IPA II TAXES AND CUSTOMS ARRANGEMENTS

Article 27 and 28 from the Framework Agreement[1], signed on 11th of February 2015

The contract is, as a rule, exempt from all taxes and duties, including value added tax (VAT) and Special Consumption Tax (SCT), Motor vehicle tax, Special communication tax, and/or taxes of equivalent effect, stamp or registration duties, special charges or any other charge having equivalent effect, pursuant to the provisions of Articles set out in the Framework Agreement signed between the Republic of Türkiye (hereinafter will be referred "Türkiye") and the EU in 2015, extract of Article 27 & 28 of which are provided below.

The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and/or services and/or works and/or grant activities required for performance of the Contract are exempt from taxes, customs, import duties, levies and/or taxes of equivalent effect, and stamp or registration duties or special charges or any other charge having equivalent effect in accordance with the rules that are set out below. Any matter not covered by the below provisions on tax and customs arrangements shall remain subject to the national legislation of Türkiye.

The relevant provisions of the Framework Agreement (the FWA) are as follows:

Granting of facilities for the implementation of programmes and execution of contracts

(1) In order to ensure the effective implementation of programmes under IPA II, Türkiye shall take all necessary measures to ensure:

(a) that, in case of service, supplies or works tender procedures as well as grant awards and twinnings, natural or legal persons eligible to participate in award procedures pursuant to Article 19 shall be entitled to temporary installation and residence where the importance or the duration of the contract so warrants. This right shall be acquired only after the procedure has been launched and shall be enjoyed by the managerial and technical staff including RTAs, needed to carry out studies and other preparatory measures to the drawing up of bids/applications/proposals. This right shall expire one month after the decision of contract award;

(b) that tenderers and applicants can submit their bids/applications/proposals without encountering any obstacle such as additional legal, administrative or customs related requirements that impair equal treatment among tenderers or applicants unless such requirements are enshrined in an underlying programme document adopted by the Commission;

(c) that personnel taking part in the implementation of IPA II assistance and members of their immediate family are accorded no less favourable benefits, privileges and exemptions than those usually granted to other international or expatriate staff employed in the Republic of Türkiye, under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation;

(d) that personnel taking part in the implementation of IPA II assistance and members of their immediate family are allowed to enter the Republic of Türkiye, to establish themselves in the

[1] This is an extract of Article 27 and 28 of the IPA Framework Agreement signed between Türkiye and the European Union Commission on 11.02.2015, and adopted as law by Turkish Parliament (no: 6647) on 04 April 2015 and which was published in the Turkish Official Gazette on 28 April 2015, no: 29340. It has been put into force by Government Decree, no 2015/7708 that was published in Official Gazette no: 29393, dated 21 June 2015 and government Decree, no 2015/8085 that was published in Official Gazette (complementary version, no: 29459, dated 28.08.2015. Please, also refer to the Framework Agreement (accessible via https://www.ab.gov.tr/files/ipaii_framework_agreement_original.pdf), and the Communiqués issued by:
- The Ministry of Treasury and Finance (the MoTF) thereto for further information, especially for exemption scope and implementation procedure, which are available at the MoTF's website at: http://www.gib.gov.tr/uluslararasi_mevzuat,
- The Ministry of Trade (MoT) thereto for further information, especially for facilities extended for customs clearance, which is available at the MoT's website at: http://www.resmigazete.gov.tr/eskiler/2017/10/20171007-9.htm - Ab Katılım Öncesi Yardım Aracı, published in the Official Gazette of Türkiye, No: 30203, on 07.10.2017.

Republic of Türkiye, to work there and to leave the Republic of Türkiye, as the nature of the underlying contract so justifies;

(e) the granting of all permits necessary for the importation of goods, in particular professional equipment, required for the execution of the underlying contract, subject to existing laws, rules and regulations of Türkiye;

(f) that imports carried out under IPA II will be exempted from all charges;

(g) the granting of all permits necessary for the re-export of the above goods, once the underlying contract has been fully executed;

(h) the granting of authorisations for the import or acquisition of the foreign currency necessary for the implementation of the underlying contract and the application of national exchange control regulations in a non-discriminatory manner to contractors, regardless of their nationality or place of establishment;

(i) the granting of all permits necessary to repatriate funds received in respect of the action financed under IPA II, in accordance with the foreign exchange control regulations in force in the Republic of Türkiye;

(j) that transactions necessary for carrying out contracts financed under IPA II will be exempted from procedures requiring the transfer of the payment for goods and/or services to their contractors abroad through banks or financial institutions operating in the Republic of Türkiye.

