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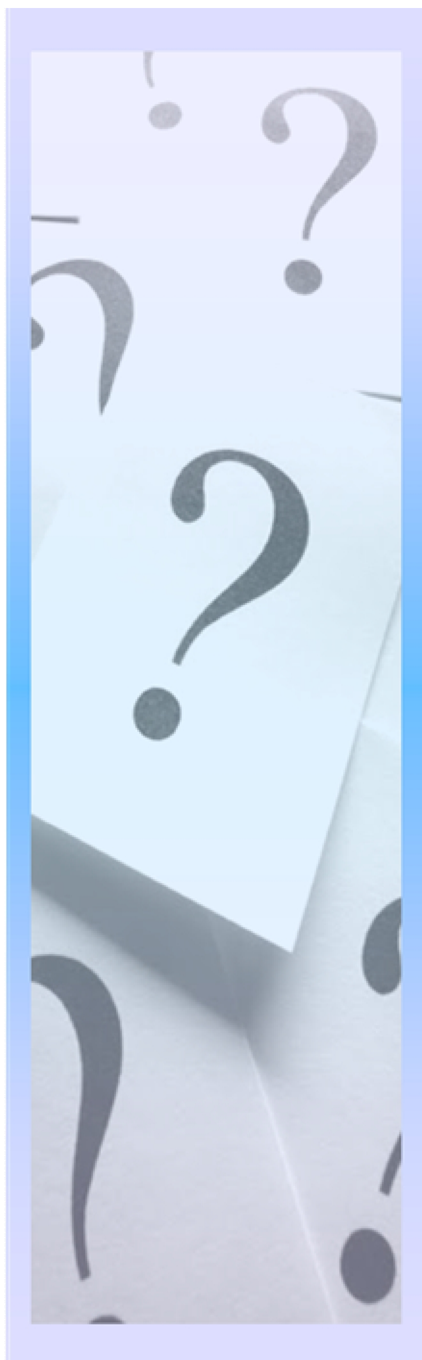

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A publication by ***Rokas***...
intended for the information of our clients and contacts, aiming to highlight selected recent developments in SE European law. The highlights do not cover every important topic; they include limited information on the selected topic without extending to legal or other advice. Readers should not act upon them without taking relevant professional advice. *Copyright © 2015, Rokas, All rights reserved.*

Combating Corporate Tax Avoidance

by Katerina Perrou (Athens)

On 18 March 2015, the European Commission presented a package of tax transparency measures which includes a number of initiatives to advance the tax transparency agenda in the European Union. Specifically:

- Assessing possible new transparency requirements for multinationals

The Commission will examine the feasibility of new transparency requirements for companies, such as the public disclosure of certain tax information by multinationals. The objectives, benefits and risks of any such initiative need to be carefully considered. Therefore, the Commission will assess the impact of possible additional transparency requirements to help inform a decision at a later stage.

- Reviewing the Code of Conduct on Business Taxation

The Code of Conduct on Business Taxation is one of the EU's main tools for ensuring fair corporate tax competition. It sets out the criteria that determine whether a tax regime is harmful or not and it requires Member States to abolish any harmful tax measures that go against the Code. Member States meet regularly to assess their compliance with the Code. But over the past years, the Code has become less effective in addressing harmful tax regimes as its criteria do not take into account more sophisticated corporate tax avoidance schemes. The Commission will therefore work with Member States to review the Code of Conduct as well as the mandate of the Code of Conduct Group in order to make it more effective in ensuring fair and transparent tax competition within the EU.

- Quantifying the scale of tax evasion and avoidance

The Commission, along with Eurostat, will work with Member States to see how a reliable estimate of the level of tax evasion and avoidance can be reached. There is growing evidence that evasion and avoidance are pervasive and cause significant revenue losses. However, a precise quantification of the scale and impact of these problems has not been determined up to now. Reliable statistics of the scale and impact of these problems would help to better target policy measures against them.

