

**GENERAL COMMUNIQUÉ OF THE FRAMEWORK AGREEMENT  
BETWEEN TURKEY AND EUROPEAN UNION FOR ASSISTANCE UNDER THE  
INSTRUMENT FOR PRE-ACCESSION (IPA) SERIES NO: 1**

**Introduction**

**European Union’s financial assistance mechanism for candidate and potential candidate countries has been reorganized as Instrument for Pre-Accession Assistance (IPA) and included in a single judicial framework.**

In this context, it has been deemed suitable to approve the “*Framework Agreement between the Government of the Republic of Turkey and the Commission of the European Communities on the Rules for Co-operation concerning EC-Financial Assistance to the Republic of Turkey in the framework of the Implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA)*” (IPA Framework Agreement) with the Law<sup>18</sup> No. 5824 dated 03.12.2008, which was signed between Turkey and European Commission on 11.07.2008 for the financial assistance regarding the European Union’s budget period of 2007-2013, in the framework of the financial cooperation between Turkey and European Union, and it has been published on the Cabinet Decision<sup>19</sup> Annex No. 2008/14450 dated 19.12.2008, and came into effect on 24.12.2008 with the Cabinet Decision No. 2009/14614 dated 21.01.2009.

**1-Objective**

The objective of this Communiqué is to establish the implementation procedures and principles of the provisions regarding the tax exemptions laid down in Article 26 of IPA Framework Agreement in the scope of the authorization given by the Paragraph 3 of the same Article.

**2-Scope**

This Communiqué covers IPA Framework Agreement of European Union’s budget period of 2007-2013 and the sectoral agreements signed between Turkey and the European Union on the basis of this Agreement, or financing agreements and agreements that are signed between European Community (EC) Contractor and Contracting Authorities authorized with this objective by the European Union covered by the financing of the European Union, and co-financing of Turkey-European Union in the framework of other Community programs under IPA.

**3-Definitions**

**3.1. Contracting Authority:** European Commission, and organizations and institutions that are assigned by the European Commission to facilitate the use of the European Union’s financial assistance, and that sign the EC Contract with the European Community (EC) Contractor.

**3.2. Financing Agreement:** Annual agreements or agreements for more than one year that are signed between European Commission and Turkey and that approve the contribution of European Union regarding any financial assistance program or project in the framework of components under IPA.

**3.3. Sectoral Agreement:** Agreements that are made for a particular IPA component that regulate the provisions that are not laid down in financing agreements or in the IPA Framework Agreement signed between the European Commission and Turkey.

**3.4. European Community (EC) Contractor:** A real or a legal person that supplies goods and/or provides services and/or carries out works and/or executes the grant contract in the scope of the EC Contract. In addition, EC Contractor includes partners in a consortium or an associated enterprise, contractors and pre-accession advisors that are known as resident twinning advisors.

**3.5. European Community (EC) Contract:** Any legally binding document signed by the European Community or Turkey or the grant beneficiary, and which ensures an activity to be financed under the IPA framework including the possible co-financing.

**3.6. Supplier:** Real or legal persons supplying goods to the EC Contractor and/or providing services and/or carrying out works in the scope of EC Contract. Even if the real or legal persons that sign procurement contract with the EC Contractor in order to supply goods, services and works in the scope of EC Contract describe themselves with different titles, they are still qualified as "Suppliers".

**3.7. Procurement Contract:** These are contracts signed between the EC Contractor and the Supplier for the purpose of supplying goods, services and work in the scope of the EC Contract.

**3.8. Grant Beneficiary:** Real or legal persons ultimately benefiting from grant in the scope of the EC Contract.

**3.9. EC Contractor in the Position of Grant Beneficiary:** Real or legal persons that supply goods and/or provide services and/or carry out work and/or execute the grant contract as well as directly benefiting from the grant in the scope of the EC Contract.

#### **4. Tax Exemptions in the Scope of IPA Framework Agreement and Their Implementation**

##### **4.1. General Rule Regarding the Tax Exemptions**

In the first paragraph of the Article 26 of IPA Framework Agreement with the title "*Rules on taxes, customs and import duties and levies and/or taxes of equivalent effect*" it is stated that; "*Save where otherwise provided for in a Sectoral Agreement or a Financing Agreement, taxes, customs and import duties and levies and/or taxes of equivalent effect are not eligible under Instrument for Pre-Accession Assistance. This exemption covers also the co-financing provided by the Republic of Turkey.*"

According to this, taxes, customs and import duties and duties and levies and/or taxes of equivalent effect that may arise in the process of implementing the agreements financed by the European Union or joint contribution of Turkey and European Union shall not be financed according to the provisions in the article 26 of IPA Framework Agreement.

##### **4.2. Tax Exemption in Import Proceedings and Its Implementation**

###### **4.2.1. Agreement Provisions**

In Article 25/1-e of the IPA Framework Agreement, which is titled as "*Granting of facilities for the implementation of programmes and execution of contracts*", it is stated: "*Imports carried out under Instrument for Pre-Accession Assistance will be exempted from taxes, customs and import duties and levies and/or taxes of equivalent effect*".

In addition, in Article 26-2/a of the same Agreement, it is stated that; *“All imports by EC contractors shall be allowed to enter the Republic of Turkey without being subject to customs or import duties, charges, Value Added Tax (VAT) and the Special Consumption Tax or to any other similar tax, duties or charges. Such exemption shall only be applied to the imports in connection with the goods supplied and/or services rendered and/or works executed by the EC contractor under the EC contract. The Republic of Turkey shall ensure that the imports concerned will be released from the point of entry for delivery to the EC contractors as required by the provisions of the contract and for immediate use as required for the normal implementation of the contract, without regard to any delays or disputes over the settlement of the above-mentioned duties, taxes or charges.”*

In paragraph 2/f of the same Article, it is stated that; *“Personal and household effects imported for personal use by real 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 of equivalent effect, the said personal and household effects being re-exported or disposed of in the state, in accordance with the regulations in force in the Republic of Turkey after termination of the contract.”*

#### **4.2.2. Implementation of the Exemption**

According to the Articles 25/1-e and 26/2-a of IPA Framework Agreement, import proceedings performed by the EC Contractor in the scope of the EC Contract are exempted from customs and import duties, charges, Value Added Tax (VAT), Special Consumption Tax (SCT) and other similar taxes and duties. Such an exemption shall only be applied to the imports in connection with the goods supplied and/or services rendered and/or works executed by the EC Contractor under the EC Contract.

Where the List of Goods To Be Imported containing information regarding the goods to be imported by the EC Contractor is prepared (ANNEX-I/a), the goods in this list is approved by the grant beneficiary as being in the scope of the EC Contract, and the copy of VAT Exemption Certificate given to them along with this list by the tax administration is submitted to the Customs Administration; the goods in the list in question shall be able to be imported as exempted from customs or import duties, charges, VAT, SCT and other similar taxes and duties.

Where the EC Contractor is also the grant beneficiary, the List of Goods To Be Imported should be signed by the Contracting Authority. Furthermore, if the Contracting Authority is outside the borders of Turkey, the List of Goods To Be Imported should be approved by;

a) the senior administrators of the public institutions with general budget, administrations with private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from above, the real person EC Contractor himself with the title of grant beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality (for instance, such as the head of an association or a foundation, authorized signatory administrator in the companies).

The EC Contractors as real or legal persons mentioned in subparagraph (b) above shall also submit this Covenant annexed to Communiqué (ANNEX-I/b) to the Customs Administration.

In the receipt composed by the relevant Customs administration with the aim of ensuring that the imports in the scope of EC Contract are carried out without being subject to taxes, customs or import duties, charges VAT, SCT and other similar taxes and duties shall not be calculated with a reference to the EC Contract and IPA Framework Agreement; and the Customs Administration shall keep a copy of both the List of Goods To Be Imported submitted by the EC Contractor and the VAT Exemption Certificate.

#### **4.2.3. Special Circumstances related to Import Exemption**

Where the import carried out by the EC Contractor in the scope of the EC Contract can not be completed for various reasons (security, health, etc.) stemming from administrative acts despite the expiry of the Agreement; goods in question shall still be able to be imported with exemption from customs and import taxes, duties, charges, VAT, SCT and other similar taxes and duties with the following conditions;

- imported goods enter the Turkish Republic customs district before the EC Contract expires, and
- the EC Contractor submits the documents mentioned above in the same duration.

