

Tax & Legal Weekly Alert

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Articles in this issue

Tax Updates

Amendment of statement 100 regarding state budget payment obligations with respect to separate declarations for certain taxes:

Starting from January 2014, several taxes regarding income derived by non-residents will be declared separately – [page 2](#).

Legal Updates

Amendments to several pieces of legislation comprising criminal law and criminal procedure provisions under New Criminal Code and New Criminal Procedure Code:

Following the entering into force of the New Criminal Code and New Criminal Procedure Code (together with the laws for their implementation) on February 1, 2014, there are brought amendments to several pieces of legislation comprising criminal law and criminal procedure provisions. We hereby present the impact of the new codes mentioned above with respect to insolvency legislation, environmental protection legislation and on companies' law – [page 3](#), [page 4](#), [page 5](#).

Legal framework on the general associated conditions to the power supply license:

On 12 February 2014, the National Regulatory Authority for Energy ("ANRE") issued the Order no. 8/2014 for the approval of the general associated conditions of a power supply license. The ANRE Order entered into force on its publication in the Official Gazette on 18 February 2014.

Before this ANRE Order had entered into force there was no legal framework for the associated conditions of a power supply license as was the case for generation licenses or setting-up authorizations. The new regulation establishes general provisions in this respect and sets forth additional conditions for the license holder in comparison with the Regulation for the issuance of authorizations and licenses in the energy sector as approved by ANRE Order no. 48/2013 – [page 6](#).



Amendment of statement 100 regarding state budget payment obligations with respect to separate declarations for certain taxes

Starting from January 2014, the following taxes regarding income derived by non-residents will be declared separately:

- Tax on dividend income obtained in Romania by non-residents;
- Tax on interest income obtained in Romania by non-residents;
- Tax on income from royalties obtained in Romania by non-residents;
- Tax on income from fees obtained in Romania by non-residents;
- Tax on income from sports and entertainment activities obtained in Romania by non-residents;
- Tax on income representing remuneration obtained by non-resident companies that act as administrator, founder or member of the managing board of a Romanian company;
- Tax on income from services performed in Romania or abroad by non-residents;
- Tax on income from awards obtained by non-resident individuals from competitions organized in Romania;
- Tax on income from gambling and gaming activities practiced in Romania by non-resident individuals;
- Tax on income from liquidation of a Romanian company , obtained by non-residents.

The appropriate field should be selected when filling-in the statement.

Contact us:

Dan Badin

Tax & Legal Partner-in-Charge
+40 21 207 53 92
dbadin@deloittece.com

Andrei Tercu

Manager
+40 21 207 56 16
atercu@deloittece.com



Amendments to insolvency legislation under the New Criminal Procedure Code

On February 1, 2014, Law no. 255/2013 for the implementation of the Criminal Procedure Code entered into force. The law mainly regulates the implementation of the new Criminal Procedure Code and, in subsidiary, amends several pieces of legislation comprising criminal procedure provisions. As regards the insolvency legislation, the Criminal Procedure Code amends, among others, two articles of Law no. 85/2006 regarding the insolvency procedure (the "Insolvency Law") with the view of protecting the owners of receivables consisting of compensation for damages resulting from a criminal offense.

- **Individual enforcement of insolvent debtors for damages resulting from criminal offenses**

Through the amendment of article 36 of the Insolvency Law, actions taken within a criminal trial for recovering receivables against the debtor or its patrimony will not be suspended by law following the opening of the insolvency procedure.

Practically, this means that if a creditor owning a receivable consisting of compensation for damages resulting from a criminal offense committed by the insolvent debtor, participates as a civil plaintiff in a criminal trial, escapes the joint character of the insolvency procedure. This creditor will be able to recover its claim against the debtor by resorting to common law before the liquidation of debtor's assets under the insolvency procedure and without having to comply with the distribution order provided by the Insolvency Law.

- **Amendments regarding the alienation of assets affected by precautionary measures ordered by a criminal court**

According to the amendments of article 53 of the Insolvency Law, the assets alienated by a judicial administrator or liquidator during an insolvency procedure shall be acquired free from any encumbrances, warranties or liens, except for precautionary measures (in Romanian "*masuri asiguratorii*") or specific preventative measures established during the criminal trial.

Thus, the creditor will be able to track assets affected by precautionary measures ordered by the criminal court in the hands of the adjudicator even if they were acquired in the insolvency procedure. Practically, such an amendment may result in blocking the sale of the insolvent debtor's assets affected by precautionary measures because it is unlikely that a buyer would be willing to acquire assets assuming the risk of subsequent enforcement.

