

Tax & Legal Weekly Alert

12 – 16 May 2014

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New amendments brought to the Fiscal Code – Excises.

We would like to inform you that on May 14, 2014 the chapter regarding the non-harmonized excise duties from the Fiscal Code has been amended – [page 2](#).

Customs mutual recognition of “trusted traders” between European Union and China

The EU and China formally agreed to recognise each other's safe traders, i.e. authorised economic operators (AEO), as a result of a mutual recognition decision signed on May 16, 2014 at Beijing – [page 3](#).

Legal Updates

Participation at information programs on benefits of mediation no longer mandatory.

Participation at information programs on benefits of mediation no longer mandatory
On 7 May 2014 the Constitutional Court has unanimously admitted the unconstitutionality exception raised against the provisions of article 2 paragraph 1 and 1² of Law no. 192/2006 regarding mediation and the mediator profession, that stated that undergoing the information procedure regarding the benefits of mediation is mandatory in the case of disputes regarding certain legal fields and stated that the mentioned provisions are unconstitutional. Following the decision of the Constitutional Court, participation at information sessions on the benefits of mediation is now optional – [page 4](#).

New legislative amendments regarding the sale of agricultural land located outside the urban boundaries.

Law no. 68/2014 regarding the amendment of certain provisions of Law no. 7/1996 regarding cadastre and immovable assets publicity and of Law no. 17/2014 regarding the sale of agricultural land located outside the urban boundaries (hereinafter the “**Law**”) was published in the Official Gazette no. 352 issued on 13 May 2014 – [page 5](#).

New rules for oil and gas companies seeking to obtain the building permit for exploration/ geological prospecting/ exploitation operations.

The Emergency Government Ordinance no. 22 dated 6 May 2014 for the amendment of Law no. 50/1991 concerning the approval of construction works (hereinafter the “**Ordinance**”) was published in the Official Gazette no 353 issued on 14 May 2014.

Ordinance 22 brings important changes for companies from the oil and gas sector which perform exploration, geological prospect and exploitation in Romania (hereinafter the “**Operations**”). The purpose of Ordinance 22 is to simplify the formalities and time necessary for the issuance of the urbanism certificate and the building permit for the construction works necessary for the performance of Operations – [page 6](#).



New amendments brought to the Fiscal Code – Excises

- Economic operators which do not have their tax residency in Romania and intend to perform economic activities involving non-harmonized excisable products, may appoint a tax representative established in Romania in order to fulfil their obligations;
- Non-harmonized excisable products are now exempt from the payment of excise duties when they are supplied, for example, for the use in the context of consular or diplomatic relations or by the armed forces belonging to any state which is a member of the North Atlantic Treaty Organisation;
- Clarifications were made regarding the categories of weapons and ammunition subject to non-harmonized excises and on the excise duties chargeability moment for such products;
- New clarifications were brought regarding the situations where the excise duty return must be submitted on the date established for their payment, only when the excises are due.

Source: Law no. 69/2014 for approving the Government Ordinance no. 28/2013 regarding the regulation of certain fiscal-budgetary measures published in the Official Gazette no. 355/14.05.2014

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Customs mutual recognition of “trusted traders” between European Union and China

The EU and China formally agreed to recognise each other's safe traders, i.e. authorised economic operators (AEO), as a result of a mutual recognition decision signed on May 16, 2014 at Beijing.

As such, starting May 16, 2014 the AEOs in the EU will receive benefits when exporting products to the China market.

Similar agreements were already signed with the USA in 2012 and with Japan in 2011.

Thanks to the mutual recognition agreement, the trusted traders will enjoy lower costs, simplified procedures and greater predictability in their activities, allowing to the holders of an AEO certificate to benefit from faster controls and reduced administration for customs clearance. This benefits the companies because the goods can move faster from one destination to another, lowering transport costs and facilitating more efficient trade. It also benefits EU customs administrations, who can concentrate their resources on checking high risk transactions.

Besides, two other important initiatives were also signed on May 16, 2014 at Beijing regarding the **new Strategic Framework for Customs Cooperation**, involving the trade facilitation, supply chain security and fighting counterfeit and illicit trade, and the **new EU-China Action Plan on Intellectual Property Rights**, aiming the improvement of the clamping-down on counterfeit goods by intensifying EU-China cooperation, communication and coordination in this field.

If you are engaged in international trade, including with China and would like to benefit from the advantages of being an AEO, we would be happy to provide you with more information and assist you in obtaining this status.