On the condition that a product imported by the EC Contractor before the expiration date of the EC Contract is exported to be changed with a new one with the same model and characteristics within the warranty period but after the EC Contract expires, and the new one is re-imported without any additional charges, this import is considered as the first import, and with the condition of reference to the customs statement of the original import procedure and the bill, it shall be exempted from customs and import duties, charges, VAT, SCT and other similar taxes and duties.

If the import carried out in the scope of EC Contract is on credit or credit is used, Resource Utilization Support Fund (RUSF) deduction shall be applied on account of this credited procedure as an additional liability pursuant to the legislation in effect during the import. Therefore, RUSF to be paid during import procedures is not exempted in the scope of IPA Framework Agreement.

It is not possible to transfer the VAT Exemption Certificate given to the EC Contractor by the tax administration to another real or legal person. Consequently, during the import procedure the EC Contractor shall perform, they shall use the VAT Exemption Certificate in question either directly themselves, or through real or legal persons authorized to carry out work or procedures on their behalf. Only the EC Contractor may benefit from the exemption regarding VAT, SCT and other similar taxes and duties that emerge during the import procedure. Real or legal persons other than the EC Contractor may not benefit from the mentioned tax exemptions for their imports.

Furthermore, in accordance with subparagraph 2/f, Article 26 of IPA Framework Agreement, Personal and household effects imported for personal use by real persons and members of their immediate families other than those recruited locally shall be exempted from customs duties, import duties, taxes and levies and/or taxes of equivalent effect shall be exempted from customs duties, import duties, taxes and levies and/or taxes of equivalent effect, the said personal and household effects being re-exported or disposed of in the state, in accordance with the regulations in force in the Republic of Turkey after termination of the contract.

During the import procedure, the principles and procedures regarding the tax and customs legislation in effect in Turkey shall be applied to other cases along with the ones stated above.

### **4.3. Value Added Tax Exemption and Its Implementation**

#### **4.3.1. Agreement Provision**

In subparagraph 2/b of Article 26 of IPA Framework Agreement, it is stated that; *“EC contractors shall be exempted from VAT for any service rendered and/or goods supplied and/or works executed under the EC contract. Goods supplied or services rendered or works executed by a contractor to the EC contractor shall also be exempted from VAT. Such exemption shall only be applied to the goods supplied or services rendered or works executed which are connected with the goods supplied or services rendered or works executed by the EC contractor under the EC contract.*

*Any EC contractor or contractor supplying goods and/or rendering services and/or executing works for an EC contractor who is entitled to the exemption, as provided in this Agreement, shall be entitled to offset or deduct any VAT paid in connection with the goods supplied and/or services rendered and/or works executed which are exempted from VAT, as provided in this Agreement, against any VAT collected by them for any of their other transactions. Should the EC contractor or contractor not be able to make use of this possibility, they 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 Turkish law for the refund of VAT.”*

#### **4.3.2. Implementation of the Exemption**

##### **4.3.2.1. The Authority to which VAT Exemption Certificate Application to be Made**

In order to receive VAT Exemption Certificate, the EC Contractors:

a) From among those who are real persons resident in Turkey, the ones whose places of residence and from among those who are legal persons the ones whose business centres (registered centre) are in the provinces where Tax Departments are established (Annex-2), the ones whose allocated budget share in the EC Contract which they have signed is less than 1 (one) million Euro (incl. 1 million Euro) shall apply to the related Tax Department (if the EC Contractors who are resident in Istanbul are tax payers of Large Taxpayers Office which is established in Istanbul, they will apply to there and if they are not, they will apply to Istanbul Tax Department) and the ones whose allocated budget share in the EC Contract is more than 1 (one) million Euro shall apply to the Revenue Administration,

b) From among those who are real persons resident in Turkey, the ones whose places of residence are not in the provinces where Tax Departments are established (Annex-2) and from among those who are legal persons, the ones whose business centres (registered centre) are not in the provinces where Tax Departments are established (Annex-2) shall apply to the Revenue Administration.

Upon the approval of the application, a tax ruling shall be issued to the EC Contractor. EC Contractor, together with this tax ruling, shall apply to the Tax Office Directorate to which it is affiliated or of which it is notified in the tax ruling and shall receive Value Added Tax (VAT) Exemption Certificate annexed to this Communiqué (Annex 3) which is valid for the period written in the EC Contract and which is limited to the budget amount belonging to it.

c) Real person EC Contractors who are not citizens of the Turkish Republic and/or who do not reside in Turkey (including resident twinning advisors) and legal person EC Contractors who do not have workplace or fixed places in Turkey shall apply to the Revenue

Administration. Upon the approval of the application, a tax ruling and VAT Exemption Certificate annexed to it shall be issued to the EC Contractor by the Revenue Administration.

If the EC Contractor applies to any other authority other than application authorities which are specified in this Communiqué for VAT Exemption Certificate, application documents shall be immediately transferred to the appropriate authority by the authority to which the application is made and the EC Contractor shall be notified of the case in writing.

The EC Contractor shall be issued a tax ruling by the Revenue Administration or the related Tax Department, which states that it will be able to benefit from tax exemptions which are set out in IPA Framework Agreement within the bounds of procedures and principles specified in this Communiqué. By means of this tax ruling, the legal position of the EC Contractor vis-a-vis the IPA Framework Agreement shall be defined and the EC Contractor shall not need to apply for separate rulings for each tax exemption which are included in the said Agreement.

Pursuant to Article 26/3 of the IPA Framework Agreement, it is obligatory for the tax administration to draw up and issue VAT Exemption Certificate for the EC Contractor within 30 days from the date of its application with the requested documents.

#### **4.3.2.1.1. Proceedings to be Performed by the Short and Medium Term Experts who are Employed in the Twinning Contracts to Benefit from VAT Exemption Certificate**

Short and medium term experts who are not citizens of the Turkish Republic, who do not reside in Turkey and who take part in the implementation of the EC Contract signed between the Contracting Authority and the Resident Twinning Advisor who is the EC Contractor within the scope of the twinning projects which are financed by the European Union or co-financed by the European Union and Turkey shall apply to the Revenue Administration with a petition for request and with the letter given by the Resident Twinning Advisor specifying ‘the names and periods of assignment of the said experts’ to benefit from VAT Exemption. Experts who are employed within the scope of the same EC Contract may apply for VAT Exemption with a single petition provided that each has the signature on the petition.

Upon this application, they will be issued a tax ruling, which states that their supply and service procurement deals within the scope of the EC Contract are excluded from the value added tax, in order for them to submit to the suppliers. The said experts shall submit to the supplier a copy of this tax ruling and a copy of the VAT Exemption Certificate which is issued by the Revenue Administration to the Resident Twinning Advisor. Resident Twinning Advisor shall approve the copies of the said ruling and Certificate with the note “true copy of the original”.

#### **4.3.2.1.2. Proceedings to be Performed by the Resident Twinning Advisor Assistant who is employed in the Twinning Contracts to benefit from VAT Exemption**

Resident Twinning Advisor Assistant who provides service within the scope of the twinning contract has the status of supplier in the implementation of IPA Framework Agreement. Accordingly, Resident Twinning Advisor Assistant has to conform with the procedures and principles specified in Part No. 4.3.3 of this Communiqué during his/her service to the Resident Twinning Advisor within the scope of the Twinning Contract.

#### **4.3.2.2. The Documents which are Required for VAT Exemption Certificate Application**

##### **4.3.2.2.1. General Documents which are required**

**a) Written Request for Application:** On the letters, the request for VAT Exemption Certificate must be clearly stated and it must be signed by the EC Contractor with the date,

name and title and correspondence information (address, telephone, fax and e-mail) must be inscribed on the letters (Annex-4/a-b).

**b) Contract, Its Annexes and Budget Sample:** Each page of the copy of the contract which is signed with the Contracting Authority and of its budget, if there is any, annexed to it must be signed by the EC Contractor or the Contracting Authority itself if it is a real person and must be signed and dated by the institution executive if it is a legal person with a note “true copy of the original” with the name and title of the person who approves the document.

If the topics such as contract price, the dates of start of implementation and closing, procedures regarding introduction of changes are not included in the contract but included in its annexes, when applying in relation to these annexes and grants, in addition to the contract, the application documents which are given by the contractor to the Contracting Authority must also be approved in the same way and added to the application documents.