- **Amendments regarding criminal offenses**

The criminal offenses covered initially by Law no. 85/2006 of simple bankruptcy, fraudulent bankruptcy and fraudulent management will be transferred to the Criminal Code with no change in their substance.

Contact us:

[Andrei Burz Pinzaru](#)

Partner
+40 21 207 52 05

[Florentina Munteanu](#)

Associate Partner
+40 21 207 52 75

[Andrea Grigoras](#)

Senior Associate
+40 21 207 98 16



Amendments brought to Companies' Law no. 31/1990 under the New Criminal Code

On February 1, 2014, Law no. 286/2009 implementing the Criminal Code came into force. On the same date, Law no. 187/2013 for the application of the New Criminal Code ("Law no. 187/2012") also came into force, bringing a series of amendments to several laws, including the Companies' Law no. 31/1990 ("Law no. 31/990" or "The Companies' Law").

Most amendments concern Title VIII of Law no. 31/1990, chapter Offenses and Crimes. The most important changes brought by the law include: decreasing sanctions for criminal offenses, providing the penalty of fine alternatively with the one of imprisonment for most of the criminal offenses, as well as extending category of persons who can be persecuted for criminal offenses regulated by Law no. 31/1990.

1. Legal regime of penalties.

Sanctions have been reduced for a series of criminal offenses provided by Law no. 31/1990. Of these, the most important are:

- the act of presenting false or inexistent data regarding the incorporation of the company, its economic conditions, or the act of hiding data or refusing to provide such data under the conditions provided by the law (regulated by article 271 of the Companies' law) is sanctioned with imprisonment from **6 months to 3 years or with a fine**, unlike the former provision under which the sanction was **imprisonment from 1 to 5 years**.
- the act of selling or purchasing shares, using the company's assets or credit, or lending in any form from the company which it manages, from a company under its control or from a company which controls the one it manages, producing in bad faith a loss for the company (regulated in article 272 of the Companies' law) is sanctioned with **imprisonment from 6 months to 3 years or with a fine**, unlike the former provision under which the penalty was **imprisonment from 1 to 3 years**.
- the act of spreading false news or using other fraudulent means with the purpose of increasing or decreasing the value of the company's shares or bonds in order to obtain a profit in the damage of the company, as well as the act of collecting or paying dividends from fictitious profits or profits which could not be distributed (regulated in article 2721 of the Companies' law) is sanctioned with **imprisonment from 1 to 5 years or with a fine**, unlike the former provision under which the penalty was **imprisonment from 2 to 8 years**.
- the act of issuing shares or bonds without observing the legal provisions, or to use them in a fraudulent manner (regulated in article 273 of the Companies' law) is sanctioned with **imprisonment from 3 months to 2 years or with a fine**, unlike the former provision under which the penalty was **imprisonment from 6 months to 5 years**.

2. Persons who can be persecuted for crimes provided by Law no. 31/1990

Prior to the amendments brought by Law no. 187/2012, active subjects who can be persecuted for the crimes provided by Law no. 31/1990 could have been: the founder, the administrator, the director, the executive director or the legal representative of the company. Currently, the category of persons who can be persecuted for crimes provided in mentioned chapter has been extended. Consequently, the category of persons who can be held criminally liable are: the founder, the administrator, the chief executive, the director, **the member of the supervisory board or the directorship** or the legal representative of the company.

3. Decriminalization of certain offenses

The following acts are no longer provided as criminal offenses by Law no. 31/1990:

- the act of carrying out trading activities in favour and on behalf of companies set up abroad in cases where the conditions stated by the respective law for their operation in Romania are not satisfied (Article 280 from the Companies' Law was repealed);
- the act of determining the set-up of a company based on a fake article of association (Article 2802 was repealed)

4. Providing certain actions as criminal offenses

- the act of carrying out the resolutions of General Meeting of Shareholders regarding the change of the legal form of the company, merger, dissolution, reorganization or decrease of share capital without informing the judicial authority or in breach of the prohibition provided by the latter, in the case where criminal prosecution was initiated against the company, is provided as a criminal offense and is sanctioned with **imprisonment from one month to one year or with a fine** (according to Article 274 letter c from the Companies' Law)

5. Prohibitions against becoming founder/administrator in a company

Law no. 187/2012 brings amendments to criminal offenses which determine that a person cannot hold the position of founder or member of management and supervisory bodies of a company. Thus, under the new regulations, the following criminal offenses have the above consequences: crimes against property by disregarding trust, corrupt acts, embezzlement, forgery of documents and tax evasion as provided by Law no. 656/2002 on preventing and sanctioning money laundering, as well as for setting up some measures for preventing and combating terrorism financing, republished, or for the crimes provided by Law no. 31/1990.