(2) Türkiye shall ensure full co-operation of all relevant authorities. It will also ensure access to state-owned companies and other governmental institutions, which are involved or are necessary in the implementation of a programme or in the execution of the contract.

(3) After the entry into force of this Agreement Türkiye shall adopt or amend the legislation and/or enabling acts necessary to enforce the requirements of the procedures laid down in this article while keeping these procedures as simple, reasonable and time efficient as possible.

Rules on taxes, customs duties and Other Fiscal Charges

(1) Except where otherwise provided for in a Sectoral Agreement or a Financing Agreement, taxes, customs and import duties and levies and/or charges having equivalent effect are not eligible under IPA II. The tax exemptions under the scope of the above-mentioned rule shall also apply to co-financing provided by the IPA II beneficiary and natural and/or legal persons that receive IPA II assistance.

(2) The following provisions shall apply:

a) All imports by Union contractors shall be allowed to enter the Republic of Türkiye without being subject to customs or import duties, Value Added Tax (VAT), excise duties and other special consumption taxes or to any other similar tax, duties or charges having equivalent effect. Such exemption shall only be applied to imports in connection with the goods supplied and/or services rendered and/or works executed by the Union contractors under a Union contract. The Republic of Türkiye shall ensure that the imports concerned will be released from the point of entry for delivery to the Union contractors as required by the provisions of the contract and for immediate use as required for the normal implementation of the contract, without any delays or disputes over the settlement of the above mentioned duties, taxes or charges;

b) Union contractors shall be exempted from VAT for any service rendered and/or goods supplied and/or works executed under the Union Contract. Goods supplied or services rendered or works executed by a contractor to the Union contractor shall also be exempted from VAT in so far that they are connected with the objectives and activities under the Union contract;

c) The exemption provided for in paragraph (b) shall in pirinciple be put into effect through ex-ante exemption. Where this is not techically and/or practically feasible, it shall be put into effect through refund/offsetting.

Where ex-ante exemption applies, the Union contractor or the contractor supplying goods and/or rendering services and/or executing works for a Union contractor, shall issue an invoice exclusive of VAT for which the IPA II beneficiary shall ensure that an effective mechanism and procedures for VAT ex-ante exemption has been put in place beforehand.

Where the refund procedure applies, Union contractors and contractors to the Union contractors shall be able to obtain a VAT refund directly from the tax administration upon submission of a written request to the tax administration accompanied by the necessary documentation required under the Republic of Türkiye law for the refund of VAT.

The Union contractors and contractors to the Union contractors shall be entitled to offset or deduct any input VAT in connection with the goods supplied and/or services rendered and/or works executed under IPA II assistance which are exempted from VAT, as provided in this Agreement, against any VAT collected by them for any of their ordinary business transactions outside IPA II.

Upon submission of the necessary documentation, the tax administration shall complete any request for exemption, tax refund, and offsetting within a maximum of 30 calendar days without any cost other than minimum and reasonable adminisrative fee;

d) Profit or income arising from Union contracts shall be taxable in the Republic of Türkiye in accordance with the national/local tax system. However, natural and legal persons, including expatriate staff and RTAs, resident or established in the Member States of European Union or other countries eligible under IPA II other than the IPA II beneficiary, executing Union contracts shall be exempted from profit or income tax in the Republic of Türkiye, including withholding and provisional or temporary taxes except in cases where the natural and/or legal person making such profit and/or income has its residence or a permanent establishment to which such income is attributable in the Republic of Türkiye according to the provisions of the applicable double taxation agreements.

