September 2022

Tax Alert

New law: Significant amendments in the tax legislation

On 21/09/2022 the Greek Parliament passed a bill, which will enter into force as a law upon its publication in the Government Gazette, that introduces significant amendments in the tax legislation such as among others the provisions of the VAT Code (L.2859/2000), the Income Tax Code (L.4172/2013) and the Tax Procedures Code (L.4174/2013) to streamline the taxation of natural and legal persons and entities, as well as procedures to enhance tax compliance.

A. Stamp duty on Corporate interest-bearing loans and other financing acts

Reintroduction of stamp duty to interest-bearing loans

- The new law amends article 63 of the VAT Code (law 2859/2000) which imposed by virtue of the introduction of VAT, the abolition of stamp duty on transactions subject to article 2 of the VAT Code (object of the VAT) and on their associated agreements. In particular, a new paragraph is added which, exceptionally, revives the imposition of stamp duty on interest-bearing loans and other financing as well on the resulting contractual interest.

Retroactive effect

The provision has retroactive effect from 1/1/2021, whereas for loans, other financing acts and the resulting interest covered by the new provisions, stamp duty is timely paid until 31/12/2022.

Key points and scope of the new provision

- ***Introduction of a new regulation***
  - The new provision introduces a new regulation which allows, from the date of its entry into force, the imposition of stamp duty on interest-bearing loans/other financing acts and the resulting contractual interest, regardless of whether the transactions in question also fall within the scope of VAT.
  - Given that the financing in question falls under the scope of stamp duty in accordance with the new provision, the possibility of their exemption in the context of territoriality should be examined on a case-by-case basis, taking however into account the existing jurisprudence of the Administrative Courts and the Dispute Resolution Committee, which has been strongly influenced by the substance over the form principle limiting that way the possibility of exemption.
- ***Compatibility of the provision with Community law***

  The amended form of Article 63 of the VAT Code seems to be in line with the corresponding Article 401 of the EU VAT Directive, as jurisprudentially interpreted by the CJEU. In particular, based on the criteria examined by the CJEU to assess whether an indirect tax has the characteristics of a turnover tax and therefore cannot be applied parallel to VAT for the transactions it covers, it follows that in the case at hand the imposition of a stamp duty could be applied parallel to the VAT provisions.
- ***Effect of the provision on pre-existing loan/financing relationships***

  It should be further explored:
  - Whether the interest-bearing loans concluded before 1/1/2021 that were disbursed and/or repaid after 1/1/2021, may be exempt from the stamp duty.
  - Whether the interest-bearing loans concluded before 1/1/2021 which are amended after 1/1/2021, are subject to stamp duty depending on whether the clauses that are amended constitute a new loan.
  - Whether stamp duty is imposed on balances transferred after 1/1/2021 in case of current account loan agreements concluded before 1/1/2021.
  - the stamp duty treatment of interest-bearing cash pooling agreements concluded before 1/1/2021 depending on whether these agreements will be regarded as loan agreements or current account loan agreements.
- ***Interest paid after 1/1/2021 on interest-bearing loan agreements concluded before 1/1/2021***

  It should be further explored whether stamp duty is imposed on interest paid after 1/1/2021 arising from loan agreements concluded before 1/1/2021.
- ***Stamp Duty refund request for interest-bearing loans concluded before 1/1/2021***

  The possibility of a stamp duty refund request for interest-bearing loans concluded before 1/1/2021, should be further explored.

B. Special solidarity tax

- The imposition of the special solidarity tax is abolished for any income acquired from 1/1/2023 onwards.
- For tax year 2022, all types of income are exempt from the special solidarity tax with the exceptions of employment income earned by employees of the public sector and pension income.

C. Taxable income for individuals

The extra-institutional allowance and any related amount paid to certain categories of people with disabilities is excluded retroactively as of 1/1/2022 from the calculation of taxable income from salaries and pensions, regardless of the providing entity.

D. The concept of donation or parental grant of cash

The concept of donations or parental grants of cash, that are paid through credit institutions and are donation tax exempt up to the amount of 800.000 € includes donations and parental benefits carried out within the period from 1/10/2021 to 9/9/2022 by withdrawing money from the donor's/parent individual or joint bank account and depositing the same amount within three (3) working days in an individual account of the donee/child or in a joint account of the donee/child with the same donor/parent or third party.