Furthermore a copy of the “Notification Document” issued by the Contracting Authority which specifies the starting date of work in the twinning contracts must be approved by the Resident Twinning Advisor with a note “true copy of the original”.

In the event that the EC Contractor is a partner in the EC Contract as a consortium member, approved copies of the following documents by the Contracting Authority must be submitted;

- The contract which is signed between the consortium leader and the Contracting Authority and its annexes,
- Partnership or participation contract which is signed between the consortium leader and the partner and its annexes,
- Budget table which show the budget shares of each partner allocated from the contract,

**c) Original of the Information Form:** “Information Form” annexed to this Communique (Annex 5) must be signed both by the EC Contractor and the authorized person of the Contracting Authority. The name, surname and title of the signatories and date of signature must definitely appear on the form and information on the Information Form and information in the contract must be the same. If there are sections on the Information Form which are filled in handwriting, they must be definitely initialled and stamped by the Contracting Authority. If there are sections on the Information Form which do not concern the EC Contractor, expression “not applicable” must be written in these sections.

In case of application by the partner EC Contractor which is a consortium member, in addition to the total contract price, the budget share allocated to itself must also appear in the price section of the Information Form which is drawn up for itself and approved by the Contracting Authority.

#### **4.3.2.2.2. The Documents which are Required for the EC Contracts which are Signed with the European Commission or Community Agencies outside the Territory of Turkish Republic**

In the event of contracts signed directly with the European Commission (except Delegation of the European Commission to Turkey) or with Community Agencies or institutions and agencies outside the territory of Turkey which are authorized by the European Commission within the scope of financial assistance or in the event of participation into these types of contracts as partners, the following documents are required to be submitted while applying for VAT Exemption Certificate.

**a) Written Request for Application:** On the letters, the request for VAT Exemption Certificate must be clearly stated and it must be signed by the EC Contractor with the date,

name and title and correspondence information (address, telephone, fax and e-mail) must be inscribed on the letters (Annex-4/a-b).

**b) Copy of the Contract and its Annexes:** One copy of the contract, if the EC Contractor signed the EC Contract with the Contracting Authority by itself and one copy of the EC Contract and partnership/participation contract which are signed between the consortium leader and the Contracting Authority if the EC Contractor is a consortium partner must be added to the application documents after being signed by the EC Contractor itself if it is a real person and signed and dated by the institution executive if it is a legal person with a note “true copy of the original” and the name and title of the person who approves the document.

If the topics such as contract price, the date of start of implementation and closing, procedures for alteration are not included in the contract but included in its annexes, when applying in relation to these annexes and grants, in addition to the contract, the application documents which are given by the contractor to the Contracting Authority must also be approved in the same way and added to the application documents.

**c) Original of the Information Form:** The Information Form (Annex 5) which is annexed to this Communique, must be signed by the real person EC Contractor or by the legal person which is the high level official of the institution (e.g. by Rector or Vice-Rector at Universities). The name, surname and title of the signatories and date of signature must definitely appear on the Information Form. The section which will be approved by the Contracting Authority on the Information Form shall be left empty. If there are sections on the Information Form which do not concern the EC Contractor, expression “not applicable” must be written in these sections.

**d) Budget Sample:** Budget tables annexed to the contract which show the EC Contractor’s share in the total price of the EC Contract or the other official proving documents must be signed by the EC Contractor itself if it is a real person and must be signed and dated by the authorised person of the institution if it is a legal person with a note “true copy of the original” and the name and title of the person who approves the document.

#### **4.3.2.2.3. The Documents which are Required in case of Changes in the EC Contract and Proceedings to be Performed**

In the event of any changes in duration, price, starting date of the EC Contract, in title of the EC Contractor and grant beneficiary, in subject and number of the EC contract introduced by the Contracting Authority and if the period of the contract is still continuing, the EC Contractor must apply to the authority to which it made its first application (Revenue Administration or Tax Department) with the following documents in order to change the current VAT Exemption Certificate;

a) request for change,

b) one copy of the proving document relating to the change received from the Contracting Authority which is signed by the EC Contractor itself if it is a real person and signed and dated by the institution executive if it is a legal person with a note “true copy of the original” and the name and title of the person who approves the document.

If the VAT Exemption Certificate was received directly from the Revenue Administration, the EC Contractor shall add the original of the previous VAT Exemption Certificate to the requested documents in its application. If the application by the EC Contractor is accepted, the new VAT Exemption Certificate shall be drawn up and issued to it in an attachment to a letter.

In line with the tax ruling which is issued by the Revenue Administration or the Tax Department following the first VAT Exemption Certificate application, if the VAT Exemption Certificate was received from the Tax Office Directorate, the EC Contractor,

after its request for change is accepted, shall submit the original of the previous Certificate to the Tax Office Directorate and receive the new VAT Exemption Certificate which is compliant with the change from the Tax Office Directorate.

In the event of change in the EC Contract (for example time extensions), the new VAT Exemption Certificate shall not be issued to the EC Contractor unless the original of the previous VAT Exemption Certificate is submitted to the tax administration.

In case of changes in the price of the EC Contract, if the contract price exceeds 1 (one) million Euro, VAT Exemption Certificate the contract price of which is corrected shall be issued by the authority which gave the first certificate.

#### **4.3.2.3. Proceedings to be Performed by the Tax Department**

Application by the EC Contractor for VAT Exemption Certificate with the requested documents shall be accepted even if the documents are incomplete. However these defects shall be notified to the EC Contractor within 7 days at the latest from the date of its entry into the official records of the Tax Department.

Following the examination of the said application documents if the application is accepted, a tax ruling shall be issued to the EC Contractor and the EC Contractor shall be notified that it must apply for VAT Exemption Certificate to the Tax Office Directorate to which it is affiliated or which is to be determined. Furthermore, synchronously, an order letter regarding the issue shall be written to the Tax Office Directorate which shall issue the aforementioned certificate and a copy of the ruling which was issued to the EC Contractor shall be attached to the letter.

If the application made by the EC Contractor is rejected, the reasons for rejection shall be stated in writing.

The requests for opinion by the EC Contractors which received VAT Exemption Certificate through applying to the Tax Department concerning the IPA Framework Agreement and concerning this Communique shall be evaluated directly by the related Tax Departments. A copy of the rulings issued within this context shall be sent to the Revenue Administration, European Union and Foreign Relations Department in official writing within 15 days from the date of the ruling.

From the date of publication of this Communique, with regard to VAT Exemption Certificates which are issued by the Tax Office Directorate upon applications made to the Tax Departments, in three month periods of the calendar year and up until the end of the 25<sup>th</sup> day of the next month following the said periods, the table annexed (Annex 6) shall be filled by the Tax Department and sent to the electronic post address [avrupabirligi@gelirler.gov.tr](mailto:avrupabirligi@gelirler.gov.tr) of the Revenue Administration.

#### **4.3.2.4. Proceedings to be Performed by the Tax Office Directorate**

Upon receiving the order letter relating to the EC Contractors either from the Revenue Administration or from the Tax Department, in the event of application by the EC Contractor, the Tax Office Directorate, without requesting any other document other than the petition and the copy of the ruling annexed to it, shall draw up in full "VAT Exemption Certificate (Annex 3) in line with the directions in the ruling and either deliver it to the EC Contractor in return for signature or send it by post.

Prior to drawing up of VAT Exemption Certificate, proceedings to confirm the identity and address of the EC Contractor shall be concluded immediately by the Tax Office Directorate.

The Tax Office Directorate shall send a copy of the VAT Exemption Certificate to the authority which sent it the order letter (Revenue Administration or Tax Department) within 15 days from the date of its delivery to the EC Contractor.

In the event that the EC Contractor does not apply for VAT Exemption Certificate within the period of contract, this situation shall be notified to the authority which sent it the order letter within 15 days from the date of expiry of the contract period. However, in the event that the EC Contractor applies to the Tax Office Directorate after the expiry of EC Contract period, no VAT Exemption Certificate shall be drawn up but a letter shall be issued to the EC Contractor which states that if there is any VAT paid, return for it may be demanded in line with the procedures and principles specified in this Communique and limited to the duration of the EC Contract.

