

Tax & Legal Weekly Alert

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Considerable reduction of retaliatory duties on imports from the United States:

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Proposals for Action 1 (Tax challenges of the digital economy) and for Action 6 (Prevent Treaty Abuse) of the BEPS Action Plan:

OECD released a discussion draft which includes proposals for Action 1 (Tax challenges of the digital economy) and for Action 6 (Prevent Treaty Abuse) of the BEPS Action Plan – [page 3](#).

Legal Updates

New restrictions on the sale of agricultural land located outside the urban boundaries:

Law no. 17/2014 regarding some measures regulating the sale-purchase of agricultural land located outside the urban boundaries and amending Law no. 268/2001 regarding the privatization of companies managing agricultural land in public and private ownership of the state and establishing the State Domains Agency (hereinafter the "**Law**") was published in Official Gazette no. 178 issued on 12 March 2014. The provisions of the Law will enter into force within 30 days as of its publication in the Official Gazette – [page 4](#).



Considerable reduction of retaliatory duties on imports from the United States

In 2005, the European Union (EU) decided to impose a 15 % *ad valorem* additional customs duty on imports of certain products originating in the United States of America. This was due to the United States' failure to bring its dumping and subsidy legislation in compliance with its obligations under the World Trade Organization (WTO) agreements. Since then, both the list of US originating products for which these measures apply and the additional duty rate has been adjusted on several occasions depending on the level of impairment caused by the US legislation to the EU.

Last year, in May, the additional duty rate was increased from 6% to 26%. According to the latest amendment, starting with 1 May 2014, this rate will drop from 26% to 0.35% and the list of products for which the retaliatory measures apply remains unchanged.

What does it mean for you?

Does your company import one or more of the following US originating products?

| CN code | Description |
|-------------------|---|
| 0710 40 00 | Sweet corn, uncooked or cooked by steaming or by boiling in water, frozen |
| 9003 19 30 | Frames and mountings for spectacles, goggles or the like, of base metal |
| 8705 10 00 | Crane lorries (excl. breakdown lorries) |
| 6204 62 31 | Women's denim trousers and breeches |

If this is the case, as of 1 May 2014, the additional duty will decrease from 26% to 0.35% for your US originating imports into the EU.

What to do?

Companies that are importing the abovementioned US originating products into the EU will benefit from the additional duty decreased, therefore the planning of their EU inbound sales, deliveries and imports could be estimated on long term.

Please do not hesitate to contact us if any clarification is needed.

Source: Regulation No 303/2014 of 25 March 2014 amending Council Regulation (EC) No 673/2005 establishing additional customs duties on imports of certain products originating in the United States of America.

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Proposals for Action 1 (Tax challenges of the digital economy) and for Action 6 (Prevent Treaty Abuse) of the BEPS Action Plan

The OECD released a discussion draft on 14 March 2014 as part of its work on Base Erosion and Profit Shifting (BEPS).

BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or to shift profits to locations where there is little or no real activity, but the taxes are low, resulting in little or no overall corporate tax being paid. As a consequence, OECD issued in 2013 an Action Plan to counteract such strategies.

The implementation of this Action Plan may be performed either by amending domestic law or by modifying the provisions of the double tax treaties.

The current discussion draft includes proposals for Action 1 (Tax challenges of the digital economy) and for Action 6 (Prevent Treaty Abuse) of the BEPS Action Plan. The Action Plan identifies changes in business as a result of the digital economy and treaty abuse (in particular treaty shopping), as one of the most important sources of BEPS concern.

I. Action 1 - Tax challenges of the digital economy - The proposed options discussed in the draft are:

1. Amendments to the permanent establishment definition:
 - Modifications to the Preparatory and Auxiliary Exception;
 - Defining Permanent Establishment to mean Significant Digital Presence;
 - Virtual Permanent Establishment.
2. Withholdings taxes on digital transactions;
3. Consumption tax (VAT) options:
 - Reduce or eliminate the generally available exemptions for imports of low valued goods;
 - A non-resident supplier should register and account for the VAT on supplies sold in the jurisdiction of the consumer.

