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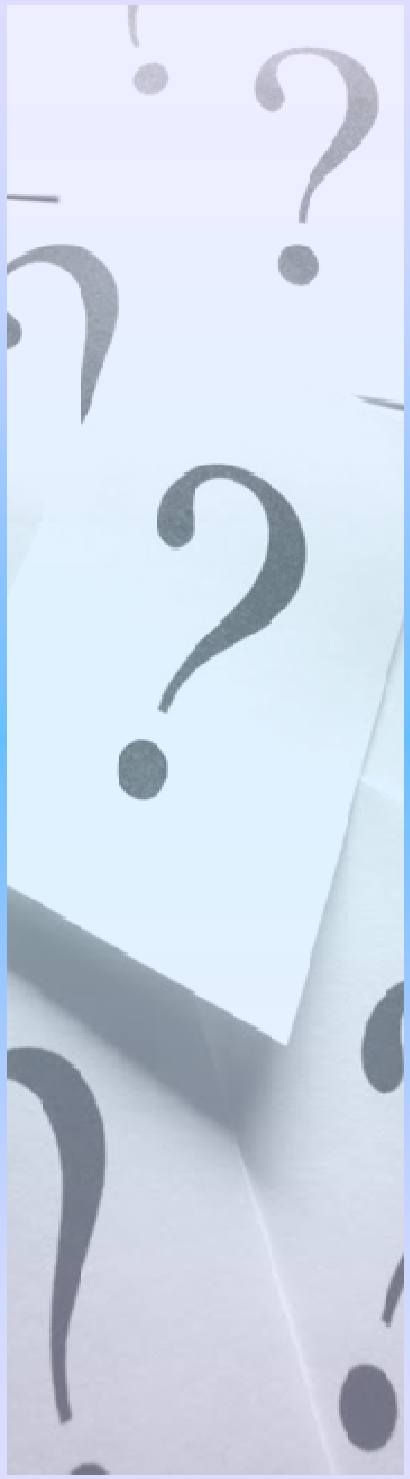

Greece

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Greece

Amendments to the Code of Tax Procedure (C.T.P.) regarding a) Transfer Pricing penalties, b) penalties for the inaccurate filing / non-filing of a tax return c) penalties on V.A.T. infringements and d) penalties on infringements regarding withholding taxes

by Konstantinos Karetsos (Athens)

On 17 October 2015, Law 4337/2015 introduced amendments which seek the decrease of the penalties imposed by the Code of Tax Procedure.

A. Transfer Pricing penalties

The penalties imposed for the delayed filing / non-filing / filing of inaccurate Summary Information Table and for the delayed submission / non-submission of the Transfer Pricing Documentation File are decreased under the new legislation. Moreover, the said penalties are not calculated on the legal person's gross profits, but on the value of the intra-group transactions. Specifically:

T.P. Infringements	Amount of penalty	Prerequisites for penalties imposition
Delayed submission of Summary Information Table	1/1000 of value of the intra-group transactions (not lower than 500 € and not higher than 2.000 €)	
Submission of inaccurate Summary Information Table		If the inaccuracy is higher than 10% of the transactions
Delayed submission of the amending Summary Information Table		If the difference from the amended transactions exceeds 200.000 €
Non-submission of the Summary Information Table	1/1000 of value of the intra-group transactions (not lower than 2.500 € and not higher than 10.000 €)	
Delayed submission / non-submission of the T.P. Documentation File (after the expiry of the one month deadline)	5.000 €	Between the 31-60 day
	10.000 €	Between the 61-90 day
	20.000 €	After the 90 day or non submission

B. Penalties for the inaccurate filing / non-filing of a tax return following audit by the Tax Authority

Infringements detected by a tax audit	Amount of penalty	Prerequisites for penalties imposition
Inaccurate tax return	10% on the amount of difference	If the amount is between 5% - 20% of the tax based on the tax return
	25% on the amount of difference	If the amount is between 20% - 50% of the tax based on the tax return
	50% on the amount of the difference	If the amount exceeds 59% of the tax based on the tax return
Non-filing of a tax return	50% on the amount of the tax arising by the non-submitted tax return	

C. Penalties on V.A.T. infringements following audit by the Tax Authority

Law 4337/2015 introduces a new article to the Code of Tax Procedure (58A) relating only to V.A.T. infringements. Particularly:

V.A.T. infringements detected by a tax audit	Amount of penalty
Non-issuance of a tax record / issuance or receipt of an inaccurate tax record for transaction subject to V.A.T.	50% on the V.A.T. that would occur from the non-issued record or of the difference respectively
Filing of an inaccurate tax return / non-filing of a tax return	50% on the V.A.T. that would occur from the non-submitted return or of the difference respectively
Commencement of business activity without the filing of the relevant return	50% of the V.A.T. that would have been paid within the operation of the business
Issuance of tax records with V.A.T. by persons not liable to file tax return	50% on the tax amount not paid