### **4.3.3 The Use of VAT Exemption Certificate**

#### **4.3.3.1 For the Purchases Over 2.000 TL**

If the amount of invoice (excluding VAT) that is arranged by the supplier for the goods, services and works which the EC Contractor will obtain within the scope of the EC Contract is over 2.000 TL; the EC Contractor shall, primarily, draw up a “supply contract” with the supplier. In the event of the approval, by the grant beneficiary’s putting an annotation such as “*This supply contract has been drawn up on the grounds of the EC Contract no... and dated...*”, of the existence of the mentioned supply contract, goods, services and works within the scope of the EC Contract, VAT shall not be applied to the the delivery of goods, execution of the services and the works.

In the event that the EC Contractor is in the position of the beneficiary at the same time, then the mentioned supply contract should be approved by;

- a) the senior administrators of the public institutions with general budget, administrations with private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;
- b) As for the EC Contractors apart from these, the real person EC Contractor himself with the title of grant beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies).

The supply contract should clearly involve the identities of the contracting parties, the subject of the contract, its cost and the EC Contract it is based upon.

The supplier shall not calculate the VAT only in the event of the submission of the supply contract drawn up with the EC Contractor which is approved by the grant beneficiary and the VAT Exemption Certificate that takes place in the EC Contractor, and by obtaining the copies of the mentioned supply contract and certificate and by means of making a reference, in the invoice or similar document, such as “*VAT has not been calculated within the scope of EC Contract, in accordance with the Article 26/2 of IPA Framework Agreement which its approval deemed appropriate with the Law No. 5824.*”

The EC Contractor who purchases goods and services and gets the works done without paying value added tax due to the mentioned certificate, shall fill in the table (ANNEX 7) which indicates his title, taxpayer identification number, the types and the amounts of goods, services and the works he purchased without paying value added tax, the dates of the invoices and their numbers, the titles and the taxpayer identification numbers of the taxpayers from whom goods and services purchased. After filling in the table, as of three-month period of the calendar year, until the evening of 25<sup>th</sup> day of the month following these

periods, the EC Contractor shall inform the authority that he took VAT Exemption Certificate.

#### **4.3.3.2 For the Purchases Under 2000 TL**

For each purchase that will be realized under 2000 TL (Excluding VAT) by the EC Contractor within the scope of the EC Contract, without laying down as a condition an approval of the grant beneficiary and without drawing up a supply contract with the supplier, VAT exemption is automatically applied by submitting a copy of the VAT Exemption Certificate.

Within this scope, the EC Contractor shall inform the authority that he took VAT Exemption Certificate by arranging a notification table (ANNEX- 8) concerning the expenses he realized by using the VAT exemption, as of three-month period of the calendar year, until the evening of 25<sup>th</sup> day of the month following these periods, and by receiving the approval of the grant beneficiary by putting an annotation such as *“the expenses listed in this table have been realized within the scope of the EC Contract No...”*

In the event that the EC Contractor is in the position of the grant beneficiary at the same time, then the mentioned table should be approved by;

a) the senior administrators of the public institutions with general budget, administrations with private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from these, the real person EC Contractor himself with the title of grant beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality. (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies)

Within this scope, the supplier who realizes delivery of goods without VAT, renders services and executes works, shall obtain a copy of the certificate submitted to him and shall keep it and he shall not calculate VAT by means of making a reference, in the invoice or in the similar document he will issue, such as *“VAT has not been calculated within the scope of EC Convention No..., in accordance with the 26/2<sup>nd</sup> Article of IPA Framework Agreement the approval of which has been deemed appropriate with the Law No. 5824.”*

#### **4.3.4 VAT Refund**

##### **4.3.4.1 VAT Refund to the VAT Taxpayer EC Contractor**

###### **4.3.4.1.1. VAT Refund within the Scope of the EC Contracts in Effect**

An EC Contractor within the scope of IPA Framework Agreement or any supplier who delivers provides and/or executes works to an EC Contractor who deserves the right for the exemption as it is foreseen in this Communiqué, has the right to reduce the VAT levied on them concerning the goods delivered, services provided or works carried out without VAT as provided in this Communiqué, from the VAT he has collected for other operations.

Owing to the fact that, this arrangement is in the nature of a full exemption, in the event that, a compensation, for the taxes charged on account of delivery and services that are in the scope of exemption, can not be realized through reduction, it can be returned to the EC Contractor and/or to the supplier in cash or on account. Refund operations that will be realized by returning or by deduction shall be made depending on refund follow-up written application that will be given together with periodical notifications in which operations within the scope of exemption are notified.

The submission of the following documents is needed for the refund application that will be made by the EC Contractor:

- 1) Written request for refund,
- 2) Value added tax list that will be deducted (each separately for the activities realized within the scope of EC Contract and for others apart from this),
- 3) A copy of the Value Added Tax Exemption Certificate,
- 4) The originals or copies of invoices or similar documents related to the purchase/sale of goods, provision of services and works within the scope of EC Contract,
- 5) Table of value added tax that charged.

In the VAT table undertaken, information defined in the part 1.1.3.1. of the General Communique<sup>1</sup> on Value Added Tax Law No.84 shall be mentioned.

For the refund, the EC Contractor, as a rule, shall apply to the tax office directorate from where he obtained VAT Exemption Certificate. The EC Contractor, who obtains the VAT Exemption Certificate directly from the Revenue Administration, shall primarily inform his refund request to the Revenue Administration. Afterwards, he shall apply for refund to the tax office directorate that has been notified to him by the Revenue Administration.

The suppliers should make the VAT refund applications within the scope of EC Contract, to the tax office directorates they are registered to within the framework of VAT legislation in effect. In the event that the amount in the invoice or in the similar document is over 2.000 TL, the supplier is obliged to submit an approved copy of the supply contract drawn up with the EC Contractor in accordance with the principals in the part No. 4.3.3.1 of this Communique.

The EC Contractor who is involved in construction- contracting works extending to years, could be reimbursed for the value added tax which concerning this construction- contracting works she/he undertook and couldn't reduce in the VAT notification he submitted in the related period in accordance with the procedures and principles defined in this Communique. But, instead of the sale invoices defined in the General Communique on Value Added Tax No.84, in return for the progress payment documents concerning the works he made in the related taxation period, it will be sufficient to add the receipt (bank receipt, receipt of payment etc.), given for the payment made by the Contracting Authority, to the VAT table undertaken.

#### **4.3.4.1.2 Refunds within the Scope of EC Contracts that Expired**

If the implementation period of the EC Contract has expired, the EC Contractor, shall, initially, in line with the procedures and principles laid down in the Part No. 4.3.2 of this Communique, apply to the Revenue Administration or to the related tax office directorate to obtain exemption certificate. In the event that the application is deemed appropriate, VAT Exemption Certificate shall not be arranged due to the expiry of the EC Contract but, a tax ruling shall be given to the EC Contractor for the execution of the necessary operations related to refund. The EC Contractor, in the refund applications within this scope, shall make his refund request to the tax office directorate he has been informed, with a copy of the

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<sup>1</sup>  Published in Official Gazzette No: 24592 dated 23.11.2001.

ruling he has been given, in accordance with the procedures and principles laid down in the part No. 4.3.4.1.1 of this Communiqué.

#### **4.3.4.2 Refund of VAT to the EC Contractor who is not VAT Taxpayer**

The EC Contractor who is not registered as taxpayer regarding VAT, can be reimbursed for the value added taxes which she/he paid for the goods, services or works he supplied within the scope of EC Contract within the context of IPA Framework Agreement and which he couldn't collect from the Contracting Authority in line with the following procedures and principles.

##### **4.3.4.2.1 Refunds within the Scope of EC Contracts in Effect**

If the EC Contractor, who is not obliged to pay VAT, has not obtained VAT Exemption Certificate, previously, within the scope of the EC Contract he/she carried out, should, primarily, obtain VAT Exemption Certificate by applying for VAT Exemption Certificate in accordance with the procedures and principles laid down in the Part No. 4.3.2 of this Communiqué.

The authority which the initial application is made to, shall canalize the EC Contractor, for the realization of the refunds of the VAT undertaken within the scope of the EC Contract, by submitting him/her a tax ruling, to the authorized tax office directorate (ANNEX-9) in the province where application for refund will be made to.

The EC Contractor shall apply to the tax office directorate defined in the ruling for refund together with the following documents.

