

LEGAL AND TAX ALERT, 16 November 2018**NEW RULES REGARDING OFFSHORE PETROLEUM OPERATIONS**

Titleholders of offshore petroleum agreements (“Titleholders”) have to observe new rules starting November 17, 2018. These new rules have been introduced through the Offshore Law¹, which sets forth the necessary measures for the implementation of petroleum operations and related works performed by titleholders of offshore perimeters and repeals Government Emergency Ordinance no. 160/1999².

The Law introduces a special regulatory framework for Titleholders which perform offshore operations and provides for specific rights and obligations in terms of authorisation of works, access to immovable property and perimeters, as well as specific regulations concerning tax and commercial matters.

AUTHORISATION OF WORKS

The Offshore Law clearly distinguishes, in terms of authorisation procedure, between (i) offshore works, (ii) onshore works (related to offshore operations) and (iii) well operations. Thus, the offshore and onshore works require the authorisation act issued by the Ministry of Energy following the prior obtaining by the Titleholder of certain endorsements and approvals explicitly provided by the new enactment, while the well operations require the endorsement issued by NAMR (*i.e.* National Agency for Mineral Resources). Both the authorisation act and the endorsement represent the equivalent of the building/demolition permit for the respective works.

RIGHTS OVER IMMOVABLE PROPERTIES AND PERIMETERS

Throughout the entire duration of the petroleum operations and related works performed over the public/private property of the state or of the territorial-administrative units, Titleholders have a legal access right which may be exercised under the conditions set forth by the new enactment. As regards the access to immovable properties owned by individuals or private entities, Titleholders have a legal access right, throughout the entire duration of the petroleum operations, under the conditions set forth by Petroleum Law no. 238/2004.

Moreover, the Offshore Law provides for the possibility of Titleholders, subject to an endorsement issued by NAMR, to perform petroleum operations (other than petroleum exploration and extraction) and to execute works also within petroleum perimeters belonging to other titleholders, subject to a prior notification of the latter and on condition not to negatively influence their petroleum operations.

TAX AND COMMERCIAL REGULATIONS

In the case of offshore petroleum agreements which are ongoing on the date of the entry into force of the Offshore Law, the Titleholders will apply, throughout the duration of such agreements, the royalties level/quotas and gross production thresholds, as well as the specific tax treatment applicable to exploration, development, production and abandonment activities, applicable on the entry into force date. Moreover, the Titleholders of such agreements will be exempt from the additional fiscal measures provided for the deregulation of natural gas prices and for the exploitation of other natural resources.

¹ Law no. 256/2018 regarding certain measures necessary for the implementation of petroleum operations by titleholders of petroleum agreements regarding offshore petroleum perimeters, published in the Official Gazette of Romania, Part I, No. 964/14.11.2018.

² Government Emergency Ordinance no. 160/1999 on implementing certain measures to incentivise the activity of titleholders of petroleum agreements and their subcontractors, which perform petroleum operations within marine perimeters including areas with a depth of more than 100 meters, approved with amendments by Law no. 399/2001, as subsequently amended.

The Offshore Law imposes on the Titleholders performing extractions and sale activities in relation to natural gas extracted from offshore perimeters, a tax applicable to the additional offshore incomes, tax from which upstream investments may be deducted in a proportion of up to 30%. The investments taken into account for the deduction from the additional offshore incomes tax cannot be subject to other deductions, being considered non-deductible for the purpose of profit tax computation. The tax is set in consideration of the reference price established by NAMR for royalties' computation, and the transactions carried out under the reference price shall be subject to taxation at the reference price. The quotas for the computation of the tax are established in consideration of the actual sale prices of natural gas, by reference to the price grids provided by the Offshore Law, and vary from 15% to 70%.

In addition, Titleholders selling wholesale natural gas have the obligation to trade on the centralized markets, during one calendar year, at least 50% of the natural gas volume to be delivered during that respective calendar year.

Not least, the Offshore Law provides for specific conditions for non-resident subcontractors of the Titleholders, and for the Titleholders, in what regards the manner of the organisation and functioning on the Romanian territory, the manner of procuring goods and services, as well as contracting employed personnel and sets fines which can reach up to 10% of the turnover in case of not complying with certain obligations.

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