- Repealing the Savings Tax Directive

The Commission is proposing to repeal the Savings Tax Directive, as this text has since been overtaken by more ambitious EU legislation, which requires the widest scope of automatic information exchange on financial accounts, including savings related income. Repealing the Saving Tax Directive will create a streamlined framework for the automatic exchange of financial information and will prevent any legal uncertainty or extra administration for tax authorities and businesses.

Source: http://europa.eu/rapid/press-release_IP-15-4610_en.htm

Tax Treatment of Distributed Dividends to Natural and Legal Persons Domestic or Foreign

by Konstantinos Karetsos (Athens)

On 26 January 2015, the Ministry of Finance issued the No 1042/26.01.2015 Circular, which gives guidelines for the tax treatment of dividends distributed to natural and legal persons domestic or foreign. The Circular's issuance clarified the following matters:

1. It is perceived as dividend whatever is distributed by legal persons (S.A., Limited Liability Company, private company, limited liability companies, and legal entities) keeping double entry books.

2. Limited liability companies and entities which keep single entry books are not subject to withholding tax provisions, since these incomes are taxed only to legal person's or legal entity's name.

3. The withholding tax rate by the dividend's distribution is 10%.

4. Especially for limited liability companies and legal entities which keep double entry books and make temporary profit abstractions, the 10% withholding tax, is made by the time the abstraction takes place.

5. The tax obligation is exhausted for shareholders:

   a) domestic natural persons;

   b) natural or legal person or legal entity which does not have its tax residence and does not retain a permanent establishment in Greece and the non – profit legal persons or legal entities which do not make business in Greece via office.

6. The profits that exports a permanent establishment foreign company's in Greece to its main office abroad are not under the 10% withholding taxation.

7. The dividends' distributed to shareholders legal persons or legal entities, profit or non – profit or foreign legal persons' permanent establishment in Greece are under the 10% withholding taxation.

8. The parent companies are excluded from the withholding tax provisions when they participate at least with 10% and for 24 months to their subsidiaries.

9. The Greek tax resident (natural person) which gains income from dividend's laid abroad regardless they are imported in Greece or remain abroad shall include it in its annual tax return.

Poland

by Piotr Kloc (Warsaw)

Obligatory Cash Registers for Lawyers, Doctors, Tax Advisers, Mechanics, Hairdressers

In 2015 came into force regulation of the Minister of Finance on exemptions from the obligation to keep records using cash register.

The new regulation extends the duty of recording, regardless of the amount of years' turnover received while performing services for the benefit of natural persons, on taxpayers providing the following services:

repair of motor vehicles and motorcycles; research and technical inspections of vehicles; medical care provided by doctors and dentists; legal advisers (with the exception of notaries); tax advisers; catering; hairdressing and beauty.

So far, taxpayers performing the above mentioned services were excluded from the obligation to register, if the turnover from the services to natural persons who do not run records, did not exceed 5.000 euros per year.

Fortunately, the legislator provided with a transitional period to ensure entrepreneurs an adjustment into the new rules. The above mentioned group of taxpayers is required to record sales since 1 March 2015 if they did not exceed the limit 5.000 euros in 2014.

In addition, the new regulation provides that the obligation to register at the cash registers, regardless of the amount of years' turnover, will be subject to the sale of perfumes and toilet waters, digital and analogue data carriers (such as USB – drivers, CD's).

Finally, the new regulation remains in force until 31 December 2016, which makes it more than certain that next year is about to some legislative changes, extending the obligation to use cash registers for new groups of taxpayers.

Romania

by Corina Badiceanu (Bucharest)

Drafts New Fiscal Code and New Fiscal Procedure Code

On 27 March 2015, drafts for the New Fiscal Code and the New Fiscal Procedure Code were registered at the Romanian Senate in order for these projects to be urgently debated by the senators.

Should these two projects be approved by the Romanian Senate and the Chamber of Deputies, their provisions, with some exceptions, will enter into force on 1 January 2016.