- 1) Refund follow-up formal request
- 2) VAT table undertaken that is approved by the Contracting Authority to be belonging to the expenditure made within the scope of EC Contract,
- 3) Originals or the copies of the invoices or similar documents related to the purchase of goods and services and the works performed,
- 4) The originals or the approved copies of the receipts (including the bank receipt) related to the payments realized in return for invoice or similar documents submitted to him by the Contracting Authority,
- 5) Approved copy of the VAT Exemption Certificate or a copy of the ruling related to the refund submitted to him by the Revenue Administration or the tax office directorate,
- 6) In the event of the existence of a taxpayer registration for a tax other than value added tax, an official document obtained from the related tax administration showing whether he has tax debts or not.

The VAT table levied shall contain information defined in the part 1.1.3.1 of the General Communiqué on Value Added Tax No.84. The Contracting Authority shall give its approval by identifying the date, the name and the title of the authorized person by means of putting an annotation to the VAT table undertaken regarding whether VAT is included in the payment made from the European Union funds to the EC Contractor. In the event of the existence of the report arranged by chartered accountant with regard to the EC Contract, the Contracting Authority shall approve the mentioned table depending on this report.

In addition to this, in the event that the Contracting Authority is out of Turkish borders, the mentioned table should be approved by:

a) the senior administrators of the public institutions that have general budget, administrations that have private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from these, the real person EC Contractor himself /herself with the title beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality. (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies)

In the approval that will be made as described above, a copy of the chartered accountant's report arranged to indicate that the expenses realized are within the scope of the EC Contract, should also be added.

In the event of the submission of the copies of the required documents, an approval should be given through, if available, stamping, signing and putting the date, by means of the EC Contractor's submission of an annotation saying that the copies are the identicals of the originals.

#### **4.3.4.2 Refunds within the Scope of EC Contracts that Expired**

If the EC Contract, carried out by the EC Contractor who is not VAT taxpayer, has expired, then application will be made by the EC Contractor primarily, to the Revenue Administration or to the related tax office directorate in accordance with the procedures and principles laid down in the Part No.4.3.2 of this Communique. In the event that the application is deemed appropriate, certificate shall not be arranged and, by submitting him/her a tax ruling, the EC Contractor shall be canalized to the authorized tax office directorate for the necessary operations to be performed related to refund. For the refund applications of the EC Contractor within this scope, the refund request shall be realized together with the copy of the ruling submitted to him/her and in accordance with the procedures and principles laid down in the Part No. 4.3.4.2.1 of this Communique.

#### **4.3.4.3 Procedures that will be performed by the Tax Office Directorate for the Refund of VAT**

In the event of the non-existence of a taxpayer record for any type of taxes, a potential taxpayer identification number shall be given to the EC Contractor who is not VAT taxpayer and who applied together with the documents mentioned above by the tax office directorate in charge of realizing the refund of VAT. If he/she is registered as a taxpayer for a different type of tax other than VAT, his refund request shall be accepted using the related from the taxpayer identification number. The authorized tax office directorate determined by the annex (ANNEX – 9) of this Communique, shall fulfil the refund request of the EC Contractor by returning or by deduction account after the necessary examinations have been done.

The refund requests of the EC Contractors and the suppliers, who are VAT taxpayers, shall be taken into consideration by the tax office directorate they are registered to.

Refund requests by returning or by deduction shall be concluded within maximum 10 days, within the framework of principles in the refund of the value added tax arising from the exports of goods of the General Communique on Value Added Tax No.84. In the course of the refund operations, without prejudice to the arrangements in the part "Special Principles" of the General Communique on Value Added Tax No.84, any other document shall not be demanded other than the documents laid down in the Parts No.4.3.4.1.1 and 4.3.4.2.1 of this Communique.

For the cases when the Affirmation Report of the Chartered Accountant is submitted for the refund, the limits set for the discharge of goods shall be valid. The VAT belonging to the expenses exceeding the cost mentioned in the EC Contract and the VAT that is paid by the EC Contractor within the scope of the EC Contract and that is collected from the Contracting Authority may not be reimbursed to the EC Contractor.

The tax office directorate is obliged to send the list (ANNEX-13) that will be arranged related to VAT refunds give back to the EC Contractors and the suppliers within the scope of IPA Framework Agreement as of the three-month period of the calendar year and until the evening of the 15<sup>th</sup> day of the month following these periods.

#### **4.3.5 Matters Related to the Financial Assets Subject to Amortization in Terms of VAT**

The EC Contractor has the opportunity to obtain the economic assets subject to amortization, without VAT according to the principles mentioned above, related to the goods he/she will deliver or the services he will provide or the works he will carry out within the scope of EC Contract, only in the event that the mentioned assets are the assets used within the scope of EC Contract and only in the event that these assets are foreseen to be delivered to the grant beneficiary free of charge with the expiry of the EC Contract. In this case, in the supply contract that the EC Contractor will draw up with the supplier and that will be approved by the grant beneficiary, it shall be defined clearly that this asset shall be transferred free of charge to the EC Contractor at the expiry of the EC Contract.

In the event that the beneficiary is at the same time the EC Contractor, the mentioned supply contract shall be approved by the Contracting Authority. In addition to this, in the event that the Contracting Authority is out of Turkish borders, the mentioned list should be approved by:

a) the senior administrators of the public institutions that have general budget, administrations that have private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from these, the real person EC Contractor himself with the title beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality. (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies)

The supplier shall not calculate the VAT by means of putting an annotation such as “*VAT has not been calculated in accordance with the EC Contract No... and the IPA Framework Agreement the approval of which has been deemed appropriate with the Law No.5824*” to the invoice or similar document which he arranged by obtaining an approved copy, from the grant beneficiary, of the supply contract drawn up with the EC Contractor, and in the cases when the grant beneficiary and the EC Contractor are the same person, from the Contracting Authority or from the individuals defined above.

In the event of the utilization of the Financial Assets Subject to Amortization for works other than the works mentioned in the EC Contract, the EC Contractor shall, initially, purchase the Economic Assets Subject to Amortization through paying VAT and shall make the VAT levied subject to reduction from the VAT calculated over the operations subject to other taxes. With the expiry of the EC Contract, the EC Contractor shall demand refund, according to the principles laid down in the Part No. 4.3.4 of this Communique, of the VAT paid for the part which the period of utilization of this asset within the context of EC Contract corresponds to the amortization rate period defined for this asset. In this case, the EC Contractor, while receiving the approval of the supply contract from the grant

beneficiary, shall ensure an annotation to be put by the grant beneficiary regarding how long this asset is to be used within the scope of the EC Contract.

#### **4.4. Exemption from Special Consumption Tax and its Implementation**

##### **4.4.1. Agreement Provision**

It is stated in Article 26/2(d) of the Framework Agreement that, *“Expenditures of the EC contractors shall be relieved from the Special Consumption Tax . This relief shall only be applied to the expenditure in connection with the goods supplied and/or services rendered and/or works executed by that EC contractor under the EC contract.”*

##### **4.4.2. Implementation of the Exemption**

In case where the EC Contractor wants to purchase goods subject to Special Consumption Tax within the framework of the EC Contract, he/she must have primarily applied for VAT Exemption Certificate in line with the procedure and principles laid down in Part 4.3.2 of this Communiqué.

###### **4.4.2.1. For Purchases Made From Non-Tax Payers**

The EC Contractor will make purchase by paying Special Consumption Tax in the beginning, for goods subject to Special Consumption Tax and to be supplied, within the framework of the EC Contract, from a supplier who is not a Special Consumption Taxpayer.

EC Contractor shall prepare the list of goods (Annex 10) purchased in this context, as per quarterly periods in one calendar year starting from the commencement date of the Contract, and shall have the approval of grant beneficiary by annotating that *“the products take place in this list are within the scope of the EC Contract No....”* and insert it among the documents required for refund.

In case the grant beneficiary is also the EC Contractor, the confirmed purchase list of goods subject to Special Consumption Tax ☒ will be approved by the Contracting Authority relying upon the report of the chartered accountant on EC Contract. ☒ ☒

However, in cases where the Contracting Authority is established outside the territories of Turkey, the said list should be approved by;

a) the senior administrators of the public institutions that have general budget, administrations that have private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from these, the real person EC Contractor himself with the title beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality. (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies)

A copy of the report of the chartered accountant indicating that the expenditures made are within the scope of the EC Contract should be annexed to the approval given in such way.

Special Consumption taxes paid by the EC Contractor in spite of the exemption may be reimbursed in compliance with the procedures and principles laid down in Part 4.4.3 of this Communiqué.