Source: European Commission press release no. IP/14/555 from May 16, 2014

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Participation at information programs on benefits of mediation no longer mandatory

On 7 May 2014 the Constitutional Court ruled unanimously that the provisions of article 2 paragraph 1 and 1² of Law no. 192/2006 regarding mediation and the mediator profession requiring mandatory participation at information programs on the benefits of mediation for certain lawsuits are unconstitutional.

According to article 2 paragraph 1 of Law 192/2006: *"If the law does not state otherwise, the parties, natural persons or legal entities, are obliged to participate at an information session regarding the benefits of mediation, including, if it is the case, after the initiation of a trial in front of the competent court, in the view of settling in this way the disputes in the field of civil law and family law, as well as other legal fields, under the conditions provided by the law"*. A claimant's failure to comply with these obligations, according to article 2 paragraph 1² of Law 192/2006, would lead to the inadmissibility of the claim.

Following the decision of the Constitutional Court, participation at information sessions on the benefits of mediation is now optional. Participation at an information session on the benefits of mediation had been mandatory for litigation cases in the following fields:

- consumer protection, when a consumer claims that he/she has suffered damages following the acquisition of a faulty product/service, the non-compliance with the contractual provisions or the guarantees offered, the existence of abusive clauses in the contracts concluded between consumers and economic operators or the breach of any other rights provided in the national or EU legislation regarding consumer protection;
- family law, in the case of the continuation of the marriage, division of joint property, the exercise of parental rights, the establishment of children's residence, the parents' contributions to the children's upbringing and any other disputes arising in the relations between spouses regarding the rights they may have under the law;
- vicinity relations, for example: disputes regarding possession;
- professional liability, respectively disputes regarding cases of malpractice;
- labor disputes arising from the conclusion, execution and termination of individual labor contracts;
- civil disputes that have a value below 50,000 RON, with some exceptions as the payment ordinance procedure.

It must be mentioned that the participation to information sessions on the benefits of mediation is free, as under law it is forbidden to charge any fees for organizing such sessions.

As a result of the court's ruling, the decision on whether to receive information regarding the advantages of mediation belongs solely to the parties of the dispute and taking part in an information program on the advantages of mediation is no longer a condition for filing legal action.

The decision of the Constitutional Court is definitive and will be communicated to the two chambers of Parliament and to the Government and will be binding after its publication in the Official Journal.

After this date, the provisions declared as unconstitutional will be suspended by right for a period of 45 days, meaning they will no longer be applicable. During this time, the Parliament or the Government may amend the respective legal provisions so that they are in accordance with the Constitution.

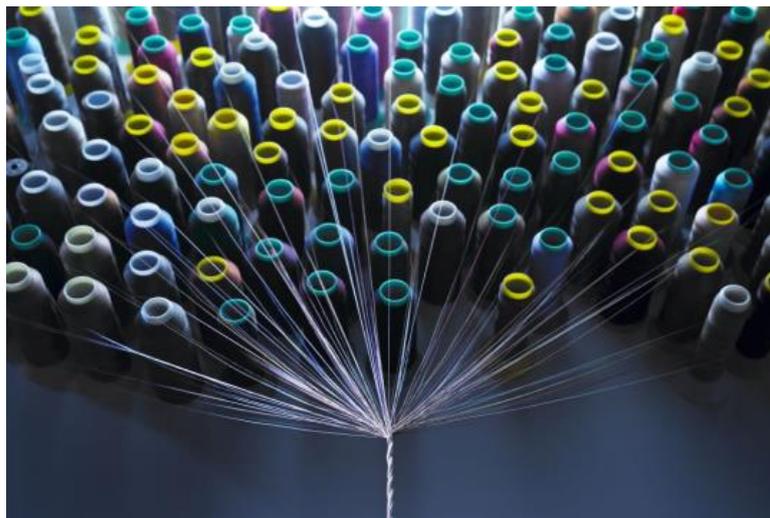
After the 45-day period from the publication of the Constitutional Court's decision in the Official Journal, the provisions declared unconstitutional will cease to produce effect if in this period the Parliament or the Government have not amended the legal provisions in accordance with the Constitution.

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New legislative amendments regarding the sale of agricultural land located outside the urban boundaries

Law no. 68/2014 regarding the amendment of certain provisions of Law no. 7/1996 regarding cadastre and immovable assets publicity and of Law no. 17/2014 regarding the sale of agricultural land located outside the urban boundaries (hereinafter the "**Law**") was published in the Official Gazette no. 352 issued on 13 May 2014.