The taxation of small businesses depending on the number of their employees, the elimination of the tax afferent to dividends as well as the obligation of all physical persons having incomes to pay social insurance contributions are among the most important amendments to the currently in force fiscal provisions.

Moreover, the tax afferent to the income and profit could be reduced to 14% starting with 1 January 2019 as opposed to the present quota of 16%.

Last but not least, the value added tax for all goods and services could be reduced to 20% starting with 1 January 2016 and to 18% starting with 1 January 2018 as opposed to the current quota of 24%.

Serbia

by Ivan Ugrinović (Belgrade)

Interest Rates' Publication

On 27 February 2015 the Ministry of Finance published the draft Rulebook on arm's length interest rates for 2014. After it is adopted by the Government, the Rulebook will enter into force eight days after being published in the Official Gazette of Republic of Serbia.

Serbian Corporate Income Tax (CIT) Law prescribes that income and expenses realized by a Serbian taxpayer on related party loans need to be stated in the Tax Balance Sheet at both the actual and the arm's length level. The arm's length level of income and expenses can be determined by using the interest rates published by the Ministry or by using general transfer pricing rules. Difference that may arise between interest at actual and the arm's length level are included in the taxable base and taxed accordingly.

Interest rates listed in the rulebook published on 2 March 2015 in the Off. Gazette of Republic of Serbia no. 023/2015 which enters into force on the eight day upon publishing, that apply to banks and financial leasing companies are:

- 7,14% for short-term loans in RSD;
- 4,39% for loans in EUR and dinar loans indexed in EUR;
- 3,12% for loans in USD and dinar loans indexed in USD;
- 5,86% for loans in CHF and dinar loans indexed in CHF;
- 4,42% for loans in SEK and dinar loans indexed in SEK;
- 13, 00% for loans in RUB and dinar loans indexed in RUB.

Interest rates listed in the rulebook that apply to other companies are:

- 13,82 % for short-term loans in RSD;
- 11,12% for long-term loans in RSD;
- 6,57 % for short-term loans in EUR and dinar loans indexed in EUR;
- 5,79% for long-term loans in EUR and dinar loans indexed in EUR;
- 8,49% for short-term loans in CHF and dinar loans indexed in CHF;
- 7,07% for long-term loans in CHF and dinar loans indexed in CHF;
- 5,28% for short-term loans in USD and dinar loans indexed in USD;
- 5,74% % for long-term loans in USD and dinar loans indexed in USD

Tax Return's Submission

As of 1 April 2015 tax returns for determination of annual personal income tax for 2014 should be submitted only in electronic form, through the Tax Authority's web portal e-Porezi. Taxpayers who have not yet submitted returns for determination of annual personal income tax for 2014 are required to submit it in the PPDG-2R form, prescribed by the Rulebook on tax return forms for the determination of personal income tax payable by way of assessment. In order to submit the tax return electronically a person should have a valid digital certificate (electronic signature). A taxpayer may authorize another person (with a digital certificate) to submit the tax return electronically.

Please note that taxpayers of the annual personal income tax are individuals – residents, and non-residents, for income generated on the territory of the Republic of Serbia, whose net annual income exceeds the threshold of three average annual salaries in the respective year, according to data published by the Statistical Office of the Republic of Serbia (2,211,336 RSD).

As of 1 April 2015 tax returns for corporate income tax, except withholding tax, should be submitted only in electronic form, i.e. corporate income tax returns (Form PDP) are submitted through the Tax Authority's web portal e-Porezi. It should be noted that forms prescribed by the following bylaws are also to be submitted electronically: Rulebook on the contents of the tax balance and other issues relevant for assessing corporate income tax, Rulebook on the means of reporting income and expenses for assessing profits realized by a nonresident taxpayer's permanent establishment on the territory of the Republic of Serbia and the Rulebook on the means of classifying fixed assets into groups and the means of determining tax depreciation.