###### **4.4.2.2. For purchases made from Special Consumption Tax Payers**

Goods to be supplied from Special Consumption Tax payers by the EC Contractor within the framework of the EC Contract can be supplied without paying Special

Consumption Tax on condition that a supply contract is concluded with the supplier and the grant beneficiary confirms that the goods subject to that contract are within the scope of the EC Contract. There is no limit for supply contracts to be made for purchases from Special Consumption Tax payers.

In case the grant beneficiary is also the EC Contractor, the supply contract will be approved by the Contracting Authority. However, in cases where the Contracting Authority is established outside the territories of Turkey, the said contract should be approved by;

a) the senior administrators of the public institutions that have general budget, administrations that have private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from these, the real person EC Contractor himself/herself with the title beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality. (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies)

The supplier will not calculate the Special Consumption Tax if only the supply contract which it made with the EC Contractor and is approved according to the procedures explained above is presented to it. It will annotate on the invoice and other documents prepared on getting the copy of the mentioned contract that *“Special Consumption Tax has not been calculated in accordance with the IPA Framework Agreement, the ratification of which is approved with the Law No. 5824 and the EC Contract numbered ....”*

EC Contractor will prepare a list (Annex 10) of goods purchased with Special Consumption Tax for the goods it purchased from the Special Consumption Taxpayer by paying Special Consumption Tax within the framework of the EC Contract and include it among the documents required for return after having it confirmed according to the procedure indicated in Part 4.4.2.1 of this Communiqué,

#### **4.4.3. Refund of the Special Consumption Tax Paid by the EC Contractor**

##### **4.4.3.1. Refund of the Special Consumption Tax to the EC Contractor having a VAT Exemption Certificate**

Special Consumption Tax paid for the expenditures made within the framework of the EC Contract shall be reimbursed to the EC Contractor who has already obtained a Value Added Tax Exemption Certificate to be exempted from the value added tax on goods and services and works within the scope of the EC Contract, after an application is submitted to the tax office directorate -which is included in the list in Annex 9 of this Communiqué- in his/her place of residence (for real persons) or in the province where its business centre (registered centre) is established (for legal persons) together with the documents indicated in Part 4.4.3.3. of this Communiqué. In cases where VAT Exemption Certificate is given directly by the Revenue Administration, EC Contractor can submit its request for refund to any of the tax office directorates listed in Annex 9 of this Communiqué.

##### **4.4.3.2. Refund of the Special Consumption Tax to the EC Contractor not having a VAT Exemption Certificate**

The EC Contractor, who has not previously obtained a VAT Exemption Certificate before, shall have confirmed before all that the contract drawn up with the Contracting Authority is an EC Contract within the scope of IPA Framework Agreement and that the EC Contractor is himself/herself. For that reason, the EC Contractor is required to apply to the authorities indicated in Part 4.3.2. of this Communiqué with the documents stated in Part

4.3.2.2. Upon the approval of the application, tax administration will submit a ruling to the EC Contractor.

The EC Contractor can have the refund after it applies to the tax office directorate, included in the annexed list (Annex 9), in his/her place of residence or in the province where its business centre is established with the ruling submitted and other documents indicated in Part 4.4.3.3. of this Communiqué. EC Contractors whose residence or business addresses are not in Turkey can apply to any of the tax office directorates indicated in the annexed list (Annex 9) for their refund requests.

#### **4.4.3.3. Documents Required for Special Consumption Tax (SCT) Refund**

EC Contractors will make their application for refund to the tax offices with the following documents:

- 1) Written request for SCT Refund
- 2) One copy of the tax ruling or VAT exemption certificate taken from the Presidency of Revenue Administration or Tax Department,
- 3) Certified list of purchases of goods with Special Consumption Tax (Annex 10)
- 4) Originals or certified copies of invoices and similar documents regarding the purchase of goods with Special Consumption Tax.
- 5) List of Special Consumption Tax calculated by themselves to be reimbursed with regard to the purchases of goods with Special Consumption Tax .

In the event of the submission of the copies of the required documents, an approval should be given through, if available, stamping, signing and putting the date, by means of the EC Contractor's submission of an annotation saying that those are true copies of the originals.

EC Contractor, whose term of contract continues, can make its refund requests for quarterly periods in one calendar year starting from the commencement date of the EC Contract. EC Contractor whose term of contract ends can make its request for refund as from the date of expiration of the contract.

#### **4.4.3.4. Procedures to be performed by the Tax Office Directorate**

Tax Office Directorate in charge of the administration of Special Consumption Tax will give a potential tax identity number to the EC Contractor who makes an application with the above mentioned documents if the Contractor is not registered to a tax office for any kind of tax. If the Contractor registered as a taxpayer on any tax type, the request for refund request will be accepted with the tax identity number given for that.

After completing the necessary examination, the tax office directorate will make a payment for the refund request either by returning or by deduction. With this examination it will be determined whether the goods indicated in invoices and similar documents with regard to purchases of goods with Special Consumption Tax are the goods included in the list annexed to Special Consumption Tax Law and the amount of Special Consumption Tax in purchase price is calculated correctly or not. This determination can be made by calculating the fixed sum by taking the amount of goods included in List I and alcoholic beverages and tobacco products in List III which are subject to lump-sum tax, into account. However, the amount of proportional tax on goods included in List II and IV for which taxation can be calculated proportionally to the amount calculated according to the base value on the date of exportation or delivery of the producer by making an examination when deemed necessary. It should be determined that the amounts of Special Consumption Tax

calculated in this way are paid after being notified to the customs administration in cases of exportation and to tax office by tax payers in cases of internal trade. This examination or determination can also be verified by the report of the chartered accountant.

The transactions regarding the Special Consumption Tax refunds to be paid by returning or by way of deduction shall be made according to the principles indicated in General Communiqué on Value Added Tax (serial no. 83) concerning the refund of value added tax arising from exportation of goods. In cases where a report of the chartered accountant is submitted, the same limits with the ones foreseen for exportation will be applicable. EC Contractor is not required to submit documents other than the ones listed in Part 4.4.3.3 of this Communiqué.

During the application for the refund, the copy of the tax ruling taken from the Presidency of Revenue Administration or Tax Office Directorate and the VAT Exemption Certificate will be certified by the Tax Office Director or the personnel authorised by him/her provided that the original document is also submitted.

Tax Office Directorate is obliged to send the list (Annex 14) to be prepared concerning the refunds that it paid to EC Contractors and suppliers within the framework of IPA Framework Agreement, to the Presidency of Revenue Administration in quarterly periods in one calendar year and before the fifteenth day of the month following those dates ends.

#### **4.4.4. Matters Related to the Financial Assets Subject to Amortization in Terms of Special Consumption Tax**

The EC Contractor has the opportunity to obtain the financial assets subject to amortization, without Special Consumption Tax, related to financial assets subject to amortization that he/she will supply from Special Consumption Tax payers within the scope of EC Contract, only in the event that the mentioned assets are the assets used within the scope of EC Contract and only in the event that these assets are foreseen to be delivered to the grant beneficiary free of charge with the expiry of the EC Contract. For this purpose, the EC Contractor, who makes a supply contract with the supplies, shall have approved in the mentioned contract, that the mentioned assets are within the scope of EC Contract to which the EC Contractor is a party and that those assets are going to be delivered to the grant beneficiary free of charge with the expiry of the EC Contract.

In case the grant beneficiary is also the EC Contractor, the supply contract will be certified by the Contracting Authority. However, in cases where the Contracting Authority is established outside the territories of Turkey, the said list should be approved by;

a) the senior administrators of the public institutions that have general budget, administrations that have private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from these, the real person EC Contractor himself with the title beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality. (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies)

The supplier shall not calculate Special Consumption Tax by means of putting an annotation such as “*Special Consumption Tax has not been calculated in accordance with the EC Contract No... and the IPA Framework Agreement the approval of which has been deemed appropriate with the Law No.5824*” to the invoice or similar document which he arranged by having the copy of the supply contract drawn up with the EC Contractor,

approved by the grant beneficiary, or in case where the grant beneficiary is also the EC Contractor, approved by the Contracting Authority or above mentioned persons.