D. Penalties on infringements regarding withholding taxation

Withholding tax infringements detected by a tax audit	Amount of penalty
Non-filing of a tax return	50% on the amount of the tax arising by the non-submitted tax return
Inaccurate tax return	50% on the amount of the tax difference

Amendments and new provisions to the Tax Legislation regarding: a) the regulation of 100 instalments ('doses'), b) the V.A.T. imposition on educational services and c) the non-recovered income from the lease of real estate property

by Konstantinos Karetsos (Athens)

On 20 November 2015, Law 4346/2015 introduced amendments and new provisions to the tax rules, the most significant of which are analyzed below:

A. Regulation of 100 instalments ('doses')

The taxpayer is not subject to the Law 4321/2015 (regulation of 100 instalments), if he fails to pay his new, after the date of inclusion in the regulation of this law, debt, within the legal payment deadline.

Exceptionally, but not beyond 31 December 2017, the regulation cannot be lost if the new debts are paid within a period from the date they fall due. The deadline is set in 30 days until 30.06.2016 and 15 days from 01.07.2016 to 31.12.2017. Moreover, from 01.07.2017 until 31.12.2017, the regulation is lost in case new debts are not paid, if six months from the previous delayed payment have not elapsed.

The regulation cannot be lost if new debts are suspended or subject to regulation at the request of the debtor submitted before the expiry of the legal deadline for payment. If the total amount of debts, new and previously regulated, exceeds 50,000 euros, the settlement of the new debts is granted only if the debtor invokes and proves that faces economic inability to pay them within the legal deadline.

B. V.A.T. on educational services

The provision of educational services provided by public schools or other institutions recognized as such by the competent authority (General Secretary of Public Revenues), are exempted from the previous 23% V.A.T. imposition. The V.A.T. paid from 20.07.2015 to 20.11.2015 is perceived as overpaid and shall be returned.

C. Non-recovered income from the lease of real estate property

This new provision is introduced to the Income Tax Code (Law 4172/2013, Article 39 para 4), more specifically:

the income from the lease of real estate property, which have not been recovered by the beneficiary, are not included in his total income provided that by the deadline for submission of the annual income tax return, a payment order or productive use order Salaries or judicial abortion decision or adjudication lease or has instituted against the lessee discharge treatment or adjudication rents, has been issued against the tenant. These incomes are taxed in the year and the amount demonstrably received, notwithstanding the provisions of Article 8 (Law 4172/2013). The above is implemented for incomes acquired after 01.01.2015 and hereafter.

The tax treatment of the capital gain of immovable property

by Konstantinos Karetsos (Athens)

On 21.10.2015 the General Secretary of the Public Revenues issued the No 1235/2015 Circular regarding the tax treatment of the capital gain acquired by a legal person or legal entity from sale and lease back of immovable property. From 1.1.2015 the tax treatment of the above capital gain is not differentiated from it's accounting treatment given that on the one hand there is no special tax treatment for it, on the other hand the profit from the business activity is determined according to the Law 4308/2014 (Greek Accounting Standards).

Specifically, the sale of assets and lease back is accounting treated by the seller as a guaranteed loan. The received from the sale amount of money is identified as liability, which is reduced by the payable amortization, whilst the relevant interests are identified as financial expense. The sold assets continue to be identified to the balance sheet as assets of the legal person's.

Moreover, for legal entities that treat all the lease contracts, including the sale and lease back, according to the tax legislation (very small entities), the said capital gain is identified and taxed as income by business activity to the income statement of the fiscal year raised, in the absence of an express provision which defines different tax treatment.

Poland

The answer on how the new government is going to deliver on election promises

by Piotr Kloc (Warsaw)

The new government promised to establish a social fund – 500 PLN (~115 euros) per month for every child from low-income families and every second and next child (without income criteria). How are they going to deliver on those populistic promises?

The Parliament works on a Bank Tax. First draft is being discussed by public opinion. Due to the fact that the ruling party (PIS) has absolute majority of votes in the Parliament, the Bank Tax is a matter of time. It is planned to come into force by 1 February 2016.

Bank Tax will be applied to domestic and foreign banks (conducting activity in a form of branch), as well as, to domestic and foreign insurers. Entities acting within the principle of Freedom of Services will be excluded. The Bank Tax amount will vary between 0,035 % and 0,05 % of excess in value of taxpayer's assets and will be paid monthly.

Who will finally pay to young families' cash allowance? It seems that the burden of tax payment will be transferred to the clients of financial sector. Democracy elected.

