

## STATE BUDGET FOR 2011: IMPACT ON RENDER OF SERVICES AGREEMENTS

### I. EXTENSION OF THE SALARY CUTS MEASURE ON THE AMOUNTS TO BE PAID UNDER RENDER OF SERVICES AGREEMENTS

Law no. 55-A/2010, December 31, which approved the State Budget for 2011 (SBL 2011), contains, in article 19 number 1, the rules on salary reduction for the staff and personnel identified in number 9 of the same provision.

Article 19 number 1 states that on January 1, 2011, the total monthly gross remuneration over 1500€ given to the persons identified under number 9, will be reduced, whether such persons are already employed or will commence employment, for any position, after such date, according to the following terms:

- a) 3.5% of the total value of the remuneration over 1500€ and under €2000;
- b) 3.5% above the amount of €2,000, accrued with 16% above the total value of the amount that exceeds €2,000, totaling a global percentage that may vary between 3.5% and 10%, in what concerns amounts equal or over €2,000 up to €4,165;
- c) 10% above the total amount of the remunerations over €4,165.

Article 22 number 1 of SBL 2011 extends the scope of article 19 to the amounts to be paid under render of services agreements<sup>1</sup> that are entered into or renewed in 2011, with the same object and same counterparty, executed by:

- a) *bodies, services and entities referred in numbers 1 to 4 of article 3 of Law 12-A/2008, February 27, amended by Laws ns. 64-A/2008, December 31 and 3-B/2010, April 28, (that is, services included in the direct and indirect administration of the State, regional and municipal administration services, bodies and support services for the President of the Republic, Parliament, Courts, State Prosecutor and respective management bodies and other independent bodies) including institutes with special regimes and public law collective entities, even if autonomous or independent due to their inclusion in the areas of regulation, supervision or control;*
- b) *corporate public entities, public companies with total or majority of public share capital and entities of the municipal or regional company sector;*<sup>2</sup>

<sup>1</sup> Please note that the extension of scope of article 19 only relates to amounts to be paid under render of services agreements, thus does not apply to other types of contracts (for instance, public work concessions, public service concessions, supply agreements, lease agreements or construction agreements).

<sup>2</sup> Under article 30 of the SBL 2011 (amendment of Decree-law 558/99, December 17, that approved the legal regime for the company sector of the State), exceptional and temporary rules can be approved by law regarding the render of services agreements executed by these entities.

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*Salary cuts extended  
to render of services  
agreements*

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- c) *public Foundations and other public establishments not included in the preceding numbers;*
- d) *cabinets referred to in article 19 number 9 n) of the SBL 2011.*

It is important to mention that **the measure extending the scope of the salary cuts is not applicable to new render of services agreements, but only to the execution and renewal, in 2011, of identical object and counterpart agreements** (that is, the execution of contracts that, materially, are renewals and properly named renewals).

There is no special rule on SBL 2011 that addresses how the referred reduction should operate, therefore it is extremely important to review, in due time, each render of services agreement to be renewed in order to guarantee the correct application of article 19 to each specific case.

## II. NEED OF A PRELIMINARY BIDDING OPINION

Article 22 number 2 of the SBL 2011 also establishes the need for a preliminary bidding opinion, to be given by members of the Government responsible for the areas of finance and public administration<sup>3</sup>, for the execution and renewal of render of services agreements by the bodies and services included in the scope of Law no. 12-A/2008, February 27, amended by Laws ns. 64-A/2008, December 31 and 3-B/2010, April 28, under the terms and in accordance with the procedure to be put forward by an ordinance issued by the referred members of Government<sup>4</sup>.

Please note that a **preliminary bidding opinion is needed both for the renewal of render of services agreements as well as for the execution of new render of services agreements** (as opposed the reduction measure addressed in the previous section).

Only the *bodies and services included in the scope of Law no. 12-A/2008, February 27, amended by Laws ns. 64-A/2008, December 31 and 3-B/2010, April 28* are subject to this rule (that is, services included in the direct and indirect administration of the State, regional and municipal administration services, bodies and support services for the President of the Republic, Parliament, Courts, State Prosecutor and respective management bodies and other independent bodies). Hence, there is **no need for a preliminary bidding opinion** regarding the execution or renewal of render of services agreements by **corporate public entities, public companies with the total or majority of public share capital and entities of the municipal or regional company sector**.

In accordance to article 22 number 3 of SBL 2011, the granting of a favorable preliminary opinion depends upon:

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<sup>3</sup> In what concerns municipalities, the opinion is to be given by the executive body and it depends on the fulfillment of the requirements set forth in article 22 no. 3 a) and c) of the SBL 2011, as well as of b) of the same number with the proper adaptation, being the terms and the procedure to be put forward by the ordinance referred in article 6 no. 1 of Decree-law no. 209/2009, September 3, amended by law 3-b/2010, April 28 (see article 22 number 4 of SBL 2011). Until the present date, the referred ordinance has still not been published.

<sup>4</sup> The request for the opinion as well as its granting is made exclusively by electronic means through the following e-mail: [contratacaoservicos@mf.gov.pt](mailto:contratacaoservicos@mf.gov.pt).



*All render of services agreements executed or renewed without a preliminary bidding opinion are null and void*

- verification of what is stated in article 35 no. 4 of Law no. 12-A/2008, February 27, amended by Laws ns. 64-A/2008, December 31 and 3-B/2010, April 28 (in other words, that the contract relates to the performance of services not involving subordination, and therefore the use of any public employment legal model is inconvenient);
- confirmation of budget allocation;
- confirmation whether the reduction measure on the amounts to be paid has been implemented (if applicable).

All render of services agreements executed or renewed without the above-mentioned preliminary bidding opinion are **null and void** (see article 22 no. 6 of SBL 2011).

Pursuant to article 4 of ordinance no. 4-A/2011<sup>5</sup>, January 3, a “favorable general opinion” is granted to the execution of render of services agreements, duly documented, addressed to the members of government responsible for the areas of finance and public administration, as long as the annual amount of € 5000 (excluding VAT) is not surpassed and the services are in one of the following categories:

- Teaching sessions that do not surpass 132 hours,
- Render of services that are completed within 132 days subsequent to the notice of the award.

The bodies and services that contract services under the “favorable general opinion” regime stated above should provide information on the executed agreements to the member of Government responsible for the areas of finance and public administration, prior to the end of the month following the month in which the contracts were awarded through the following e-mail: [contratacaoservicos@mf.gov.pt](mailto:contratacaoservicos@mf.gov.pt). Apart from the executed agreements, all the elements set forth in article 3 number 2 of Ordinance 4-A/2011, January 3, should be included in the e-mail.

<sup>5</sup> This Ordinance is not applicable either to Municipalities or Autonomous Regions.

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