In the event of the utilization of the Financial Assets Subject to Amortization for works other than the works mentioned in the EC Contract, the EC Contractor shall, initially, purchase the Financial Assets Subject to Amortization through paying Special Consumption Tax . With the expiry of the EC Contract, the EC Contractor shall demand refund, according to the principles laid down in the Part No. 4.4.3 of this Communiqué, of the Special Consumption Tax paid for the part which the period of utilization of this asset within the context of EC Contract corresponds to the amortization rate period defined for this asset. In this case, while receiving the approval of the supply contract from the grant beneficiary, the EC Contractor, shall ensure an annotation to be put by the grant beneficiary regarding how long this asset is to be used within the scope of the EC Contract.

#### **4.4.5. Implementation of Special Consumption Tax on the Transfer, to the Third Parties, of Vehicles of which the First Acquisition are Made Using Special Consumption Tax Exemption**

Article 15/2-a of the Special Consumption Tax Law provides that, in cases where the registered and enrolled goods in list II for which exemption is applied during their first acquisition, excluding their transfer by inheritance, are acquired by people other than the beneficiaries of the exemption, Special Consumption Tax will be imposed on the ones of which registration and enrollment proceedings have been completed, on the basis of tax base at first acquisition and on effective rate on the date of registration and enrollment. According to this provision, during the acquisition by third parties, except for being transferred by inheritance or by the grant beneficiaries using Special Consumption Tax exemption, of vehicles subject to registration and enrollment and of which first acquisition have been done with Special Consumption Tax exemption, Special Consumption Tax assessment of the vehicles in question will be made by third persons in the name of whom the enrollment and registration proceedings are going to be made, on condition that they make an Special Consumption Tax statement within the framework of Article 15/2-a of the Law. In case where the vehicle in question was purchased through paying Special Consumption Tax at the beginning as it would be used in other works than the works indicated in the EC Contract, but the Special Consumption Tax, amount of which was calculated by considering the term of use within the scope of the contract was later reimbursed, the reimbursed amount must be declared and paid by third parties.

### **4.5. Exemption from Income and Corporate Tax and its Implementation**

#### **4.5.1. Agreement Provision**

It is stated in Article 26/2-c of the Framework Agreement that, *“Natural persons, not nationals and not residents of Turkey, carrying out services and/or works and/or grant and/or twinning contracts financed by the Community and the eventual co-financing contribution provided by the Beneficiary shall not be subject to income tax in Turkey for the income generated by this type of contract.*

*Legal persons will be subject to the same above provision provided that they do not have their permanent establishment or fixed base in Turkey.*

*Profit and/or income arising from EC contracts shall be taxable in Turkey in accordance with its tax system, if the real and/or legal persons making such profit and/or income have their permanent establishment or fixed base in Turkey according to the provisions of the applicable double taxation agreements as ratified by the Beneficiary.”*

#### **4.5.2. Implementation of the Exemption**

According to IPA Framework Agreement, income generated from the contract under which the real person EC Contractors, who are not nationals and not residents of Turkey, are carrying out services within the framework of the execution of EC Contracts financed by the European Union or co-financed by the European Union and Turkey, shall not be subject to income tax.

Similarly, income of real persons, not nationals and not residents of Turkey, carrying out services for an EC Contractor and whose fees are paid from the budget of the EC Contract shall not be subject to the income tax.

Institutional income of legal person EC Contractors arising from their execution of the EC Contract shall not be subject to income tax on condition that they do not have an office or fixed base in Turkey.

However, profit and/or income arising from EC contracts shall be taxable in Turkey in accordance with its tax system if the real and/or legal persons making such profit and/or income have their office or fixed base in Turkey according to the provisions of the applicable double taxation agreements as ratified by Turkey.

Thus, the amount of money provided to real persons who are nationals or residents of Turkey and to legal persons having their office or fixed base in Turkey as grants in order to have them carry out their obligations arising from the EC Contract shall be considered as income within the scope of business earning, subject to income tax and to corporate tax and as for corporate tax payers, it shall be included in the corporate income as an element of business earning and be subject to corporate tax.

#### **4.6. Inheritance and Transfer Tax Exemption and its Implementation**

##### **4.6.1. Agreement provision**

In the Article 26/2-e of the IPA Framework Agreement, it has been stated that; *“Those benefiting from projects and/or contracts and/or activities carried out under IPA shall be exempted from “Inheritance and Transfer Tax” resulting from goods and/or rights and/or constructed facilities and/or funds transferred to them without consideration in any way under IPA”*.

##### **4.6.2. Implementation of the Exemption**

With regard to the goods and/or rights and/or constructed facilities and/or funds transferred to the grant beneficiaries free of charge in terms of the EC Contract financed by the European Union or co-financed by Turkey and the European Union, the grant beneficiaries shall be exempted from inheritance and transfer tax or from any tax of equivalent effect imposed instead of this tax. Hence, they shall not make a declaration of inheritance and transfer tax, related to the mentioned transfers.

#### **4.7. Stamp Duty and Charge Exemption and its Implementation**

##### **4.7.1. Agreement provision**

In the Article 26/2-g of the IPA Framework Agreement, it has been stated that; *“EC contracts shall not be subject in the Republic of Turkey to stamp or registration duties, or to any other charge having equivalent effect. This exemption shall also apply to transactions and related payment orders under the EC contract with the exemption of sub-contracting”*.

##### **4.7.2. Implementation of the Exemption**

###### **4.7.2.1. Implementation of the Stamp Duty Exemption**

EC Contract financed by the European Union or by the co-financing of the European Union and Turkey, and signed between the Contracting Authority and EC Contractor, and concluded in the Part 3.5 of this Communiqué shall be exempted from the stamp duty. Accordingly, each legally binding document signed by the European Community, or Turkey, or the grant beneficiary; and ensuring the financing, including the possible co-financing, of any activity within the framework of IPA shall be exempted from the stamp duty. However, the supply contract drawn up between the EC Contractor and the supplier shall not benefit from the stamp duty exemption.

#### **4.7.2.2. Implementation of the Charge Exemption**

EC Contract financed by the European Union or co-financed by Turkey and European Union, and signed between the Contracting Authority and the EC Contractor; and the proceedings carried out within the scope of the EC Contract shall not be subject to charges. However, as the supply contract between the EC Contractor and supplier, and the proceedings carried out under this contract are not within the scope of the exemption, mentioned proceedings shall be subject to charges.

### **4.8. Special Communication Tax Exemption and its Implementation**

#### **4.8.1. Agreement provision**

In the 2/i of the Article 26 of the IPA Framework Agreement, it has been stated that; *“Apart from the taxes, customs and import duties and levies and/or taxes of equivalent effect mentioned above, the following shall also be exempted: Special Communication Tax”*.

#### **4.8.2. Implementation of the Exemption**

Expenses, of RTA, relating the special communication tax covered by the budget of the EC Contract; and which are within the scope of the EC Contract signed in accordance with the IPA Framework Agreement shall be exempted from the special communication tax with the condition that it is limited with the duration of the EC Contract. EC Contractor, shall pay, at first, the special communication tax, for his/her expenses under this exemption. However, special communication taxes charged for the expenses regarded as exemption under the scope of the EC Contract shall be reimbursed to the EC Contractor in accordance with the following procedures and principles.

#### **4.8.3. Refund of the Paid Special Communication Tax**

For the refund of the special communication tax charged despite being within the scope of the exemption, EC Contractors whose term of contract continues, for quarterly periods in one calendar year starting from the commencement date of the EC Contract and; EC Contractors whose term of contract ends, as from the date of expiration of the contract should apply with following documents to the tax office warranting the VAT Exemption Certificate, or in case where the VAT Exemption Certificate was granted directly from Revenue Administration, to one of the tax offices listed in ANNEX 9 of this Communiqué.

##### **4.8.3.1. Required Documents for the Refund of Special Communication Tax**

- 1) Written Request for Refund,
- 2) Certified List of Charged Special Communication Taxes,
- 3) Copies of the Invoices or Similar Documents of the Charged Special Communication Taxes,
- 4) VAT Exemption Certificate and/or copy of the ruling given by the tax administration within this scope.

