

Decision Enacting the Law on Amendments to the Law on the Indirect Taxation System in BiH

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall "Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation";

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) "measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities";

Further recalling that the responsibility for indirect taxation has been transferred to Bosnia and Herzegovina by an agreement signed by the Federation of Bosnia and Herzegovina and Republika Srpska which regulates distribution of competences in that domain;;

Mindful that the Parliamentary Assembly of Bosnia and Herzegovina enacted the Law on Indirect Taxation System in Bosnia and Herzegovina establishing the institutional and organizational basis for the single indirect taxation system of Bosnia and Herzegovina;

Convinced of the importance to Bosnia and Herzegovina of ensuring the principles of a single economic space;

Noting the communiqué of the Steering Board of the Peace Implementation Council issued on 24 September 2004, which states that necessary steps ought to be taken to ensure an operational Indirect Taxation Authority by the spring of 2005 and calls on BiH authorities and donors to ensure that all the necessary preparations for introducing a VAT system consistent with European standards are in place by the Prime Minister's target date of mid 2005;

Further noting that some technical deficiencies in the legal framework in place have slowed down progress thus far;

Mindful that the Governing Board of the Indirect Taxation Authority (hereinafter "the Board") is composed of the Minister of Finance and Treasury of Bosnia and Herzegovina, and the Ministers of Finance of the Federation and Republika Srpska as well as three experts for indirect taxation;

Noting that, by virtue of the Law on Conflict of Interest in the Governmental Institutions of Bosnia and Herzegovina, advisors with relevant experience are barred from performing other executive duty and are therefore prevented from being members of the Board;

Further noting that due to an inconsistency between the Law on Civil Service and the Law on Indirect Taxation System, civil servants with appropriate expertise in the field of indirect taxation may be prevented from being appointed as members of the Board;

Recalling that the Prime Ministers of the Federation of Bosnia and Herzegovina and Republika Srpska have signed an Agreement on removing the burden of the excise allocation mechanism from domestic producers that provides for a complete harmonisation of indirect taxes in Bosnia and Herzegovina, for the abolishment of the indirect tax laws in the Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District and their replacement by Bosnia and Herzegovina laws for sales tax and excise taxes;

Noting that the Law on Indirect Taxation System fails to identify a procedure to cope with administrative proceedings that have been instituted prior to the Law coming into force;

Having taken into account and considered the totality of the matters aforesaid, the High Representative hereby issues the following:

DECISION

Enacting the Law on Amendments to the Law on the Indirect Taxation System in Bosnia and Herzegovina

(“Official Gazette of Bosnia and Herzegovina ”, No. 44/03)

which is hereby attached as an integral part of this Decision.

The said Law shall enter into force as a law of the Bosnia and Herzegovina, with effect from the date provided for in Article 4 thereof, on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina Parliament adopts this Law in due form, without amendment and with no conditions attached.

This Decision shall come into force forthwith and shall be published without delay in the “Official Gazette of the Bosnia and Herzegovina”.

Sarajevo, 20 October 2004

Paddy Ashdown
High Representative

THE LAW ON AMENDMENTS TO THE LAW ON THE INDIRECT TAXATION SYSTEM IN BOSNIA AND HERZEGOVINA

Article 1

In Article 17, after paragraph 3 new paragraphs 4 and 5 shall be inserted and read as follows:

“Appointment of advisors as members of the Board pursuant to this Article shall not be subject to Article 11 paragraph 1 of the Law on Conflict of Interests in Governmental Institutions of Bosnia and Herzegovina .

Notwithstanding Article 16 paragraph 1 (a) of the Law on Civil Service in the Institutions of Bosnia and Herzegovina, Article 19 paragraph 1 (a) of the Law on Civil Service of the Federation of Bosnia and Herzegovina and Article 87 paragraph 1 of the Law on the Civil Service in the Administration of the Republika Srpska, civil servants shall be authorized to be appointed as members of the Governing Board pursuant to this Article.”

The current paragraph 4 shall become paragraph 6.

Article 2

In Article 25, in paragraph 2, the words “Unless otherwise approved by the Board,” shall be added at the beginning of the sentence. Said paragraph will read as follows:

“Unless otherwise approved by the Board, the taxes that are not collected by the Authority pursuant to the previous paragraph shall be collected and distributed in the manner performed prior to the entry into force of this

Law until the Law from Article 23 enters into force, at which time the Authority will take over the administration of all indirect taxes.”

Article 3

After Article 37, a new Article 37a shall be added and shall read as follows:

“Article 37a

Administrative proceedings that relate to the application of regulations within the competence of the Authority and which were instituted prior to 8 January 2004 shall be conducted and adjudicated in accordance with the legislation in force at the time these proceedings were instituted.

If, after the 8 January 2004, a first instance decision issued in administrative proceedings referred to in Paragraph 1 of this Article, was annulled and the case remanded to the first instance body, further proceedings shall be conducted pursuant to Paragraph 3 of this Article.

Until the entry into force of a law regulating administrative procedures related to indirect taxation, appeals against first instance decisions issued after 8 January 2004 by the customhouses or by the branch-offices and sub-offices referred to in Article 6 of this Law shall be adjudicated by the Director of the Authority.

Notwithstanding Paragraph 3 of this Article, the final administrative acts issued prior to 20 October 2004 shall remain in effect.”

Article 4

This Law shall come into force forthwith and shall be published without delay in the Official Gazette of Bosnia and Herzegovina.