Please find below the main amendments brought by the Law:

- **Absolute nullity is replaced by relative nullity**
According to the new provisions of the Law the main sanction in case of non-compliance with the pre-emption right established pursuant to Law no. 17/2014 and in case of failure to obtain the necessary approvals for the sale of land, set forth by the provisions of the Law no. 17/2014, is the relative nullity of the sale agreement. Prior to this amendment, for the same breaches, Law no. 17/2014 provided the more severe sanction of absolute nullity of the sale agreement.
- **Restrictions for the conclusion of a pre-agreement**
In order to obtain a court order representing a substitute for the sale agreement, the initial provisions of Law no. 17/2014 established (in addition to other requirements related to the observance of the pre-emption right) that the pre-agreement be concluded in a mandatory authenticated form. Based on the recent amendments brought by Law no. 68/2014 **the requirement of authenticated form has been eliminated.** However, the new amendments provide additional requirements namely the land object of the pre-agreement **must be registered with the fiscal authorities and with the land book.**

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

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New rules for oil and gas companies seeking to obtain the building permit for exploration/geological prospect / exploitation operations

The Emergency Government Ordinance no. 22 dated 6 May 2014 for the amendment of Law no. 50/1991 concerning the approval of construction works (hereinafter the „**Ordinance**”) was published in the Official Gazette no 353 issued on 14 May 2014.

Ordinance 22 brings important changes for companies from the oil and gas sector which perform exploration, geological prospect and exploitation in Romania (hereinafter the “**Operations**”). The purpose of Ordinance 22 is to simplify the formalities and time necessary for the issuance of the urbanism certificate and the building permit for the construction works necessary for the performance of Operations.

Please find below the main amendments brought by Ordinance 22 and their consequences:

I. The option to obtain the urbanism certificate/ building permit for land plots which are not registered with the cadastral registries and land books

As an exception from the general rule which remains in force and applicable to all other construction works, in order to obtain the urbanism certificate and the building permit for the performance of construction works necessary for the performance of Operations, **it is no longer mandatory for the land plots located within the exploration/geological prospecting/ exploitation perimeters to be registered with the cadastral registers and land books.** Thus, such land plots may be identified solely by the number of the plot and of the parcel, through the ownership title and the take-over protocol, as well as by any other manner provided by law.

The direct consequence of this change (as intended by the legislator) may be the reduction of the necessary time and formalities (and of the associated costs) that the holders of licenses/ permits/ approvals (hereinafter the “ **Holders**”) must perform with a view to obtain the urbanism certificate and the building permit for the Operations.

II. The option to obtain the building permit for exploitation perimeters based on lease agreements (and in the absence of a real estate rights being established)

Based on Ordinance 22, the lease agreements concluded by the Holders with the owners of the land plots located within the limits where exploitation perimeters shall constitute entitlements for the issuance of the building permit necessary for the performance of Operations. Therefore, following the enactment of Ordinance 22, the establishment of real estate rights for the respective land plots shall no longer be mandatory for the purpose of obtaining the building permit.

The respective lease agreements must be concluded in accordance with the specific legal provisions applicable to the oil and natural gas sector and must comprise the express consent of the owners for the performance of construction works on these land plots.

The practical implication of these amendments for the Holders can be the simplification of the process for the negotiation and conclusion of lease agreements with land owners and the reduction of the time period necessary for the completion of the documentation necessary for the issuance of the relevant building permit.

We would like, however, to point out that the application of Ordinance 22 in its current form (and in the absence of methodological forms for its application) may generate various practical issues for the Holders and for the authorities in charge with the issuance of the administrative acts related to construction works for the Operations:

- until the registration of a land with the land book, the Holders cannot have the certainty to have contracted with the current owners of a plot or that the identification elements of the plot as its extent/coordinates are those mentioned in the documents presented by the contractor of the Holders;
- taking into account the exceptional character of the amendments brought by Ordinance 22, it should be clarified /amended the entire legal frameworks applicable, among which we mention:
 - The methodological norms for the application of Law no. 50/1991, which detail the procedure for the issuance of such procedural documents; and
 - The coordination with the regulations applicable to the registration with the land book of the construction thus erected, as regulated by Law no. 7/1996 and the Romanian Civil Code.

We are at your disposal for additional details and with a view to identifying and finding practical solutions for any aspects that may affect your company.

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