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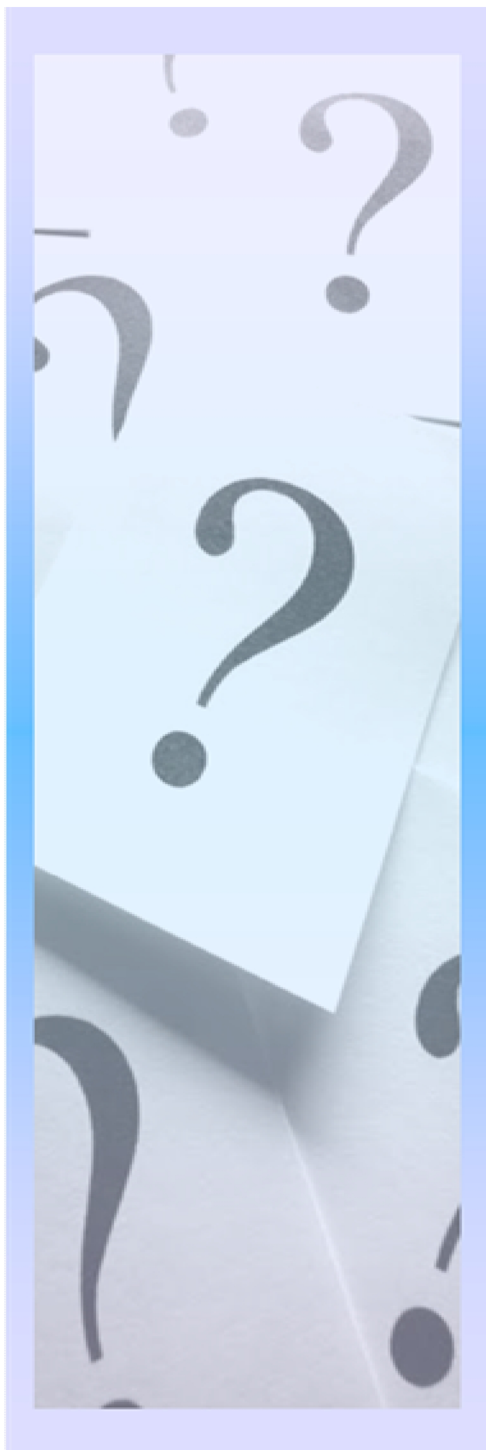

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Greece

by Konstantinos Karetsos (Athens)

Withholding tax on the interest obtained from natural and legal persons that do not have their tax residence in the Greece and do not maintain a permanent establishment in Greece

On 17 June 2016, the General Secretary of Public Revenues issued the No 1078 Circular regarding the taxation of savings in the form of interests. Specifically, the provisions of art. 5 of L.4378/2016 incorporate into the Greek legislation the art. 1 of Directive (EU) 2015/2060, repealing Directive 2003/48/EC on the taxation of savings in the forms of interest in order to determine firstly the context of the obligations that Greece applies under the Directive to other than Austria Member States and the economic operators and the paying agents established in Greece and secondly the context of exceptions Austria applies and it's economic operators and paying agents.

Specifically, since from 1.1.2016 the Directive 2003/48/EC is abolished, the provisions of articles 3 to 13 of L. 3312/2005 and the respective regulatory decisions issued are also abolished, only to the extent relating to the EU Member States.

Moreover, it shall be noted that, based on the position of the EU Council, other than above derogation for Austria, the repeal of Directive 2003/48/EC was considered essential to avoid the double obligation for the exchange of information (through Directive 2003/48/EC and through Directive 2014/107/EU), because from 01.01.2016 apply the provisions of art. 1 to 4 of L. 4378/2016, under which was transposed to the Greek legislation the Directive 2014/107/EU with regard to the mandatory automatic exchange of information in tax matters and in order to save costs for both tax administrations and for economic operators.

Thus, after the abolition of art. 3 to 13 of L.3312/2005, the general income tax provisions apply, i.e. the income of interests acquired by natural persons not having their tax residence in the Greece, as well as legal persons or legal entities that do not have their tax residence and do not maintain a permanent establishment in Greece, is subject to 15% withholding taxation, as provided in the relevant Double Taxation Conventions.

