

# Tax & Legal Alert

Ernst & Young Bulgaria

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In this edition of the Tax & Legal Alert, we focus on recent rulings of the European courts on cases involving Bulgaria. We also provide an update on the latest domestic developments.

## **Bulgarian rules for VAT refund incompatible with EU law**

The European Court of Justice (ECJ) has recently held that the Bulgarian tax rules, under which default interest for unrecovered VAT does not accrue for the period of a tax audit, are contrary to the EU law. This judgment opens room for Bulgarian taxpayers to seek interest for each case when VAT was refunded after the statutory term, irrespective of whether the company has been audited.

## **Bulgaria convicted for unjustified delay in court proceedings**

The European Court of Human Rights (ECHR) has delivered its judgments in two cases, which require that Bulgaria introduces compensatory remedies in respect of unreasonably long proceedings in civil, administrative and criminal cases. According to the ECHR, these remedies, allowing Bulgarian citizens to seek compensation directly from the state, should be enforced within 12 months.

## **Increased number of Bulgarian referrals to the ECJ**

Bulgarian taxpayers may rely on ECJ's practice before the national courts if specific provisions or principles of the EU law are breached. In the light of an increased number of disputes with the Bulgarian tax and customs authorities on interpreting the EU legislation, the national courts may, and sometimes must, refer to the ECJ for a preliminary ruling, which sheds light on the relevant Community legislation.

Few referrals on tax and customs issues have been made in the first years following Bulgaria's EU Accession. However, in the context of existing inconsistencies between the Bulgarian and the EU legislation, and even more misinterpretations of the latter in practice, there is a growing trend towards seeking clarification by the ECJ. As a result, a large number of Bulgarian referrals have reached the ECJ lately. For example, the ECJ has opened six cases on Bulgarian tax matters in the course of the last few months. They concern various issues, such as restrictions of VAT deductibility, taxable base of supplies between related parties, customs classification, customs procedures, etc.

Some of the preliminary rulings already given have resulted in legislative changes, e.g. allowing of a refund of overpaid excise duties on used vehicles. In others, the ECJ has held that compensatory interest on customs duties may be levied only after the date due for payment. ECJ has also passed a judgment on the scope of the VAT second-hand margin scheme.

## New requirements to property transactions

As of 1 July 2011, parties to property transactions should declare that the amount, indicated in a notary deed, is the actual price paid, thus engaging potential criminal liability for a false declaration. Payments above BGN 10,000 should be made to the notary's bank account or to a special account, indicated by the parties.

## Amendments to excise duties regulation

The by-laws on movement of excise duties under suspension arrangements have now been aligned with the legislative changes adopted earlier this year. New forms, such as an application for a certificate of trading with tobacco products, have been introduced. Changes will also apply in certain terms, procedures and methods.

## New rules for non-EU employees

The rules for access of non-EU nationals to the Bulgarian labor market have recently been amended. Employers are now obliged to check the residence permits of their foreign employees and to keep a notarized copy for the duration of employment. They are also required to notify the National Revenue Agency about the commencement of work within the deadlines, laid down in the Labor Code.

Hiring an illegal immigrant does not exclude the employer's obligation to pay due remuneration in line with the Bulgarian minimum salary requirements for a period of at least three months. Taxes and social security contributions are due as well. Nonetheless, employers may suffer penalties in the range of BGN 3,000 and BGN 30,000 for hiring illegal immigrants.

Within the first two years of validity of an EU blue card, foreign employees are entitled to change their employer once, subject to prior approval by the Employment Agency. In case of unemployment, a three-month period is given to EU blue card holders to find a new job.

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