E. Deadline for payment of debt

Extension until 31/05/2023 of the deadlines for the payment of debts and installments of arrangements to the Greek State (Tax Authorities /Audit Centres/ Centres for the Assessment and Collection of Debts (K.E.A.O.)) of certain categories of natural and legal persons and entities that have been affected by the war in Ukraine and fall under the provision of art. 118(1) of Law 4964/2022.

F. Transfer Pricing Issues

- If, following a tax audit, profits from intragroup transactions that have been subject to tax in Greece are included in the profits of a legal entity, the related party that is subject to tax may request a corresponding adjustment to its taxable profit. This is carried out by means of a filing of an amending tax return, accompanied by the audit report issued by the tax authorities within a deadline of 3 months from the notification of the act of the corrected tax assessment to the audited legal person.
- The refund or offsetting of tax at the level of the related party is conditional upon the payment by the audited legal entity of the tax assessed in the context of the correction of the profits from the intra-group transactions entered into between the two related parties.
- Insofar as an amending tax return is filed by the related party in line with the above, while the corrective tax assessment is contested by the audited legal person, there being issued a decision pursuant to article 63 or article 63B of the Tax Procedures Code (L. 4174/2013) or a record of the Extra-judicial Dispute Resolution Committee or a court judgment which (partially or fully) annuls the corrective tax assessment, the corresponding correction in the profits of the related party being carried out with the initiative of the Tax Administration.
- The above applies as of the date of entry into force of the law and also covers pending cases (for which the three-month deadline for the filing of an amending tax return begins from the entry intro force of the law). Specific provisions have been enacted governing both the right of a tax refund following the filing of an amending tax return as well as the extension of the statute of limitations, in cases where the amending tax return for a particular year is submitted during the last year before the lapse of the statute of limitations of that particular year.

G. Penalties for non-transmission of data pertaining to retail sales documents, issued via FIM, to the "myDATA" digital platform

- In case of non-transmission of summaries of retail sales documents, transmitted to the "myDATA" digital platform through the Information System of Electronic Tax Mechanisms (FIMs) of the Independent Authority for Public Revenue (IAPR), the following penalties will be imposed:
  - **For transactions subject to VAT:** The penalty is equal to fifty percent (50%) of the VAT indicated on each non-transmitted document. This penalty, aggregated per tax audit, may not be less than five hundred (500) euros, where a double-entry accounting system is maintained, or two hundred and fifty (250) euros, where a single-entry accounting system is maintained.
  - **For transactions not subject to VAT:** The penalty, per tax audit, amounts to one thousand (1,000) euros, when a double-entry accounting system is maintained, or five hundred (500) euros, when a single-entry accounting system is maintained.
- Furthermore, apart from the above penalties, the suspension of **the operation of business establishments is stipulated.** In detail:
  - Failure to transmit to the FIM Information System of the IAPR, more than ten (10) retail sales documents issued through FIM, or, regardless of the number of such documents, in case the value of goods or services not transmitted exceeds five hundred (500) euros, shall result in the immediate suspension for forty-eight (48) hours of the operation of the business establishment where the audit was carried out.
  - If, within the same or the following tax year after the detection of the above violations, it is found again, by the same partial on-site audit, that at least three (3) retail sales documents issued through FIM, regardless of their value, have not been transmitted to the FIM Information System of the IAPR at the same or another business establishment of the liable person, the operation of the business establishment where the audit was conducted shall be suspended immediately for ninety-six (96) hours.
  - In the event of any subsequent finding by the same partial on-site audit of a relapse within two (2) tax years of its discovery in any business establishment of the liable person, the operation of the business establishment in which the audit was carried out shall be suspended immediately for ten (10) days.
- The above apply to violations committed from **31 October 2022 onwards.**

G. VAT exemption

The delivery of goods or the provision of services carried out by Greek and foreign legal bodies or persons, including the Federal State Republic of Germany to the legal entity of the public sector "Jewish Community of Thessaloniki" for the purpose of building the Holocaust Museum of Greece is included in the special VAT exemption of article 27(1)(ist) of the Greek VAT Code (Law 2859/2000).

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