The Council of State changes the taxation for foreign tax residents

Separate tax declarations for spouses with different tax residence

On 29 June 2016, the Council of State issued the No 1445/2016 decision and clarified the issue of the meaning of art. 4, para. 1 L. 4172/2013 (Income Tax Code) with respect to tax residence of a natural person in Greece.

Specifically, in order to determine if an individual has a domicile in Greece, all the relevant factors must be taken into account. Especially the existence of household, the physical presence of him/her, the members of his/her family (which does not include only the spouse and his/her

children), the place of performance of its professional activities, the place where its property interests reside, the place of administrative links to public authorities and institutions (insurance, professional, social), the place of the development of its political, cultural or other activities.

Additionally, under the general social and moral attitudes of this period and depending on the socio-economic data of the spouses, the separate residence of them is possible. Thus, if a married individual is not obligated to submit income tax return in Greece, on the ground that it is not Greek tax resident, it is not obliged to submit a joint tax declaration with his or her spouse, solely because the spouse, according to art. 4 para. 1 of the above law meets the criteria to qualify as a Greek tax resident, irrespective whether the obligation to submit a joint declaration is or is not consistent with precedent force provisions.

Moreover, the electronic system of the tax declarations' submission does not accept different declarations from spouses, in case one of them is Greek tax resident. However, the said system should be adapted to the rules of tax law and serve the needs of their correct application and not the opposite.

In conclusion, if an individual does not qualify as Greek tax resident, a double residence issue is not raised. Therefore, there is no need to settle it (residence issue) and remove the conflict of taxation powers between Greece and the other State, which results the application of the Double Taxation Convention between them.

Alterations to tax provisions

On 27 July 2016 the Greek parliament voted tax amendments included into the draft legislation for the alterations to the National Customs Code. Specifically, the L. 4410/2016 brings significant changes to tax law provisions, i.e. the tax certificate, the Unified Real Estate Property Tax (EN.F.I.A), the Tax Procedure Code and the contractors' withholding tax.

1. Tax certificate

The annual tax certificate is issued hereafter optionally for the S.A. companies, the Limited Liability companies and the branches of foreign companies in Greece without any sanctions. Moreover, the said certificate has informational character for the Tax Authority. The above companies are obliged to assign the issuance of the tax certificate every 5 years to different statutory auditor or auditor firm.

2. Unified Real Estate Property Tax (EN.F.I.A)

The natural persons are not obliged to pay supplementary tax on the agricultural parcels of individuals for the fiscal year 2016.Especially, the first installment is paid due to 30 September 2016 and the last due to 31 January 2017 for the year 2016.

3. Tax Procedure Code

a) Transfer Pricing

The new deadline for the completion of the Documentation File for Transfer Pricing transactions and the submission to the Tax Administration of the Summary Information Table is hereafter the same with the deadline of the annual income tax declaration submission. The

above applies to Documentation Files that are compiled for transactions of fiscal years starting from 1.1.2015 and onwards. The said legislation provides the possibility for small and very small entities (as defined into the Greek Accounting Standards) to exempt, by decision of the General Secretary's of Public Revenues, from the Documentation File's obligation.

Moreover, the time limit that the General Secretary of Public Revenues is obliged to issue its decision of the GSPR on APA's is extended from 120 days to 18 or 36 months the starting from the applications' submission date.

b) Tax Register

There are not imposed sanctions to taxpayers when they declare personal information (i.e. date of marriage, death etc) to the Tax Office. Additionally, the time-period within the taxpayer is obliged to declare to the Tax Authority any alterations to information reported upon registration are extended from 10 to 30 days. The said alterations must be written and include changes to the corporate name, the distinct title, the home address or the address of the business premises, the head office, the object of activity, the email address etc.

c) Local inspections

The local inspection to the taxpayers' residence requires the presence of a judicial officer along with the mandate of the competent prosecutor.

d) Administrative appeal

The foreign tax residents are obliged to submit to the Tax Authority an administrative appeal within 60 days starting from the date the competent Tax Authority notified them for the amount they shall be paid or from the omission made.