II. Action 6 – Prevent Treaty Abuse - The draft proposals set out:

1. Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances:
 - Limitation on benefits clause;
 - Determining treaty residence;
 - Minimum shareholding period regarding dividends;
 - Withholding taxes on payments to permanent establishments (PE);
2. Clarification that tax treaties are not intended to be used to generate double non-taxation:
 - The title and preamble to the OECD Model Tax Convention will be amended.
3. Tax policy aspects that countries should consider before deciding to enter into a tax treaty with another country.

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New restrictions on the sale of agricultural land located outside the urban boundaries

Law no. 17/2014 regarding some measures regulating the sale-purchase of agricultural land located outside the urban boundaries and amending Law no. 268/2001 regarding the privatization of companies managing agricultural land in public and private ownership of the state and establishing the State Domains Agency (hereinafter the "Law") was published in Official Gazette no. 178 issued on 12 March 2014. The provisions of the Law will enter into force within 30 days as of its publication in the Official Gazette.

The Law was enacted due to the fact that as of 1 January 2014, EU citizens have the right to purchase agricultural land in Romania.

We emphasize the fact that the measures established by the Law only target land located outside the urban boundaries, the situation of land located within the urban boundaries remaining the same.

Please find below the main novelties introduced by the Law:

Necessity of several permits

- Agricultural land located outside the urban boundaries at a distance of 30 km from the state border and the Black Sea, to the interior, and those lands located outside the urban boundaries at a distance of 2,400 m from the specific objectives may be alienated by sale-purchase only with the permit from the Ministry of Defence, issued after consultations with the state agencies responsible for national security. Procedures to be followed for obtaining the permit will be determined by the methodological rules for the application of the Law. This requirement is not applicable when the alienations are made towards the holder of pre-emptive rights in accordance with the Law.
- Agricultural land located outside the urban boundaries in which there are archaeological sites and have been established as archaeological heritage areas or areas of known archaeological potential, may be alienated by sale only after obtaining a permit from the Ministry of Culture, respectively from its territorial structures.

Pre-emption right

- The pre-emption right is established for the sale of agricultural land located outside the urban boundaries for the following persons and in the following order, at equal price and conditions:
 1. Co-owners;
 2. Landholder;
 3. Neighbours;
 4. The Romanian state (represented by the State Domains Agency).
- The sanction provided by the Law in case of non-compliance with the pre-emption right and in case of failure to obtain the necessary approvals for the sale of land, set forth by the provisions of the Law, is that the contract is null and void. The act is also considered a misdemeanor, being punishable with a fine between RON 50,000 and RON 100,000.
- The applicable procedure in view of complying with the pre-emption right, briefly implies the following steps:
 - The seller initiates the procedure by filing the offer with the city hall. The latter publishes the offer for 30 days at its headquarters and, as the case may be, on the website and notifies the Ministry of Agriculture and Rural Development (central or territorial structure) of a file containing information regarding the offer (the pre-emptors list, a copy of the offer etc.). The Ministry (central or territorial structure) publishes the offer for 15 days on its websites.

- If no pre-emptor expresses an intention to purchase the land within the 30 days term under which the offer is published, the sale of the respective land would be unrestricted. Notwithstanding the above, the land cannot be sold at a lower price or in more advantageous conditions than the ones mentioned in the initial offer; otherwise the contract so concluded would be considered null and void.

In this case, the sale agreement shall be concluded based on a certificate from the city hall.

In case there are pre-emptors interested in the offer they would have to notify the seller in writing with respect to their acceptance of the offer within the 30 day term under which the offer is published and to register the acceptance with the city hall. The city hall publishes the acceptance of the offer and also notifies the Ministry for publication on its websites.

The sale agreement shall be concluded based on the permit issued by the Ministry of Agriculture and Rural Development, represented by the central authority in the case of land exceeding an area of 30 hectares or by the territorial authority in the case of land of 30 hectares or smaller.

The authenticated form of the pre-agreement

- In order to obtain a court order to replace the sale-purchase agreement, the Law establishes (in addition to other requirements related to the observance of the pre-emption right) that the pre-agreement must be concluded in an authenticated form.

We mention that the Law does not apply to pre-agreements and option rights that were concluded in an authenticated form prior to the entry into force of the Law, nor to alienation between relatives up to the third degree inclusive.

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

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