Legal Update

5 December 2017

TRADE LAW

- New law on trading of petroleum products

The council of Ministers has approved a new law regulating the trade in petroleum products (the “Law”) by a Decision No. 68 dated 27/01/1439H (corresponding to 17 October 2017) and Royal Decree No. M/18 dated 28/01/1439H (corresponding to 18 October 2017).

The Law was published in the Official Gazette on 10 November 2017 and will enter into force on 9 January 2018, sixty days after its publication. The Ministry of Energy, Industry, and Mineral Resources (the “Ministry”) will issue the Law’s Implementing Regulation on 17 December 2017.

The Law aims at regulating all commercial aspects of trade in petroleum products including the use, sale, transport, storage, distribution, import and export.

The key points are as follows:

– State-priced petroleum products are to be strictly used as fuel. The Petroleum Products, defined as crude oil and its derivatives including aviation fuel, kerosene, gasoline, diesel, fuel oil and asphalt, shall be used as feedstock only at the global prices (article 4).

– Export and import of Petroleum Products or products containing Petroleum Products are subject to a licence of the Ministry (article 5).

– The General Customs Department will collect the amount equal to the difference between the price set by the State for the products to be exported and their price in international market. The amount will be transferred to the State’s treasury (article 6).

– Violators of the provisions of this Law shall be subject to imprisonment for a period not exceeding five years and/or a fine not exceeding three times the value of the Petroleum Products and/or cancellation of the license (articles 8 and 13).

This Law is part of a broader economic reform to reduce the burden on government that heavily subsidizes fuel. The Law attempts to prevent the smuggling of fuel outside the Kingdom and misrepresenting the kind of products smuggled or publicly exported via tankers under the guise of other products and especially State-priced products that are exported under the guise of non State-priced product. Revenues of smuggling of Petroleum Products are estimated at 2 billion Riyals annually.

CAPITAL MARKET

- Updated regulations to regulate mergers and acquisitions

On 15/10/2017, the Capital Market Authority's Board of Commissioners has issued its Resolution No. 2-94-2017 to adopt the updated Merger and Acquisition Regulations, thereby replacing the previous one adopted in 2007. The updated regulation is effective and entered into force on 19/10/2017.

Amongst the significant additions to the updated regulations are:

- A number of examples to clarify cases in which a person will be considered as a related party and the obligations arising therefrom and a number of examples in which a group of persons are presumed to be acting in concert and as such their collective ownership in the listed company will be treated as that of a single person's ownership.

- A regulatory framework for securities exchange offers to acquire all of a listed company's shares or merging with it subject to the shareholders general assemblies' approval, as well as allowing for partial takeovers of a listed company's shares.

- A legal framework for private sale and purchase transactions that involves targeting an ownership of 10% or more in a listed company's share capital, and clarifying the role of the companies' boards of directors in these transactions, the announcement obligations on the transaction parties and the listed company, as well as the prohibitions and restrictions on dealings by the selling shareholder, the buyer and any persons acting in concert with any of them.

- Provisions that are applicable to any person who increases its ownership so that it becomes the owner of, individually or together with persons acting in concert with it, 40% or more of a listed company's shares. These persons shall be subject to a lockup for a period of six months and shall announce to the public a number of details such as its ownership and the ownership of the persons acting in concert with it, the consideration paid, the objective of the acquisitions, and its future plans for the listed company, its shareholders and employees. On its side, the listed company will be required to announce to the public the details of the changes in its ownership structure, the rights and the obligations of that person, and the opinion of its board of directors about that person's plans regarding the listed company's activity, shareholders and employees.
  (https://cma.org.sa/en/MediaCenter/PR/Pages/Updated-Merger-And-Acquisition-Regulations.aspx)

TAX

- 2 types of VAT invoices

The General Authority of Zakat and Tax (GAZT) have outlined the requirements for VAT invoices ahead of the introduction of VAT on 1 January 2018, with the aim of improving levels of tax compliance. GAZT indicated that two types of invoices are outlined in the VAT Implementing Regulations.

The first is a simplified tax invoice for the supply of goods or services with a total value of less than SAR 1,000, which must include the date of issue, the name, address and VAT identification number of the supplier, the statement of goods or services supplied, payment for goods or services, and a clear statement of the tax payable or indication that the total payment (consideration) includes the tax in respect of the supply of goods or services. A simplified tax invoice may not be issued with respect to internal supply or exports.

The second type of invoice is for transactions that exceed SAR 1,000, which require a more detailed invoice, as outlined in article 53 of the Implementing Regulation.
This invoice, which must be in Arabic in addition to any other language, must include the date of issue of the invoice, the serial number identifying and distinguishing the tax invoice, the supplier's VAT identification number, the customer's VAT identification number (if the customer is responsible for the calculation of the import tax and a statement thereof), the date on which the supply was signed, the name and address of the supplier and the customer, the amount and nature of the goods supplied, the scope and nature of the services provided, the amounts subject to tax at rate or exemption, the unit price excluding tax, and any discounts or rebates if not included in the unit price, as well as the applicable VAT rate and amount due in Saudi Riyals.

According to the Implementing Regulation, every taxable entity is required to issue tax invoices when supplying goods or services subject to VAT, or any payments made in respect to the supply of goods or services. This helps businesses file their tax returns on time, and go through the required process for tax refunds on inputs.

GAZT confirmed that in the event of discounted prices on goods or services, VAT should be applied to the final discounted price, rather than the original amount.

GAZT called on businesses to provide clear invoices that specify goods or services that are not subject to standard 5% VAT due to being exempt from VAT or zero-rated.

GAZT stressed that businesses whose annual revenues exceed SR 1,000,000 must register for VAT before 20 December 2017 to avoid financial penalties and the suspension of government services.

All eligible businesses are urged to visit the VAT.GOV.SA website, which contains a VAT manual with a simplified explanation of the basic steps businesses need to undertake to implement VAT, as well as a wide range of tools and information to support businesses in achieving readiness.
http://saudigazette.com.sa/article/523426/BUSINESS/2-types-of-VAT-invoices

MISCELLANEOUS

- SAR 500 fine for failing to renew iqama 3 days after its expiry

There will be a grace period of three days before the fine of not renewing iqama (residence permit) on time is imposed, according to the passport department (Jawazat).

A fine of SAR 500 will be levied for delaying iqama renewal, Al-Madina Arabic newspaper quoted the Jawazat as saying on Sunday. The Jawazat also said that there will not be any fee for transfer of data (naqal maalumat) from old passports to new ones.

It said the fine for cancelling the exit-reentry visa after it has been issued is SAR 1,000.

http://saudigazette.com.sa/article/522258/SAUDI-ARABIA/SR500-fine-for-failing-to-renew-iqama-3-days-after-its-expiry

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