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Legal & tax perspective on Romania's oil and gas industry

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Agenda

Legal & Tax

1. Legal framework
2. Concession of oil & gas reserves
3. Setting – up of companies in Romania
4. Setting – up of branches in Romania

Legal framework

Legal Framework

- Petroleum Law no. 238/2004 (published in the Official Gazette no. 535/2004)
- Methodological Norms for the implementation of the Petroleum Law approved by Governmental Decision no. 2075/2004 (published in the Official Gazette no. 1170/2004)
- Energy and Natural Gas Law no. 123/2012 (published in the Official Gazette no. 485/2012)
- Order 34/2013 approving the Regulation for granting of set-up authorizations and licenses in the natural gas sector

Oil and natural gas reserves

Who is the owner of the oil & gas reserves?

- According to the Romanian Constitution, the State has the exclusive ownership right over the oil and natural gas reserves located on Romania's territory.

The Concession

- A Romanian or foreign legal entity can be granted the right to carry out petroleum activities by way of concession agreement.
- The concession represents the legal operation by which the National Agency for Mineral Resources, acting on behalf of the Romanian State, transfers to a legal entity the right and obligation to carry out petroleum activities and the right to use public assets during the process. In exchange, the legal entity must pay to the State a royalty.

Types of concession petroleum agreements

- Exploration-development-exploitation concession petroleum agreement
- Development-exploitation concession petroleum agreement
- Exploitation concession agreement
- Underground storage of natural gas concession petroleum agreement
- Petroleum agreement for the concession of the national oil pipeline system
- Petroleum agreement for the concession of oil terminals

How is a concession agreement concluded ?

Procedure to be followed for concluding the petroleum concession agreement

- Who can initiate the concession?
 - ✓ Either the legal entity or the competent authority (NAMR).
- How is the concession granted?
 - ✓ The concession is granted by public tender under Petroleum Law.
- Is the concession granted for a limited period?
 - ✓ Yes, the concession is granted for a period of 30 years with the possibility of extension for another 15 years.
- ✓ The agreement enters into force only after the approval of the Government.

Special conditions to be met by the bidders

- Solvability – each participant to the public tender must include in its participation offer a bank letter of good standing, indicating its solvency and global liquidity levels, gross profit margins and financial profitability.
- If the winner of the public tender is a foreign legal entity it must establish and maintain a branch or subsidiary headquartered in Romania.

Criteria for granting the concession (I)

For exploration-development-exploitation concessions

- The proposed exploration program
- The technical capacity
- The financial capacity
- The environmental impact and clean-up program
- Technology transfer programs and staff training programs

Criteria for granting the concession (II)

For development-exploitation concessions or exploitation concessions

- The pre-feasibility study
- The technical capacity
- The financial capacity
- The environmental impact and the program for restoration
- Technology transfer programs and staff training programs

Assignment of rights and obligations under the concession petroleum agreement (I)

General facts

- The Romanian law allows the assignment of rights and obligations.
- The assignment may be total or partial.
- Without the ANRM approval the assignment is null and void.

Assignment of rights and obligations under the concession petroleum agreement (II)

Conditions related to the petroleum agreement

- The petroleum agreement must be in force.
- The obligations undertaken by the concession holder (assignor) have been fulfilled or the assignee undertakes to fulfill those obligations.
- The assignment must not affect the existent conditions of the concession.

Assignment of rights and obligations under the concession petroleum agreement (III)

Conditions related to the parties

- The Romanian legal entity to which the rights and obligations shall be assigned must have no outstanding debts towards the state budget, social contributions budget and local budgets.
- The assignee must have the technical and financial capacity to undertake the contractual obligations.
- The assignee is specialized for carrying out oil activities or has appointed an authorized company as operator which possesses the technical capacity for the oil operations provided in the concession agreement.

Setting-up a company in Romania

Types of companies

- Limited Liability Company (SRL)
- Joint Stock Company (SA)
- General Partnership (SC)
- Limited Partnership (SCS)
- Limited Partnership by Shares (SCA)
- Economic Interest Group (GIE)

Out of the range of five legal forms, the Limited Liability Company is the most commonly incorporated company in Romania.

Setting up a Limited Liability Company (I)

General Information

- A LLC (SRL) may be established by one or more natural and/or legal entities. A person may be sole shareholder only in one LLC. Additionally, a LLC may not have as a sole shareholder another LLC with a sole shareholder.
- The nominal value of the share capital must be at least 200 RON (approx. EUR 50).
- The LLC must have a registered seat in Romania.
- The articles of association must detail all important elements defining the LLC. There is no special form required for the articles of association. However, for the cases when shareholders contribute immovable property to the share capital the articles of association must be issued in authenticated form.

Setting up a Limited Liability Company (II)

Duration & Costs

- Time required for registration with the Trade Registry: 3 days from the submission of all documents required by the law for the incorporation of the company.
- Incorporation costs: the overall taxes and legal tariffs for the registration of a LLC are in a range between EUR 100 to 300 (excluding contributions to the share capital and the costs for authentication, apostillation or translation of documents).