Contact us:

[Andrei Burz Pinzaru](#)

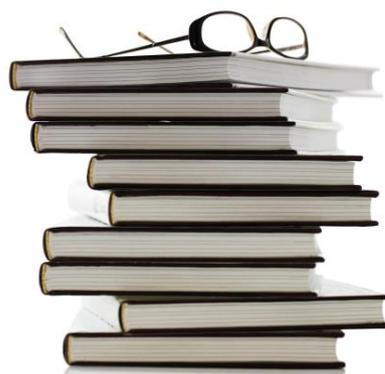
Partner
+40 21 207 52 05

[Georgiana Singurel](#)

Associate Partner
+40 21 207 52 86

[Diana Fejer](#)

Managing Associate
+40 21 207 52 53



Amendments to environmental protection legislation under the New Criminal Code

Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal Code entered into force on 1 February 2014 (the „**Law**“). The Law mainly regulates the implementation of the new Criminal Code of Romania, jointly with the amendment of various other pieces of legislation.

In what regards environmental related legislation, we highlight below the main changes:

I. Government Emergency Ordinance no. 195/2005 on environmental protection (“GEO 195/2005”)

1. The Law changed the limits of sanctions that had been applicable to the committed acts classified as criminal offenses. A special case is the criminal offense of pollution by means of discharge into the atmosphere or on the ground of wastes or hazardous substances. This offense has been modified in that it has eliminated (i) the discharge of waste into water and (ii) the word “acknowledging”. The direct consequence of the later change is that an act is now considered a criminal offense regardless of the form of guilt under which the person is acting.
2. The Law also repealed the following criminal offenses:
 - Non-compliance with restrictions or prohibitions established to protect water and the atmosphere, provided by legislation in force;
 - The use of dangerous baits and using electrical means to kill wild animals and fish, for consumer use or marketing purposes;
 - Non-compliance with restrictions and prohibitions during hunting and fishing of protected species or temporarily forbidden by law, in strictly protected areas according to specific regulations;
 - Improper application or failure to take measures in case of nuclear accident;
 - Determining, by will, of pollution by discharging or submerging substances or hazardous waste into natural waters, directly or from ships or floating platforms.

Note that, although these actions are no longer classified as criminal offenses under special legal provisions, they can be further classified as criminal offenses under the provisions set forth by the Criminal Code.

II. Law no. 211/2011 on waste regime (“Law 211/2011”)

The Law amends Law 211/2011 as follows:

- It introduces fines that may be applied in case of occurrence of a criminal offence, as an alternative sanction to imprisonment from 6 months to 5 years;
- It classifies, as a criminal offense, the failure to take, or the violation of, compulsory measures for carrying out the collection, transport, recovery and disposal of hazardous waste activities;
- With regard to the criminal offense of refusal to return to the country of origin of the waste introduced into the country and who’s return was ordered by the competent authority, the Law provides that this is applicable for waste that has been introduced into the country for any other purpose other than elimination;
- The act of accepting waste that has been smuggled into the country and/or wastes introduced into the country for other purposes than elimination and which has not been used for the purpose for which it was introduced, cannot be committed by any natural or legal person, the active subject of this criminal offence can only be operators of waste warehouses/incinerators.

We are at your disposal for additional information in this respect or tailored analysis of their impact your company’s activity.

Contact us:

[Robert Ionita](#)
Associate Partner
+40 21 207 52 32

[Adina Gutiu](#)
Senior Associate
+40 21 207 56 98

[Mihai Petre](#)
Senior Manager
+40 21 207 53 44



Legal framework on the general associated conditions to the power supply license

On 18 February 2014, the Order of the President of the National Regulatory Authority in the Energy Field ("ANRE") no. 8/2014 for the approval of the general associated conditions of a power supply license has been published in the Official Gazette.

The new regulation establishes the legal framework for the power supply license. We shall present herein the main rights and obligations of the license holder, as well as the additional conditions for the license holder in comparison with the Regulation for the issuance of authorizations and licenses in the energy sector as approved by ANRE Order no. 48/2013.

1. Rights and obligations of the licensee holder

The order provides clarifications on the rights and obligations of the license holder, such as:

- The right to sell electricity to final clients on the en detail market;
- The right to purchase and sell electricity on the en-gross market;
- The right to transfer the balancing responsibility to the party responsible for balancing, which has been registered at the transport operator and system operator, according to the regulations in force;
- The right of access to information held by the operators measuring the electricity consumption of end users;
- The right to request that ANRE solve certain conflicts, such as: conflict regarding the access to public electricity network, conflicts with other participants in the electricity market, contractual disputes, and so on;
- The right to launch court proceedings against the ANRE regarding modifying, revocation or suspension of the power supply license or regarding the application of certain penalties.

