

FISCAL INCENTIVES FOR TRADE COMPANIES IN THE PETROLEUM FIELD

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Law no. 134/1995 on Petroleum Law, published in the Official Gazette no. 301/29th of December 1995, amended by:
 - Government Emergency Ordinance no. 47/2002 for the amendment and completion of the Mines Law no. 61/1998 and of the Petroleum Law no. 134/1995, published in the Official Gazette no. 267/22nd of April 2002
 - Government Decision no. 1152/2001 on updating of the value of the annual taxes for mining activities and of the contravention fines stipulated by the Mines Law no. 61/1998 and of the Petroleum Law no. 134/1995, published in the Official Gazette no. 771/4th of December 2001
- Order no. 14/1997 on establishing the list of areas for development-exploitation and/or exploitation that are to be subject to administration with a view to performing the petroleum operations, published in the Official Gazette no. 54/1st of April 1997

I. Petroleum Operations

Petroleum operations are performed by Romanian or foreign legal persons, according to law, only within certain areas established for this purpose by the competent authority, which is National Agency for Mineral Resources (ANRM), agency representing State's interests in the field of petroleum resources.

- Law no. 134/1995, no. 61/1998 and of the Petroleum Law no. 134/1995, published in the Official Gazette no. 267/22nd of April 2002, stipulates that petroleum operations means the aggregate of activities regarding exploration, development and exploitation of a petroleum field, the underground storage, transportation and transit of the petroleum through main pipelines, as well as the operation of petroleum terminals on the public domain of the state.

II. Authorities having duties in this field

The competent authority having duties on enforcing legal provisions in the petroleum field is the National Agency for Mineral Resources, organized in the Government's subordination.

The National Agency for Mineral Resources has the following capacities in the field of petroleum resources:

- a) manages state's petroleum resources;
- b) negotiates clauses and conditions of the petroleum agreements, concludes such agreements, regulates petroleum operations performed on their basis, as well as of the norm, regulations and technical instructions issued in the law enforcement.
- c) Confirms petroleum reserves and organizes the fund of geological data and of its exploitation, storage, systematization and valorization; established the national fund of petroleum reserves; the official data regarding the oil reserves are those registered in the national fund;
- d) Performs surveys, on the basis on which it grounds and establishes, together with the Ministry of Public Finances, the price of petroleum extracted from Romania and the tariffs provided by law;
- e) studies and verifies the petroleum production for the computation of tariffs and royalties;
- f) studies the enforcement of measures established for the protection of the surface and of the underground during the petroleum operations;
- g) controls the compliance by the holder of the provisions of the petroleum agreement, as well as of those from norms, regulations and instructions in this field and orders measures for their observance;
- h) orders the ceasing of the geological works or of exploitation performed outside the established area, of those without approved technical documentations, as well as of those which, by their modality of performance, may lead to a non-rational exploitation, degradation of deposits, until the cessation of the facts that caused them;
- i) draws up and keeps the Petroleum book; the legal documents and the documents non-registered in the Petroleum book are not opposable to third parties;
- j) establishes and notifies the failure to comply with the provisions of the Law no. 134/1995, as further completed and amended.

III. Valorization of petroleum resources

Petroleum resources are given for managing to the regies autonomes or are subject to concession by the National Agency for Mineral Resources. The concession period cannot exceed 30 years.

National Agency for Mineral Resources establishes annually the list of areas given for managing or concession and publishes it in the Romanian Official Gazette.

1. The initiative of the given for managing or concession

The initiative of given for administration concession belongs to the National Agency for Mineral Resources.

The initiative of concession may belong to the Romanian or foreign legal persons that prove the interest of being granted with the right of performing petroleum operations in this regime. For the concession, Romanian and/or legal persons shall be selected by public bid call.

In the presented offers, the offerers shall prove their financial capacity and technical skills necessary for the fulfillment of the performances, as they are proposed in the public bid call.

The initiative of given for managing belongs to the regies autonomes having duties for petroleum operations.

2. Petroleum agreement

Given for concession or managing is performed by **petroleum agreement**, concluded by the National Agency for Mineral Resources with Romanian or foreign legal persons.

Petroleum agreement means any legal document concluded, according to the provisions of Law no. 134/1995, as further amended and completed, between the National Agency for Mineral Resources and a Romanian or foreign legal person, for the performing of the petroleum operations.

Petroleum agreement is concluded in writing and comes into force after its approval by the Government.

Provisions of the petroleum agreement remain valid on its entire duration, subject to conditions from the date of its conclusion.

The holder of a petroleum agreement may transfer the rights acquired and liabilities to other legal person only subject to written approval from the National Agency for Mineral Resources. Any transfer without the approval is null.

The beginning of petroleum operations in the area given for managing or concession is authorized by National Agency for Mineral Resources in writing.

Law provides for the obligation of the foreign legal persons that have obtained the right to perform petroleum operations that, within 90 days from the date of the coming into force of the petroleum agreement, to establish and keep, on the entire duration of the concession and subject to conditions of the petroleum agreement, a branch or subsidiary in Romania.

If two or more than two foreign partners acquire petroleum rights regarding the same area, the obligation of establishing and keeping a branch or subsidiary in Romania falls within the company designated to represent their interests.