Ukraine

by Alina Karas (Kiev)

Transfer Pricing Amendments to the Tax Code of Ukraine

On 23 April 2015, the Draft Law "On the Amendments to the Tax Code of Ukraine Regarding Transfer Pricing" No 1861 (hereinafter – Draft Law 1861) was passed the first reading in the Parliament of Ukraine.

The Draft Law 1861 increased the minimum limit of transactions to be under control from UAH 5 million to UAH 20 million. In addition it was excluded the VAT from the controlled international transaction from the transfer pricing.

Moreover, the Draft Law 1861 introduced increased percentage (from 20% to 50%) for definition of affiliated persons as a condition for applying transfer pricing. Pursuant to the Draft Law 1861 the Cabinet of Ministers will define the list of exchanges and goods listed on the exchanges for the purpose to formulate the average pricing for the mentioned goods.

The penalty for non-declared international transactions subject for control will be decreased from 5% to 1% of the undeclared sum of transaction.

EU

by Konstantinos Karetsos (Athens)

Do the Multinational Companies Pay the Attributable Tax?

On 12 February 2015, the E.U. Parliament decided to conduct its own inquiry by setting up a Special Committee on tax rulings. The E.U. institutions have come to this decision since they were not convinced that the multinational enterprises pay every year their fair share of taxes. For this reason, before the European Parliament designates the Special Committee, the European Commission has made numerous investigations focusing Member States which in its view have given multinational companies preferential tax treatment.

Defining the problem

Each Member State's tax authority has a wide range of discretion when enforces its tax rulings. The European Commission believes that the tax rulings in some Member States are used to help specific corporations to pay less tax and therefore giving them a competitive advantage. In case the process described above is followed for multinational corporations and not for local firms, it could lead to state aid which is prohibited.

The Special Committee's on tax ruling solution

The tax ruling is a document issued by a tax authority defining in advance how a corporation will calculate its taxes and which tax provisions will be used. This is an absolute legal document and it will not be easy for companies to abolish it. Since the European Commission is of the opinion that "a trillion euros in taxes are lost each year due to tax evasion and avoidance" caused by corporations aggressive tax planning, the European parliament has set up a 45 member tax ruling Committee in order to examine practice in the application of the E.U. taxation law in relation to tax rulings and other measures similar in nature issued by Member States.

The European Commission Refers Greece to the European Court of Justice

On 26 March 2015, the Commission has decided in its monthly package of infringements to refer Greece to the Court of Justice of the European Union regarding two (2) important elements:

a) the inheritance tax treatment of bequests to non-profit organisations

The European Commission has decided to refer Greece to the Court of Justice of the European Union regarding its inheritance taxation of bequests to non-profit organisations in another EU Member State or EEA State.

The Greek legislation treats legacies bestowed on certain non-profit entities established in Greece more favourably than those bestowed on similar entities established in other EU/EEA States. A preferential tax rate of 0.5% is automatically available to certain Greek non-profit entities, whereas similar non-profit

entities established in other EU/EEA States can only benefit from the preferential tax rate if legacies to Greek non-profit entities also have access to a preferential tax treatment in such other EU/EEA State. If this reciprocity condition is not met, the applicable tax rate varies between 20-40%, depending on the taxable value of the property.

b) the discriminatory tax exemption for primary residences

The European Commission has decided to refer Greece to the Court of Justice of the European Union regarding its inheritance tax exemption for primary residences which is applicable only to EU nationals permanently residing in Greece.

The Greek legislation favours exclusively those taxpayers who already live in Greece and who typically are Greek nationals. By contrast, the legislation penalises those beneficiaries who inherit a property in Greece but live outside of the country, and who are normally non-Greek nationals or Greek nationals who have exercised their fundamental freedoms by working, studying or living abroad.

Source: http://europa.eu/rapid/press-release_MEMO-15-4666_en.htm?locale=en

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