The holder of the power supply license has the following obligations:

- The obligation to establish a customer service for insuring the receipt and resolution of customer complaints;
- The obligation to assume responsibility of balancing to the transport and system operators in the purchase and sale, import and export of electricity, according to ANRE regulations;
- The obligation to ensure mediations with the network operator if the end user has not entered into an individual contract with the operator;
- The obligation to provide consumption forecasts to the ANRE for the end customers with whom the holder of the license has closed deals;
- The obligation to give annual statements on the origin (the primary energy sources used) of the electricity acquired in the previous calendar year.

Furthermore, please be informed that the holder of the licensee is prohibited from cross-subsidization between its regulated activities and between its regulated and non-regulated activities.

2. Communication between the license holder and his clients

The holder of the license is required to organize and maintain a specialized structure in his relationship with his end customers, ensuring communication related to regulations regarding the electricity market. This communication system must be functioning before any licensed activity begins.

3. General control of ANRE over the activity of the licensee

The license holder is obliged to inform the ANRE every year by 15 February about the address and contact details of the customer centers that are part of the specialized structure.

Holders of more than 5,000 residential end-customers are obliged to notify the ANRE of any intention to terminate the customer relationship centers that are part of the specialized structure. Their dissolution can take place only with the prior consent of the competent authority

4. Communication between the license holder and ANRE

ANRE may require at any time the license holder to provide information that it considers related in any way to the affairs and activities he performs in the electricity sector. ANRE has the right to ask the license holder even for classified or commercially sensitive information for this purpose.

At a well-argued request of a third party or at its own initiative, ANRE can check the license holder's behaviour on the electricity market and can apply sanctions for non-compliance with certain rules. Penalties may consist in suspension or revocation of the license.

5. Obligation of notifying ANRE

The license holder is obliged to inform the competent authority about:

- anything which constitutes a violation of the licensing conditions within 8 days of the occurrence;
- change of the legal representative of the license holder within 10 days of its registration in the national trade register office;
- changes in license holder's status generated by mergers, divisions, etc., within 30 days from the appearance;
- change of mailing address used when communicating with ANRE within 10 days before the effective change takes place;
- change of contact details within 10 days after the change takes place;
- incapacity or bankruptcy of the holder, within 8 days of the onset of this condition;
- the cancellation of the issuer or the expiration of an act that led to the granting of the license within 8 days from the date of the occurrence of the event;
- loss of legal title over the real estate used by the license holder for supplying work, within 8 days of the occurrence of the event.
- the license holder is required to notify ANRE about its intention to perform activities that would lead to tangible assets used for activities authorized by the license to be transferred to another person or to share capital being reduced by at least 25%. The notification must be sent within at least 60 days before the date on which the event occurs. Following this notification the competent authority will decide to amend, withdraw or transfer the license.

6. Depositing and keeping financial guarantees

The license holder has the obligation to deposit and keep financial guarantees needed to ensure the continuity of the supply of energy. The guarantees must be deposited before providing electricity.

The amount of the guarantee provided cannot be at any moment less than the amount of funds needed to carry on the ongoing contracts for 30 days. In the case of suppliers of last resort, the guarantees cannot be less than 10 % of the average monthly turnover registered in the previous year from activities covered by the license.

7. Issuing statements and financial reports

The holder is required to prepare separate financial statements for activities subject to the license, as these activities would be performed by different operators. The license holder must indicate in writing the rules adopted in the allocation of income and expenses between activities.

The license holder ensures that the auditing of accounting records are made by a person legally authorized to do financial auditing. For each financial year, the license holder sends to ANRE a copy of the financial statements and of the auditors' report, as well as the annual financial report referring to the activities covered by the license. The financial report format and content must be consistent with the methodology issued by ANRE. The financial report and annual financial statements must be sent to ANRE within 30 days of the date on which they must be submitted to the tax authority. Also, the license holder must submit to ANRE a copy of the company's financial statements for the first six months of each financial year within 30 days of the date on which they must be submitted to the tax authority.

Contact us:

[Alexandru Reff](#)
Partner
+40 21 207 52 48

[Georgiana Singurel](#)
Associate Partner
+40 21 207 52 86



For further information please contact us at:
Romania@deloittece.com or visit the web pages
www.deloitte.com/ro/tax-alerts and

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