

Distribution of shipping profits & implementation of FATCA

The Greek MoF recently published a decision on the withholding tax treatment of dividends, which may be of interest to shipping companies. Also, please see below an update on the implementation of FATCA between Greece and the US.

Distribution of profits from a company engaged in shipping as well as in other activities

The Greek Ministry of Finance (MoF) has issued interpretative guidelines (POL 1012/2017) in relation to the tax withholding process in case of distribution of profits of Greek companies engaged not only in activities which are subject to income tax but also in activities which are tax exempt.

Such guidelines clarify the following:

- According to Greek corporate law the profits of an entity constitute an integrated and indivisible whole which means that they cannot be distinguished as taxable and tax exempt.
- Technically, a company engaged both in activities which are subject to income tax and in activities which are tax exempt (e.g. shipping activities) cannot distribute profits arising exclusively from tax exempt activities, since the company's financial accounts do not reflect annual net profits separately per source of income (i.e. profits arising from taxable or tax exempt activities).
- Therefore, a pro-rata calculation should be performed to allocate distributed profits between taxable and tax exempt. In view of the above, upon distribution of dividends from shipping companies engaged also in other non-shipping activities, part of the profits should be reported as tax exempt shipping dividend while the remaining part should be reported as taxable dividend. The applicable allocation key does not seem to be indicated in the ministerial guideline and may need to be reviewed on a case by case basis.
- The potential impact of the above guidelines on profit distributions from non-Greek shipping companies should be further explored.

Agreement between Greece and the US on the implementation of FATCA

On 19 January 2017 Greece signed an agreement with the United States of America to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA). The agreement is based on Model 1 Intergovernmental Agreement published by the US Treasury for the implementation of FATCA and provides for annual exchange of information on an automatic basis.

According to such agreement, financial institutions (e.g. banks) of both countries shall collect the information specified in the agreement relating to the financial accounts held (i) by US persons with Greek financial institutions and (ii) by Greek tax residents with US financial institutions and report such information to their domestic tax administration. The tax administrations of each country will then exchange the above information on an automatic basis.

Among the information that the Greek tax administration is obliged to exchange is the account balance of the reportable accounts as at the end of the relevant calendar year, whereas the US tax administration will only have to report the amounts of interest paid to the account, the US source dividends and other US source income paid or credited to the account.

Pursuant to the agreement the Government of the United States is committed to further improve transparency by pursuing the adoption of regulations, in order to achieve such equivalent levels of reciprocal automatic exchange of information. **It is not clear yet when the United States will initiate the procedures to automatically transmit information towards Greece.**

The agreement is expected to be ratified soon and will enter into force as soon as Greece has completed its necessary internal procedures for entry into force of this agreement.

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