



Greece

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Greece

by Konstantinos Karetsos, (Athens)

Shipping companies of Art. 25, L.27/1975, are exempted from both the insurance premium tax and business tax

The No 1028/2017 interpretative Circular issued by the Department of Indirect Taxation (Faculty A' VAT) states, inter alia, that they are exempted from premium tax (as established by Art. 29 para. 1, L.3429/2006, as amended and applicable), "the insurance policies concluded by foreign or domestic shipping companies covered by L.27/1975, are subjective exemptions granted by Art. 25 and 26 of this law to specific legal persons (private legal entities) and cannot be removed by a subsequent general provision of law".

Additionally, by the No 1031/2017 Interpretative Circular issued by the General Department of the Faculty of the Application of Direct Taxation (Faculty C'-B') the No. 324/2016 Opinion of the First Regular Plenary Session of the Legal Council of State was notified, which decided by majority that the offices or branches of foreign shipping companies settled in Greece under the provisions of Art. 25 of L. 27/1975, are not subject to the business tax of Art. 31 of L. 3986/2011, on the grounds that:

"...the provisions of Art. 25 paragraph 3 subparagraph first of L.27/1975, which provide exemption from any tax, duty, contribution upon the income and are manifestly specific, with regards to those established tax exemptions for shipping companies under the regulatory control of the said law, because they are included in the, of major importance for the general interest, basic special legislative shipping fiscal institutional framework of the above law ... and therefore supersede any subsequent contrary general tax law provision, and any subsequent tax uniform in the subject to the income tax falls within, as is the disputed tax under Art. 31 of L.3986/2011..."

Guidelines for the application of corporate restructurings under the Greek Income Tax Code

On April 7, 2017 the Head of the Independent Authority of Public Revenues issued the No 1057/2017 Interpretative Circular, which provides the guidelines with respect to corporate restructurings described in the Greek Income Tax Code. The main elements of the said Circular are the following:

- a) No 1057/2017 Circular clarifies the conditions for the implementation and the tax benefits granted within the context of local restructurings (effected between local entities) and cross-border restructurings (between local and EU entities), provided in Art. 52-55 of the Greek Income Tax code, namely:
- contribution of assets;
 - exchange of shares;
 - mergers and demergers;
 - transfer of the registered seat of a Societas Europaea to an EU member country.
- b) The Ministerial Circular clarifies that the framework for the restructurings referred to in Art. 52-55 of the Income Tax Code is equally implemented to companies having the form of a Private Company,
- c) It is officially confirmed that for local corporate restructurings the companies can opt in between the provisions of Income Tax Code and either L.2166/1993 or legislative decree 1297/1972, and
- d) Moreover, it is expressed that for cross-border corporate restructurings, L.2578/1998 is still in force and apply in parallel with the provisions of the Income Tax Code.

The shareholders of a foreign shipowning, managing and chartering company are exempted from the tax on the distribution of dividends

The 287/2016 Opinion of the First Plenary Session of the Legal Council of the State, accepted by the Head of the Independent Authority of Public Revenues.

In that opinion, the following were accepted:

- a) on the basis of the provisions of Art. 26 of L.27/1975 (as in force at the time of submitting the question, before its replacement with Art. 24 par. 1 of L.4110/2013), the dividends acquired by the shareholders of a foreign shipping company, who are residents in Greece, when its vessel flying under foreign flag is operated under a foreign company through an office established in Greece in accordance with the provisions of Art. 25 of L.27/1975, are income tax exempted, irrespective of the person who entrusted it with the management,
- b) the dividends received by the shareholders of a foreign company, residents in Greece, which manages the vessel flying under foreign flag through its office in Greece, shall not be exempted under this provision from income tax, and

- c) under the same provision, the profits of the foreign charter company and the dividends paid to its shareholders shall not be exempted from income tax.

Recent developments to the tax legislation and to the case law

1. Deadline extension subject to the regulation for voluntary disclosure of the taxable income of previous years.

The deadline entering to the regulation of voluntary disclosure of taxable income of previous years under Art. 57-61 of L.4446/2016 is extended until 30.9.2017. Taxpayers who have not received an audit order may submit the statements subject to the article 57 of the referred Law after the 31st of May, 2017 and until the expiry of the extended period and the additional tax of Art. 1 and 2 of L.2523/1997 is set at 12% of the main tax instead of 10% which was valid until 31.5.2017.

2. Spouses with a different tax residence may submit separate tax return according to the Council of State.

The No 1215/2017 decision of the Council of State found that in cases where one of the spouses is a permanent resident abroad and meets the criteria of tax residence (183 days within a year lives in a foreign country), even if they can be considered as spouses under family law, in practice they do not have a common residence and family house.

It is considered that the matrimonial cohabitation has been ceased (without a divorce), which can be proven by the tax residence certificate, and therefore they may submit a separate tax return.

3. Discount granted for inheritance tax or parental benefit tax of the primary residence to permanent residents of E.E.A.

The fourth subparagraph of paragraph 1 of Section A, Art. 26 of L.2961/2001, according to which only Greek residents could deduct the tax due so far, is amended.

Now, after the amendment of the law, permanent residents of EU and EEA countries can also be also entitled to a reduction of the inheritance tax or parental benefit tax for their primary residence.

Romania

by Corina Badiceanu, (Bucharest)

Draft Law on prevention

Until 1 May 2017, the draft law was under public consultation therefore, interested persons were able to send to the Romanian Ministry for the Business Environment, Commerce and Entrepreneurism written opinions, suggestions and proposals regarding the said draft law.

According to this draft law, the competent fiscal authorities will be able to sanction the legal and natural persons, in certain conditions and only for certain misconducts, with a warning instead of a fine.

According to this draft law, the non-respect of the legal obligations of the employer as regards the registration of the resignation of an employee or as regards the legal obligations of the employer for the issuance to the employee/former employee of a document ascertaining the activity provided, the duration, the salary and the seniority are among the misconducts for which, in certain conditions, the competent fiscal authorities will be able to sanction the legal persons with a warning instead of a fine.

If the draft law passes through all the technical legal procedure for its adoption and enters into force, it is expected to reactivate the business environment and to aid the function of the local administration.

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