IV. Incentives granted to holders of petroleum agreements

Law no. 134/1995 as further amended and completed provides for the incentives granted to the holders of petroleum agreements:

- Exemption from customs duties of imports performed by the holders of the agreements or by their subcontractors, for the goods necessary for the performing of the petroleum operations;
- Exemption from customs duties of the goods of household and personal use necessary to foreign personnel of the holder of agreement, of the affiliated companies and of their foreign subcontractors; the goods exempted from import customs duties are written in the schedules to the petroleum agreement;
- Exemption from customs duties of the export of the petroleum quotas due to the holder of agreement, as well as of export of the goods imported by him and by its foreign personnel, subject to conditions provided for in the previous mentioned point.

Holders of petroleum agreements, foreign legal persons, benefit from the following incentives:

- a) to perform operations of cashing in foreign currency, derived from the export of petroleum from the production due to him and to keep this currency abroad after the payment of the obligations towards Romanian state;
- b) in the case in which the sales of the petroleum due to the holder are performed in Romania, he has the right to transform in convertible currency the amounts in lei, subject to conditions of the Romanian legislation and to dispose freely on the disposable funds in currency that can be transferred abroad after the payment of the obligations towards Romanian state.

Incentives granted to the holder of petroleum agreements are established for each contract and remain unchanged for the entire period of the petroleum agreement.

The delivery of machines and equipments, as well as performing of services, connected directly to the petroleum operations made by the holders of the petroleum agreements, **foreign legal persons**, on the basis of the Petroleum Law no. 134/1995 as further amended and completed shall be performed with VAT exemption and the suppliers and performers of services shall deduct the VAT afferent to purchased goods and services, destined to these operations.

V. Sanctioning regime

The failure to comply by the foreign legal persons that have obtained the right to perform petroleum operation with the obligation to establish, within 90 days from the date of coming into force of the petroleum agreement and to keep, on the entire duration of concession and subject to conditions of the petroleum agreement, a branch or subsidiary in Romania, is a contravention and is sanctioned with a fine from lei 131 million to lei 262 million.

The failure to comply by the holder of the petroleum agreement of obligations regarding:

- the drawing up, on the basis of the petroleum agreement, of technical and economic documentations for the performing of the petroleum operations and their submission for approval to the competent authority;
- obtaining, drawing up, keeping updated and transmittal on the due terms of all the data, information and documentations established by the competent authority regarding petroleum operations performed and the obtained results;
- fulfillment, on the established terms, of measures ordered in writing by competent authority in exercising the due duties according to law.

is contravention and is sanctioned with a fine from lei 131 million to lei 262 million.

The followings are contraventions and are sanctioned with a fine from lei 262 million to lei 655 million:

- the holder of the petroleum agreement fails to comply with the assumed obligations regarding the term of beginning of the petroleum operations;
- the holder of the petroleum agreement continues the ceasing of works for a period longer than 30 days without the approval of the competent authority;
- uses methods or exploitation technologies, other than those approved by the competent authority;
- performs petroleum operations without authorization.

In these four circumstances the National Agency for Mineral Resources may withdraw the managing or concession if the holder of the petroleum agreement, despite of contravention sanctioning and/or notification that has been made to him, does not comply with the stipulated obligations within 30 days from its reception.

- Failure to perform exploration and development works of the deposits of petroleum only for reserves confirmed by the National Agency for Mineral Resources, according to the norms drawn up by it, taking into account international practices;
- Failure to comply by the holder of the petroleum agreement of the obligations:
 - to comply with the norms, regulations and instructions issued in the enforcement of the Law no. 134/1995 as further amended and completed and the provisions of the petroleum agreement;
 - to associate, upon request of the National Agency for Mineral Resources, with the holder of certain adjacent areas, in case in which the hydrodynamic continuity of the deposit in those areas is established by the works performed, in order that an efficient valorization of reserves to be ensured;
 - to use with priority, in the execution of the petroleum operations, local labor force accordingly qualified, as equipments and materials made in Romania, in competitive conditions.

The following are contraventions and are sanctioned with a fine from lei 655,000,000 to lei 1,310,000,000.

- violation of the obligation to perform petroleum operations only within areas established for this purpose by the National Agency for Mineral Resources;

- violation by the holder of the petroleum agreement of the obligation to maintain confidentiality upon the data obtained from the National Agency for Mineral Resources and from their own activity and not to transmit them without its approval;
- failure to comply by the holder of the petroleum agreement of obligation to grant to the Romanian state of the preemption right at its acquisitioning, under the conditions stipulated in the petroleum agreement, for the part from the petroleum production due to him.

Performing for a second time of one of the sanctioned contraventions and for which the law does not provide for the withdrawal of managing or concession, is sanctioned with a fine, the limits of the fine provided for the respective contravention being established at double.

If the National Agency for Mineral Resources establishes the continuous violation of provisions for which sanctions are established, it shall order the ceasing of geological works or of exploitation ones performed outside the established area, of those without approved technical documentations, as well as of those which, by their way of unfolding, may lead to the non-rational exploitation and the degradation of deposits, until the removal of the causes that produced them.

The establishment of contraventions and of the failure to comply with the obligations as well as the punishing with a fine are made by a minutes concluded by the empowered personnel of the National Agency for Mineral Resources.