**DECISION**

**No. 397, on 30.6.2021**

**ON THE APPROVAL OF DETAILED RULES TO SUB-CONTRACTED LEGAL ENTITIES, WHICH PERFORM HYDROCARBON OPERATIONS**

Pursuant to Article 100 of the Constitution and to the point 4, of article 2, of The Law no.153/2020, “On fiscal regime at hydrocarbon sector”, under the proposal of the Minister of Finance and Economy and the Minister of Infrastructure and Energy, the Council of Ministers

DECIDED:

1. The purpose of this decision is to define detailed rules, which will be applicable to legal entities, under the definition of point 4, of article 2, of the Law no. 153/2020, “On fiscal regime at hydrocarbon sector ”, which, directly or indirectly, perform hydrocarbon operations in compliance with applicable law on hydrocarbons, including exploration and production, meeting the criteria stipulated under point 3, of article 2, of the Law no. 153/2020, “On fiscal regime at hydrocarbon sector”, as well.

2. In addition to the definitions given in Article 4, of the Law no. 153/2020, “On fiscal regime at hydrocarbon sector”, the following terms have these meanings:

a) “**Essential activity of a hydrocarbons operation**”, one or several hydrocarbon operations realized by subcontracted legal entities, when the level of billed contribution of this legal entity is not less than 25 (twenty and five) % of total costs for hydrocarbon operations of the authorized person;

b) **"Related persons"**, the same meaning as stipulated under article 2, of the Law no. 8438, on 28.12.1998, “On income tax”, as amended.

c) "**Hydrocarbon operations**", all operations and any operation related to research, assessment of a discovery, development, extraction, production, separation and treatment, collection, transportation and sale or disposal of hydrocarbons up to the export point or up to a delivery point in Albania, which has been agreed on, or at the entry point into a refinery and includes natural gas processing operation, but does not include the operations of hydrocarbon processing that are stipulated by the in-force legislation on hydrocarbons.

3. When the expenses due to hydrocarbon operations billed to the authorized person by the subcontractor are not less than 25 (twenty-five)% of total expenditures for hydrocarbon operations, subcontractor or subcontractors are subject to the in-forced provisions of the Law no.153/2020, “On fiscal regime at hydrocarbon sector”, and pay tax on profit at the tax rate of 50(fifty)%. The costs for hydrocarbon operations, from subcontractor to contractor, are calculated pursuant to the total value of invoices in ALL, as issued by the subcontractor without VAT. Whether the value of expenses without VAT calculated as above constitutes not less than 25 (twenty-five) % of total contractor’s costs, the subcontractor is taxed at the tax rate of 50 (fifty) % for this part of the activity or of his activity.

4. Tax administration, in cooperation with AKBN, analyses the compliance of agreements and contracts closed between the contractor and the subcontractor with provisions/regulations of in-forced legislation on fiscal regime in the hydrocarbon sector and taxation on income, in order to identify cases when avoidance of tax payment is intended by the subcontractor, according to the tax rate set under the Law no.153/2020, “On fiscal regime at hydrocarbon sector”

5. In cases when, in accordance with point 4, of this decision, it is evidenced that the contractor and / or subcontractors perform one or a series of actions or direct or indirect transactions, that aim at avoiding or reducing tax liabilities, the action or transaction is re-characterized by tax administration and the new tax liability is calculated in accordance with the in-forced provisions on alternative tax assessment, stipulated in the Law no. 9920, on 19.5.2008, “On Taxation Procedures in the Republic of Albania ”, as amended, and in the Law no. 153/2020, “On fiscal regime at hydrocarbon sector”.

6. Final decision on the tax rate applicable to subcontractors, pursuant to point 5, of this decision, is taken by the General Director of Taxation in coordination with the regional tax directorate, where the subcontracted legal entities are registered.

7. In order to implement this decision, tax administration cooperates and coordinates its work with the National Agency on Natural Resources (AKBN), due to their functions and activity, as stipulated at the in-forced legislation on the fiscal regime in the sector hydrocarbons.

8. The General Directorate of Taxation and National Agency on Natural Resources are in-charged for the implementation of this decision.

This decision enters into force after its publication in the Journal Official.

VICE PRIMEMINISTER

**Erion Braçe**