   A Union grant to a grant beneficiary shall not be construed as a profit or income to that grant beneficiary. Where a profit is generated from a grant contract, the Commission shall be entitled to recover percentage of the profit in accordance with the terms of the underlying contract. The remaining profit may be taxable according to the national/local tax system. “Profit” in the context of this paragraph means a surplus of the receipts over the eligible costs approved by the Contracting Authority when the request for payment of a balance is made;

e) Expenditures of Union contractors shall be relieved from special consumption taxes or excise duties or from any other taxes or charges having equivalent effect for the expenditure in connection with the goods supplied and/or services rendered and/or works executed by that Union contractor under the Union contract;

f) Those benefiting from actions and/or contracts and/or activities carried out under IPA II shall be exempted from “Inheritance and Transfer Tax” or any other taxes or charges having equivalent effect resulting from goods and/or rights and/or constructed facilities and/or funds transferred to them without consideration in any way under IPA II;

g) Personal and household effects imported for personal use by natural persons (and members of their immediate families), other than those recruited locally, carrying out tasks defined in service and/or works and/or grant contracts and/or twinning contracts or covenants, shall be exempted from customs duties, import duties, taxes and levies and/or taxes having equivalent effect and/or deterrent excessive collateral requirements, the said personal and household effets being re-exported or disposed of in the state, in accordance with the regulations in force in the Republic of Türkiye after termination of the contract;

h) Union contracts, contracts signed by Union contractors as well as partners in a consortium or joint venture or co-beneficiaries and affiliated entities (as defined in Article 122 of the Financial Regulation) in grants shall not be subject to stamp or registration duties, or to any other charge having equivalent effect in the Republic of Türkiye. This exemption shall also apply to transactions (including assignment of rights) and documents related to payments made to the Union contractor, including contracts concluded between grant beneficiaries (including their partners, affiliated entities or sub-grant beneficiaries) and

their contractor (including their staff or contracted experts), and contracts concluded for incidental and provisional expenditure under service contracts and works contracts respectively where such payment are directly related to the Union contract;

i) For the purposes of this Agreement, the term "Union Contractor" shall be construed as natural and legal persons, rendering services and/or suppliying goods and/or executed works under a Union contract. The term "Union contractor" shall also refer to grant beneficiaries (including partners, affiliated entities as identified in a Union contract and sub-grant beneficiaries as well as twinnig contractors) partners in a consortium or joint venture, contractors and RTAs under twinning contracts as well as contractors under the Techical assistance and information exchange instrument (TAIEX);

j) The term "Union contract" means any contract or grant contract, including sub-grant contracts and delegation agreements under indirect management, through which an activity is financed under IPA II, including the co-financing by the IPA II beneficiary or natural and/or legal persons of IPA II assistance and which is signed by the European Commission or the IPA II beneficiary or a grant beneficiary when related to Union contracts. The term "Union contract" shall also cover provisions of assistance under TAIEX and participation in Union programmes including grants received under Union programmes and co-financing of such grants;

k) The following charges shall also be exempted for Union contractors implementing a Union contract:

i) special communication tax;

ii) motor vehicle taxes;

iii) special charges applied under:

The law as to Revenues of Municipalities re.no.2464 (Belediye Gelirleri Kanunu), in particular Additional Article 1- Charges for Construction of Buildings, 79- Registration and Copies of Document, 80- Charges to Land Development)
Law on the Conservation of Cultural Heritages and Natural Property, ref. no 2863 (Kültür ve Tabiat Varlıklarını Koruması Kanunu)".

(3) Whenever necessary, the IPA II beneficiary shall adopt or amend the secondary legislation and/or enabling acts necessary to enforce the tax provisions in this Agreement immediately upon its entering into force.

(4) The rules and procedures referred to in this Article shall also apply to any similar tax, duty, levy or charges having equivalent effect which are in force or which may be instituted after the date of entry into force of this Agreement in addition to or in replacement of existing ones.

(5) In case of conflict between the provisions in this Article and the national legislation of the IPA II beneficiary, the provisions of this Agreement shall prevail. In the event of accesion to the Union, the IPA II beneficiary will continue to apply the provisions in articles 27 and 28 except where these are incompatible with its obligations under the relevant Union acquis.

In case of conflict between the contract and the IPA II Framework Agreement[1], provisions of the IPA II Framework Agreement[1] shall apply.