.

We remain at your disposal with any clarifications in this regard, and to identify and implement the changes necessary for operating in accordance with the concept of "net neutrality".

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New rules on public support in the renewable energy

The European Commission has adopted, in principle, Guidelines on State aid for environmental protection and energy 2014-2020. The version of the document was published on the European Commission website for informative purposes and will be subject to amendments until its publication in the European Union Official Journal. The new Guidelines will replace, with effect from 01.07.2014, the Community Guidelines on state aid for environmental protection, published in the European Union Official Journal no. C82 dated 01.04.2008.

Member States will have one year from the publication of the new Guidelines in the European Union Official Journal to align existing aid schemes with the procedures set out in the Guidelines with the exception of schemes for operating aids for renewable sources and cogeneration, which only need to be aligned if they are prolonged or adapted.

The main novelties introduced by the new Guideline are:

1. the gradual introduction of market based mechanisms. In this regard, the gradual introduction of competitive bidding processes for allocating public support is provided, while offering Member States flexibility to take into account practices at the national level. The competitive bidding procedures will increase cost effectiveness and limit distortions. In this respect, a pilot phase will be introduced in 2015 and 2016, which will allow member States to test competitive bidding procedures for a small share of their new electricity capacity. Starting from 2017, aid for renewable energy will be granted, in principle, through a competitive bidding process, unless Member States can demonstrate that utilising such procedure would have an unsatisfactory outcome (as is the case of small and medium enterprises).

2. the use of co-operation mechanisms to facilitate cross-border aid support of renewable energy, when possible and appropriate. This would allow a better functioning of the internal electricity market.

3. the exemption of small installations or technologies in an early stage of development from participating in competitive bidding processes. Small installations are defined as producing less than 6 MV of wind power (or 6 generation units) or 1 MW of power resulting from other renewable energy sources, such as solar energy or biomass. In addition, small installations that produce energy below3 MW (or 3 generation units) or below 500 KW of power resulting from other renewable energy sources are considered to have a lower potential to participate in the wholesale market and can benefit from any form of aid, including „*feed-in*” tariffs.

4. the possibility for Member States to reduce the financial burden for a limited number of energy intensive sectors at the level of the entire European Union. The Guidelines mainly follow an approach based on sectors. However, Member States are able to grand reductions to companies having high electro – intensity and which are active in a sector exposed to international trade. In the purpose of preserving the competitiveness of these sectors and companies, the Guidelines allow reductions on the charges levied to support renewable energy. The aid is partial and the companies will have to partially contribute to the funding in these cases.

5. the simplification of procedures for implementing certain aid measures in the field of environment and energy protection, measures which are to be included in their majority in the upcoming revision of the General Block Exemption Regulation. The Regulation will be adopted in May 2014 and will come into force on 01.07.2014, on the same date as the new Guidelines. This will help the public authorities in implementing such measures, as they would not need to obtain prior approval from the Commission. Such measures include, as an example, certain forms of aid to promote renewable energy, district heating, etc.

6. maintaining the current regime regarding state aids which are currently granted to installations. These will continue to receive aid based on already approved state aid schemes. An aid which has not been notified to the Commission will however be assessed on the basis of the Guidelines currently in force. This rule contains one exception, in that the new Guidelines will apply retroactively for the assessment of reductions in the financing of renewables for energy-intensive users. The possibility for such reductions was not provided in the previous Guidelines.

You can find here more information with respect to the content of the Guidelines and the changes having impact over the energy related field.

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