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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



Change of procedural norms regarding unannounced inspections of the Competition Council

The new Criminal Procedure Code amends, among others, the provisions of Competition Law no. 21/1996 regarding the unannounced inspections of the Competition Council.

Unified approach – judicial authorization is required to inspect any premises

Following the amendment, unannounced inspections will be conducted by the competition inspectors only having the judicial authorization given through a decision of Bucharest Court of Appeal or by a judge assigned by the later.

In the past, the inspections conducted at the headquarters of undertakings (or in other premises owned by them), were carried out based on the order of the president of Competition Council. The judicial authorization was exceptionally required for inspections carried out at the domicile, lands or means of transport belonging to leaders, managers, directors and other employees of the companies subject to investigation.

Taking into account the legislative amendment, in case where during an investigation it is deemed appropriate the conducting of an unannounced inspection (and often, such an inspection is carried out), the inspectors will have from the beginning a full mandate which will allow them to inspect all the premises considered relevant to the investigation, including the domicile of administrators or employees or undertaking under investigation.

Changing the challenging against the decision of Bucharest Court of Appeal

For reasons of procedural rigor, further to the conceptual clarifications regarding the appeal institution in the light of new code of civil and criminal procedure the challenge against the authorization decision for conducting unannounced inspection is a challenge and not the appeal.

Contact us:

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



Regulations for the controls conducted by the Financial Supervisory Authority on legal entities and concerned individuals

On January 24, 2014, the Regulation no. 1/2014 regarding controls performed by the Financial Supervisory Authority (the "Regulation") was published in the Official Gazette of Romania, Part I, no. 61 dated 24 January 2014.

The Regulation provides for the first time the complete legal framework based on which the Financial Supervisory Authority (the "Authority") performs controls regarding the legal entities and concerned individuals who perform activities/operations subject to authorisation/approval and/or their supervision in the capital markets, insurance and private pensions sectors.

The Regulation provides the following controls performed by the Authority, namely:

- (i) **Periodical Control** – the review of activities performed during a determined timeframe and the observation of the legal provisions;
- (ii) **Permanent Control** –the supervision and continuous monitoring of the legal entities/concerned individuals by analysing and/or by solving the data and information provided under the reports/addresses/notices, complaints/claims requested under the authorization and supervision activities;
- (iii) **Unannounced Control** –the review of one or more activities/operations performed during an determined timeframe and the fulfilment of the legal entities of one or several legal provisions; and
- (iv) **Crossed Control** –the review of the legal entity's documents and operations compared to the documents owned by another entity.

The most important rights and obligations of the legal entities and concerned individuals for controls provided under the Regulation are the following:

1. Principal rights of legal entities and concerned individuals

- (a) To be notified of the commencement of control procedures in the case of a periodical control;
- (b) To benefit from the persons assigned to perform the control activity of a just and equitable treatment;
- (c) To be informed of the final results of the control;
- (d) To oppose the measures and sanctions set forth in the documents of the Authority.

2. Principal obligations of legal entities and concerned individuals

- (a) To allow the control team access to the area in which the activity is performed, as well within the areas where documents regarding the activity and utilised information systems are kept;
- (b) To answer the Authority's request to present itself on the date and at place set for performing the control;
- (c) To ensure that the control is performed in good conditions and to facilitate the necessary support for its performance;
- (d) To collaborate for the entire period in which the control is performed in order to assess the facts;
- (e) To provide the control team with documents and complete and accurate information.

With respect to the opposition to the Authority's decision issued as a result of the control, the Regulation provides for the right of the legal entities and concerned individuals to submit a complaint against such a decision by which sanctions or measures are set forth in accordance with the provisions of Law no. 554/2004 regarding administrative proceedings.

The Regulation was published in the Official Gazette of Romania, Part I, no. 61 dated 24 January 2014 and shall enter into force 30 days from its publication.

Contact us:

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Tax & Legal Partner-in-Charge
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dbadin@deloittece.com



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

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