Romania

Applicable tax to the distributed dividends starting with 1 January 2016

by Corina Badiceanu (Bucharest)

On 3 November 2015, an Emergency Decree amending the new Romanian Fiscal Code (applicable from 1 January 2016) was published in the Official Gazette under the no. 50/2015.

According to this Emergency Decree, starting with 1 January 2016, the afferent tax applicable to dividends distributed to Romanian legal persons will decrease from 16% to 5% of the gross distributed dividend. The afferent tax must be declared and must be paid until the 25th of the month following the one where the dividends were distributed.

This amendment advances the decrease of the afferent tax applicable to the distributed dividends from 1 January 2017 (as initially provided by the legislation) to 1 January 2016.

Serbia

The Serbian parliament has adopted the amendments of the Value Added Tax Law whereas their provisions will be coming into effect successively until 1 January 2017 while Serbian Ministry of Finance has issued an Opinion regarding the VAT status of return of the unsold merchandise

by Ivan Ugrinović (Belgrade)

The adopted amendments of the V.A.T. Law aim to achieve further harmonization of the V.A.T. Law with European Union regulations particularly regarding V.A.T. registration of foreign entities as well as improvement of control of the Tax authorities.

The most important changes concern the status of foreign entities. Namely, foreign entities that perform taxable supplying of the merchandise and services in Serbia are granted the status of taxpayers and are required to designate a fiscal representative whose position is now provided for in a different manner since it will fulfil all the obligations and will exercise all rights in the name and on behalf of foreign entity towards Tax authorities. However, foreign entities providing only services that are deemed to be supplied electronically and services of transportation of passengers by busses, for which the V.A.T. base represents the average consideration received for each particular transport, will not be required to designate a fiscal representative.

Fiscal representative, which will be performing all activities that are necessary in order to answer the liabilities, exercising the rights in the name and on behalf of foreign entity (submission of tax returns, issuing of invoices, etc.) and will jointly liable for the liabilities arising for the foreign entity from being a V.A.T. payer, can be a legal entity an entrepreneur or an individual that meets the following requirements:

- V.A.T. registration for at least 12 months prior to submission of the request for being fiscal representative, and
- Absence of outstanding tax liabilities on the day of submission of the request.

A foreign entity cannot designate its permanent establishment as a fiscal representative.

As to the Opinion of the Ministry of finance it states that when the seller (V.A.T. payer) sells, assessing and paying V.A.T., a product to another V.A.T. payer and afterwards the buyer decides to return certain portion of the acquired products that remained unsold, such return, from V.A.T. perspective, shall be deemed as a new supply (of unsold merchandise) to the seller from the original transaction. The entity that performs the new supplying is required to assess and pay V.A.T. in compliance with the V.A.T. Law, whereas the V.A.T. base represents the amount received by the entity that performs the new supplying.

EU

V.A.T. – deduction of input value

by Konstantinos Karetsos (Athens)

On 22 October 2015 the Court of Justice of the European Union held that the question whether or not the supplier of the goods - a non-existent trader - has paid the V.A.T. due on those transactions to the public purse has no bearing on the right of the taxable person to deduct input V.A.T..

Specifically, the finding that the company was a non-existent trader was based on the overall evidence, including the fact that that company was not registered for V.A.T. purposes, did not submit a tax return and did not pay any taxes. In addition, that company did not publish its annual accounts and did not have a concession for the sale of liquid fuels. The building designated in the commercial register as being its corporate seat was in a dilapidated state, making any economic activity impossible. Finally, all attempts to contact with the company or the person registered as its director in the commercial register had proved to be unsuccessful.

The Court ruled that any failure by the supplier of goods to meet the requirement to state when taxable activity commences cannot call into question the right of deduction to which the recipient of goods supplied is entitled in respect of the V.A.T. paid for those goods. Accordingly, that recipient has a right to deduct even if the supplier of the goods is a taxable person who is not registered for V.A.T., where the invoices relating to the services supplied contain all of the

information necessary to identify the person who drew up those invoices and to ascertain the nature of the goods provided.

Moreover, it is for the tax authorities, having found fraud or irregularities committed by the issuer of the invoice, to establish, on the basis of objective factors and without requiring the recipient of the invoice to carry out checks which are not his responsibility, that that recipient knew, or should have known, that the transaction on which the right to deduct is based was connected with V.A.T fraud, this being a matter for the referring court to determine.

The Court concluded from this that the tax authorities cannot refuse the right of deduction on the ground that the issuer of the invoice no longer has an individual business operator's licence and that, accordingly, he no longer has the right to use his tax identification number, where that invoice contains all the information set out in Article 22(3)(b) of the Sixth Directive.

for further information, please contact…

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