4. Contractors' withholding tax of 3% at the assignment of public technical projects

A new provision is added to the Income Tax Code according to which in the case of the assignment of a public technical project to a subcontractor (joint venture or company of any other form) the contractors' tax shall be withheld only by the contractor of the project (Government, Municipality, Public Companies, etc.) upon the payment of the contractor's consideration.

Poland

by Piotr Kloc (Warsaw)

Tax on Retail Sale in front of the Polish Parliament

On 23 June 2016, was held a parliamentary meeting referring to Tax on Retail Sale. The draft of Act was prepared by Polish Government in February 2016, however due to stormy protests of retailers during public consultations, the core of the Act has been changed. Government withdrew from the idea of taxing retailers depending on the surface of their markets. Government

changed to criteria of total income raised from retail sale (decreased by VAT). The income of retailers is taxable if it exceeds 17.000.000 PLN in each month. The tax base is 0,8 % from the exceeded amount up to 170.000.000 PLN. If the exceeded income reaches the limit, it will be taxed progressively with 1,4 % tax base.

For example, if retailer reaches a monthly income about 400.000.000 PLN, the amount between 17 – 170.000.000 PLN will be taxed with 0,8 % tax base and the amount between 170 – 400.000.000 PLN will be taxed with 1,4 % tax base. The retail sale is understood as consumer's sale conducted within territory of Poland directly or indirectly, however Internet sale is excluded. The Act regulates exclusions in the area of following consumer's goods distribution: electricity, gases, fuels, heating oils, water, as well as medicine and gastronomic products. The tax will be payable monthly on the basis of monthly incomes until 25th of the following month. The Act was intended to come into force within 1st August 2016, however due to prolonged public consultations, it is expected to be adopted within September 2016. The main purpose of this Act is to finance social programs like "family 500+" from the turnovers of big retailers. The Retail Sale Tax will be a deductible tax cost for the retailer. Government estimates annual inflows to state budget from Retail Sale Tax on the level of 1.890.000.000 PLN.

Romania

by Corina Bădiceanu (Bucharest)

L. 112/2016 on the approval of the Urgency Enactment No. 41/2015 for the amendment of certain normative acts, as well as on the provision of certain budgetary measures

On 30 May 2016, a law on the approval of the Urgency Enactment No. 41/2015 for the amendment of certain normative acts, as well as on the provision of certain budgetary measures was published in the Official Gazette under the No. 112/2016.

One of the most important provisions of the L. 112/2016 is the amendment of the newly in force Romanian Fiscal Code as regards the payment of the health contributions. Thus, L. 112/2016 introduces an optional procedure on the payment of the health contributions owed by natural persons that do not have incomes as mentioned by article 155 of the Fiscal Code or that have monthly incomes exclusively out of investments and/or other sources with a monthly basis for the calculation lower than the gross minimum wage and that are not natural persons exempted from the payment of health contributions or for whom the payment of health contributions is covered from other sources.

This optional procedure gives the said persons the right (i) to either pay, monthly, the health contributions in an amount of 5.5% calculated on the gross minimum wage for a period of time of at least 12 consecutive months or (ii) to pay, on the date the health public services are

accessed, the health contributions in an amount of 5.5% calculated on the gross minimum wage multiplied by 7.

In order for the abovementioned persons to pay the relevant health contributions, a statement must be submitted to the fiscal authorities. The gross minimum wage abovementioned is the one approved by the Romanian Government at the time of the submission of the statement. The minimal period of 12 consecutive months is calculated from the submission of the statement to the fiscal authorities.

EU

by Konstantinos Karetsos (Athens)

The EU Commission proposal for an EU anti-tax avoidance directive was welcomed by the EU Parliament

On 8 June 2016 the EU Parliament voted in favour the EU Commission's proposal for an EU anti-tax avoidance directive published on 28/01/2016. MEPs nonetheless advocated stricter limits on deductions for interest payments and tougher rules on foreign income. They also called for more transparency for trust funds and foundations, common rules for "patent box" tax reductions on intellectual property earnings, and an EU blacklist of tax havens and sanctions against uncooperative jurisdictions.