Setting up a Romanian branch

General Information

- A branch is an extension of the parent company, has no legal personality and no independence;
- The branch is governed by the laws of its parent company's country of incorporation;
- The branch is economically dependent on the mother company;
- The branch may carry out activities falling within the objects of activity of the parent company;
- The parent company is fully liable for the liabilities of the branch;
- A branch is registered with the National Trade Register;
- The incorporation of the Romanian branch follows the main steps as for setting-up a subsidiary and implies similar costs.

Tax matters

Potential benefits

- 16% flat tax rate
- 5% dividend income tax*
- Holding regime
- Double Taxation Treaties network
- Tax incentives: R&D, reinvested profit
- Reverse charge mechanism for VAT on real estate transactions**
- Reduction of VAT rate to 20%

Potential “troublemakers”

- Instability of the legislative framework
- Formalistic approach of the tax inspectors
- Lack of consistent practice

Specific tax issues

- Special tax rules for joint-ventures
- Exposure to creating a taxable presence in Romania
- Employees' tax compliance
- Construction tax

Subsidiary vs Branch

- Micro-company regime
- Aggregation of the fiscal result
- Dividend vs profit distributions
- Transfer pricing requirements

A permanent establishment may be created even if a subsidiary is registered!

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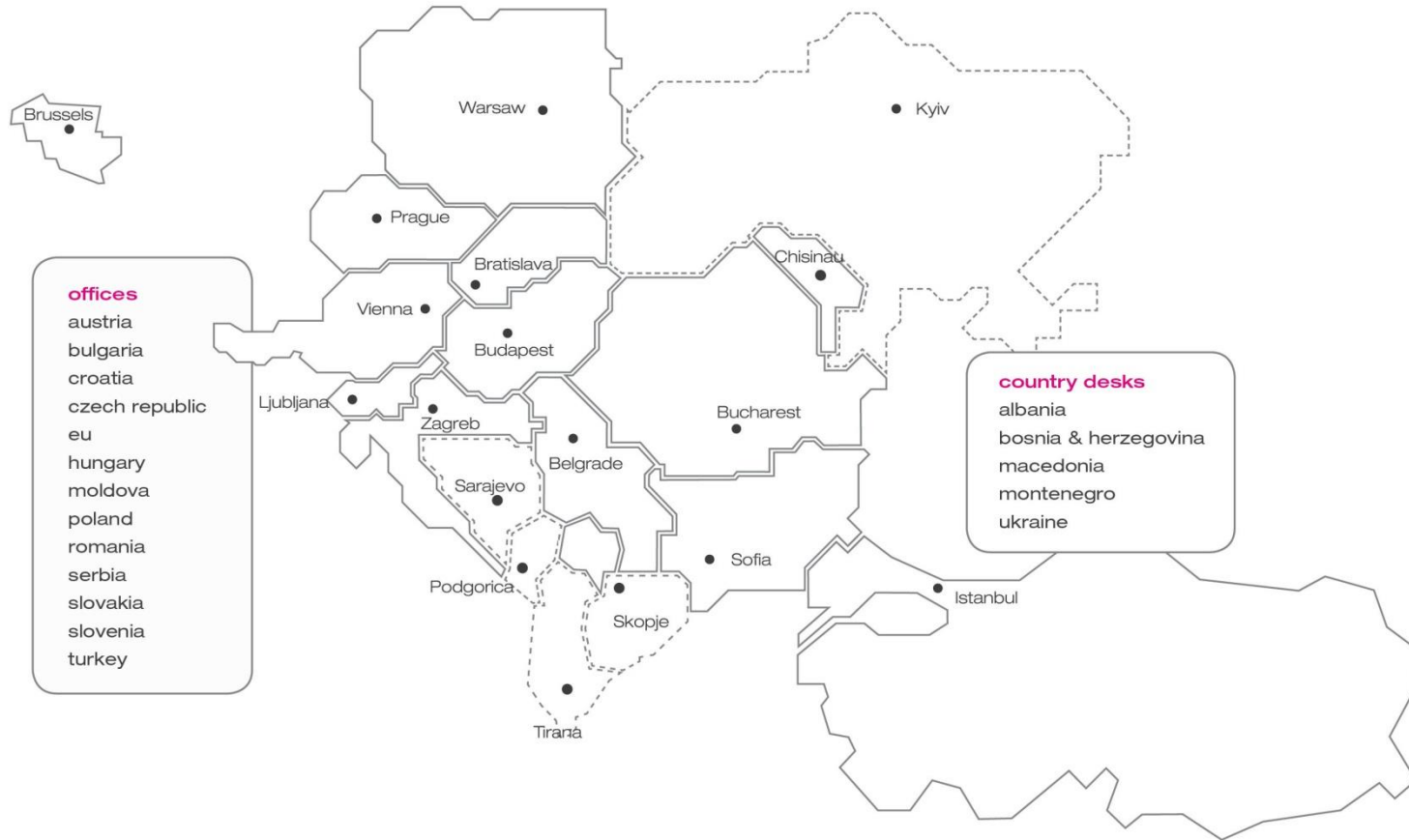
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