

## Tax & Legal Weekly Alert

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#### Tax Updates

**The Romanian Government has adopted the procedure regarding the refund of excise duties afferent to the diesel used as fuel in road transportation**

This new decision settled the conditions and the refund procedure as state aid scheme, for a part of the excise duties on diesel used as fuel in road transportation, namely the amount of 40 / 1000 liter and 47.34 euro / ton.

The refund will be granted quarterly based on a request addressed to the Romanian Road Authority by the carriers which meet the specified conditions of the decision – [page 2](#)

#### Legal Updates

**Amendments to the legislation governing public procurement and concession of public works and services**

On June 28<sup>th</sup> 2014, Government Emergency Ordinance no. 51/2014 amending and supplementing Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, contracts for concession of public works and contracts for concession of services entered into force – [page 3](#)



## The Romanian Government has adopted the procedure regarding the refund of excise duties afferent to the diesel used as fuel in road transportation

- The validity period of the aid scheme in which the reimbursement of excise duty can be requested is July 15, 2014 until March 31, 2019 inclusively;
- In order to benefit from excise duty refund, the economic operators must cumulatively meet certain conditions such as holding transport licenses valid in Romania or in another Member States of the European Union, does not benefit from other compensation for the performed transport activity or they are not in a judicial reorganization;
- In order to request the refund, the economic operators are required to register in the Register of vehicles and of economic operators eligible for refund of excise duty;
- The application for refund shall be filed quarterly and shall be accompanied by supporting documents, as appropriate: purchase invoices of diesel fuel, proof of payment of invoices, detailed statement summary of diesel fuel consumption etc.;
- The documents based on which the refund is claimed shall be submitted at the Romanian Road Authority, as administrator of the state aid scheme;
- In view of a subsequent control, the documents attached to the application, and other supporting documents (tachograph records, warehouse sheets) must be archived for a period of 10 years from the date of application for refund.

**Source:** Decision no. 537/2014 regarding conditions, procedure and refund terms as state aid scheme of the amounts representing the difference between the excises standard level and excises differentiated level for diesel used as engine fuel published in the Official Gazette no. 512/09.07.2014

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# Amendments to the legislation governing public procurement and concession of public works and services

On June 28<sup>th</sup> 2014, Government Emergency Ordinance no. 51/2014 amending and supplementing Government Emergency Ordinance no. 34/2006 on awarding public procurement contracts, contracts for concession of public works and contracts for concession of services entered into force.

The adopted measures aim at streamlining the public procurement procedure and protecting the contracting authorities against abusive challenges, in view of improving the absorption of European funds, in view of operationally implementing projects of general interest and relieving the personnel responsible for public tenders.

In this respect, the main amendments to Government Emergency Ordinance no. 34/2006 target the following issues:

## 1. Introducing the good conduct guarantee

The person that challenges the legality of conducting the public procurement procedure has the obligation to provide a good conduct guarantee for the entire period between the date when the challenge is submitted and the moment that the award settling it (either issued by the National Council for Settlement of Challenges (“CNSC”) or by a court of law) becomes final and binding.

In principle, the newly introduced guarantee amounts to 1% of the awarded contract's estimated value, but without exceeding EUR 100,000.

As a rule, the contracting authority retains the good conduct guarantee in cases where the challenge is rejected by CNSC or by the court of law, if the claim was sent directly to it. Moreover, the guarantee is withheld even if the challenging party waives its claims, except for the cases where the waiver results from the contracting authority's remediation of the documents claimed to be illegal. However, the guarantee is refunded if the challenge is admitted, even if the court of law rules against the admission award issued by CNSC.

## 2. Waiver of the retention of various amounts from the participation guarantee

According to the new regulation, the contracting authority is no longer entitled to retain various amounts from the participation guarantee provided by the complainant, in cases where the challenge is rejected or waived off. Therefore, the authorities' protection against abusive challenges, previously ensured by the participation guarantee mechanism, will be carried out from now on by withholding the good conduct guarantee, in the cases described above.

## 3. Changes regarding the procedure for settling challenges

The deadline for the supplementing of the challenge, in case CNSC considers that it does not include all the necessary information, has been reduced from 5 to 3 days since the notification of the claimant. On the other hand, the period within which the contracting authority must answer to the submitted challenge has been extended from 3 to 5 days from its receipt.

As regards the complainant's rights, according to the new regulation the complainant can also access the technical proposals of the other bidders in the awarding procedure, without obtaining their approval, except for the information declared as confidential by the economic operators, the disclosure of which would harm their legitimate interests, especially with respect to commercial secret and intellectual property.

## 4. Removal of the requirement to develop internal awarding norms for certain categories of entities

The new regulation repeals the provision of Government Emergency Ordinance no. 34/2006 according to which, in view of awarding contracts for supply/provision of services/performance of works, with an estimated value above a certain threshold, self-managed public authorities and national companies/companies entirely or mostly owned by a state entity, were required to draw up internal awarding norms in order to ensure compliance with the principles of non-discrimination and equal treatment, transparency, proportionality and mutual recognition.

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