The anti-tax avoidance directive reflects the OECD's action plan to limit tax base erosion and profit shifting (BEPS) and follows recommendations made by Parliament in November (TAXE 1 report) and December (legal recommendations drafted by EP rapporteurs Dodds and Niedermayer) last year.

The proposal builds on the principle that tax should be paid where profits are made and includes legally-binding measures to block the methods most commonly used by companies to avoid paying tax. It also proposes common definitions of terms like "permanent establishment", "tax havens", "minimum economic substance" "transfer prices", "royalty costs", "patent boxes", "letterbox companies" and other terms hitherto open to interpretation.

Switch-over clause

MEPs are more ambitious than the Commission with regard to the "switch-over rule" for earnings taxed in a country outside the EU and then transferred to an EU member state. This so-called "foreign income" is often exempt from taxation, so as to avoid double taxation. MEPs favour setting a minimum rate of 15%, i.e. if foreign income was taxed at a lower rate outside the EU, then the difference would need to be paid.

Further recommendations include, inter alia:

- limiting the deductibility of exceeding borrowing costs only up to 20% of the taxpayer's earnings or up to an amount of EUR 2.000.000, whichever is higher,

- drawing up an exhaustive 'black list' of tax havens and countries, including those in the Union, complemented with a list of sanctions for non-cooperative jurisdictions and for financial institutions that operate within tax havens,
- prohibiting the use of letterbox companies,
- swiftly introducing of a common consolidated corporate tax base (CCCTB),
- increasing the transparency of trust funds and foundations,
- introducing a common method for calculating the effective corporate tax rate in each member state, so as to allow for comparison across the EU,
- a cross-border tax dispute resolution mechanism with clearer rules and timelines, to be introduced by January 2017, and
- creating a harmonised, common European taxpayer identification number (TIN) to serve as a basis for effective automatic exchange of information between member states tax administrations.

Source:
http://www.europarl.europa.eu/news/en/news-room/20160603IPR30204/parliament-calls-for-crackdown-on-corporate-tax-avoidance

BREXIT: potential tax implications on multinational companies

On 23 June 2016, the people of the UK voted to leave the EU. Upon leaving the EU, unless agreed otherwise in the withdrawal agreement, the UK will cease to benefit from (or be bound by) the various European tax directives, such as the Interest and Royalties Directive (IRD), the Parent/Subsidiary Directive (PSD), directives on administrative cooperation and mutual assistance, the EU proposed initiatives (Accounting and Anti-Tax Avoidance Directive).

Specifically,

PSD and IRD

The PSD and IRD provide exemptions from withholding tax on dividends, interest and royalties between related parties in the EU. The PSD also provides exemption from tax on receipt of dividends from an EU subsidiary.

Other Directives

Following the UK's formal withdrawal from the EU, the EU directives on administrative cooperation and mutual assistance will no longer apply in the UK, including the forthcoming automatic exchange of tax rulings. Overall, however, the impact is likely to be limited given the broadly similar rights and obligations under the OECD multilateral convention.

Other proposed EU initiatives would also cease to apply upon Brexit, such as public country by country reporting under the Accounting Directive and the Anti-Tax Avoidance Directive. The latter is proposed to come into effect from 1 January 2019 and accordingly may post-date the UK's exit in any event.

VAT and the customs union

Leaving the EU will have significant compliance implications for VAT and customs duties, as supplies that are currently intra-EU become exports and imports. Reporting and cashflow management will need to be reassessed (including having regard to the less streamlined 13th Directive refund process) and existing cross-border supply chains could become unwieldy and inefficient.

In conclusion, group structures can and should be reviewed to identify areas where a cessation of EU membership could cause tax leakage, and consideration given to the possibility of pre-emptive restructurings before the UK formally exits the EU.

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