For the refund of the special communication tax paid despite being within the scope of the exemption, EC Contractor should firstly prepare a list of invoices or similar documents relating to the paid special communication taxes. The mentioned list shall be approved by the grant beneficiary with the declaratory provision: *“Expenses declared in this list and whose details were given in the annexed invoices or similar documents were made within the scope of the EC Contract and the amounts stated in the EC Contract were not exceeded.”*

Where the grant beneficiary is the same person with the EC Contractor the mentioned list shall be approved by the Contracting Authority. However, when the Contracting Authority is outside the territories of Turkey the mentioned list shall be approved by;

a) the senior administrators of the public institutions with general budget, administrations with private budget, social security institutions and the units affiliated to these in the event that all these institutions are in the position of EC Contractor;

b) As for the EC Contractors apart from these, the real person EC Contractor himself with the title of grant beneficiary and as for the legal person EC Contractor, by the senior authorized person of the legal personality. (for instance, such as the head of an association or foundation, authorized signatory administrator in the companies)

In case there is not any allocated budget in the EC Contract for the expenses under the scope of the special communication tax, no refund shall be made. Besides, although there is some allocated budget in the EC Contract for the issue, in case where the total amount of the submitted invoices or similar documents is above the indicated budget, no refund shall be made for the exceeding amount.

#### **4.8.3.2. Proceedings to be carried out by the Tax Office Directorate**

When the EC Contractor having the VAT Exemption Certificate applies with the above mentioned information and documents for the refund of the special communication, the tax office directorate that gave the Certificate shall carry out the related works and proceedings within the framework of the principles and procedures in force.

### **4.9. Motor Vehicle Tax Exemption and its Implementation**

#### **4.9.1. Agreement provision**

2/i of the Article 26 of the IPA Framework Agreement is: *“Apart from the taxes, customs and import duties and levies and/or taxes of equivalent effect mentioned above, the following shall also be exempted: Motor Vehicle Tax”*

#### **4.9.2. Implementation of the Exemption**

Land, air and sea transport vehicles, purchased by the EC Contractor within the framework of the EC Contract, and enrolled and registered in his own name in the traffic, municipality or port registry and to the relevant registry among the civil aviation registries in the Ministry of Transportation shall be exempted from the motor vehicles tax (MVT) provided that it is limited with the duration and conditions of the EC Contract, and on the condition that the vehicle is going to be transferred to the grant beneficiary free of charge.

EC Contractor shall enroll and register the vehicle purchased within the scope of the EC Contract, in his own name in the relevant registry office and shall pay the motor vehicles tax accrued during the contract.

Upon application, Motor Vehicles Tax charged during the EC Contract for the vehicle purchased within the scope of the EC Contract shall be reimbursed to the EC Contractor, following the expiration of the EC Contract and transfer of the vehicle to the grant

beneficiary, in accordance with the principles and procedures laid down in the Part 4.9.3 of this Communiqué.

#### **4.9.3. Refund of MVTs**

For the refund of the MVTs charged during the contract duration, EC Contractor shall apply to the tax office directorate having the authority to collect MVT with following documents:

- a) Written Request for Refund,
- b) A copy of the ruling given by the Revenue Administration or by the relevant tax office directorate following the VAT Exemption Certificate application,
- c) Copy of the official letter (ANNEX-11) submitted by the Contracting Authority, indicating that the vehicle was purchased or used within the scope of the EC Contract,
- d) Copy of the Motor Vehicle Registration Certificate of the vehicle purchased by the EC Contractor and for which MVT was charged; and copy of the Motor Vehicle Registration Certificate issued to the name of the grant beneficiary following its transfer to him/her.

Where there is no tax office directorate having the authority to collect MVT, the application shall be made to the tax office directorate that gave the VAT Exemption Certificate.

EC Contractors who obtained VAT Exemption Certificate directly from the Revenue Administration shall apply to the tax office directorate that has the authority to collect MVT and that is in the province where the refund is, at wish, to be obtained. Where there is no tax office directorate having the authority to collect MVT, they shall apply to the tax office directorate acting in the province where the application is wished to be made and listed in the annex of this Communiqué (ANNEX-9).

EC Contractor is also obliged to submit additional information and documents, other than the aforementioned ones, for the refund of MVT if required by the provisions of the legislation in force.

Depending on the expiration of the EC Contract in question, the vehicle registered in the name of the EC Contractor and transferred to the ownership of the grant beneficiary shall be subject to the motor vehicles tax as of the termination of the contract, according to the provisions of the MVT legislation in force.

#### **4.9.4. Proceedings to be carried out by the Tax Office Directorate**

For the refund of the MVT paid during the contract period for the vehicles bought within the framework of the EC Contract under the IPA Framework Agreement and enrolled and registered on the name of the EC Contractor; on the condition that the tax office directorate is not the one that gave the VAT Exemption Certificate, the tax office directorate to which the EC Contractor applied with the documents listed above has to take a confirmation whether the EC Contract has expired or not from the unit that gave the VAT Exemption Certificate.

Tax Office Directorate applied shall carry out the proceedings for the refund of the MVT, within the framework of the provisions of the legislation in force.

#### **5- Status of the Framework Agreement found eligible for ratification through Law No. 5303 and the Related General Communiqués**

According to the part (3) of the 'Introduction' section of IPA Framework Agreement Instrument for Pre-Accession Assistance (IPA) takes the place of the previous instruments for assistance and annuls the Decisions No. 97/256/EC and 1999/311/EC and Regulation No. 2500/2001 regarding the financial assistance to Turkey.

Moreover in the Indent (5) of the Article 1 of the Section I titled 'General Provisions', it has been stated: "*The Framework Agreement between the Government of the Republic of Turkey and the Commission of 14 May 2004 continues to be applicable for measures decided and agreed upon under previous pre-accession instruments, until they are completed in accordance with the terms of the relevant implementation agreements*".

According to this, Turkey- European Union Framework Agreement General Communiqués Sequence no 1, 2, 3 and ANNEX A/8 Article of this Agreement shall continue to be applied for the contracts financed within the scope of the Framework Agreement found eligible for ratification through Law No. 5303 and dated 22.2.2005, and published in the annex of Cabinet Decision No. 2005/8636 dated 17.3.2005.

Until the expiration of the contracts within the scope of this Agreement, all the applications regarding the contracts shall continue to be made to the Revenue Administration, as before.

## **6- Proceedings to be carried out by the Contracting Authorities**

In order to ensure a more rapid and effective implementation of the IPA Framework Agreement, EC Contractor and Contracting Authorities signed the EC Contract and residing in Turkey are obliged to send the below list to the Revenue Administration, European Union and Foreign Affairs Department, European Union Directorate and to carry out the other tasks determined in this Communiqué:

a) To send the information regarding all the EC Contracts signed with the EC Contractors, as a list (ANNEX-12) to the e-mail: [avrupabirligi@gelirler.gov.tr](mailto:avrupabirligi@gelirler.gov.tr) within 15 days after the signing of the contract,

b) To promptly send an official letter indicating the name/s, title/s, list of authorized signatures after the assignment of them to approve the Information Form required from the EC Contractor during his application for the VAT Exemption Certificate,

c) To send an official letter indicating the changes in the duration, amount, titles in the EC Contracts, a list of which was sent to Revenue Administration, within 15 days from the date of change,

d) To send an official letter accompanying the documents and its annexes which lay the ground for the cancellation of the EC Contracts cancelled because of financial reasons whose conditions were written in the EC Contract or because of any other reason; and which gives a detailed explanation of the cancelled budget amount, within 15 days after the date of cancellation.

## **7- Responsibility**

### **7.1. Responsibility of the EC Contractors**

If the EC Contractors fail to make the notifications determined in this Communiqué, special irregularity fines shall be applied in accordance with the Articles 148, 149 and reiterated Article 355 of Tax Procedure Law No.213.

The mentioned fine shall be carried out in accordance with the provisions of the legislation in force, by the tax office directorate that issued the VAT Exemption Certificate

or by the tax office directorate authorized by the Prime Ministry if the VAT Exemption Certificate was given directly by the Revenue Administration.

## **7.2. Responsibility of the Contracting Authorities residing in Turkey**

In accordance with the second paragraph of the Article 5/2-a of the IPA Framework Agreement, the Commission is obliged to provide the necessary information on programmes and projects implemented in centralised management in Turkey including the projects implemented by the Delegation of the European Commission.

Based on the mentioned Article and the Article 26/3-b of the IPA Framework Agreement, where the Contracting Authorities residing in Turkey fail to carry out the notifications stated in the Article 6 of this Communiqué, as there will be some troubles in the implementation of the tax exemptions regarding the European Union financial aids; concerning these notifications Revenue Administration's right to disapprove the applications of EC Contractors in this regard (VAT Exemption Certificate, refund, extension of time, consultation, etc.), or/and to cancel the approved VAT Exemption Certificates shall be reserved.

It is herewith communicated.