ZEPOS & YANNOPOULOS

Tax Newsletter

Information on recent tax law developments in Greece

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In this newsletter

A. Direct Taxes

Dividends, interest & royalties; Greek MoF publishes guidelines on applicable tax treatment

The Greek Ministry of Finance has recently published one of the long anticipated Decisions (POL 1042/2015) guiding on the implementation of relevant provisions of the Greek Income Tax Code (Law 4172/2013) on the taxation of dividends, interest and royalties earned from 01.01.2014.

Points to be highlighted may be summarised as follows:

Branch profits explicitly outside of scope of 10% dividend withholding tax

It has been clarified that profits remitted by a Greek branch to the foreign head-office are not subject to 10% dividend withholding tax. The clarification confirms the position that the remittance of profits from a branch to the head-office does not constitute a distribution of profits in the absence of two separate legal entities.

To be noted that under the previously applicable regime (Law 2238/1994 applicable until 31.12.2013), branch profits were treated similarly to dividends for withholding tax purposes.

Remuneration paid out of profits to executives and employees classified as dividend

Dividends are defined in a broad manner encompassing, among others, any remuneration (e.g. bonus) paid out of profits. According to Ministerial Decision POL 1042/2015, payments in question qualify as dividends, not only if paid to BoD members and managers, but also to other company employees.

To be noted that dividends earned by Greek tax resident individuals are subject to 10% final withholding tax, whereas salary income is subject to income tax calculated on the basis of progressive rates going up to 42%.

Interest earned by Greek or foreign credit institutions

According to article 64 par. 6 of the Greek Income Tax Code, loan interest earned by credit institutions is exempt from withholding tax. The Decision (i) confirms that exemptions cover also non Greek resident banks and in fact (ii) expands the scope of the exemption to interest on any credit granted in the context of the business activity of such banks and not just strictly loans (with the exception however of bond loans).

Foreign source dividends/interest earned by Greek tax resident individuals

Following enactment of the New Income Tax Code (Law 4172/2013) there has been uncertainty in relation to the tax compliance obligations of Greek tax resident individuals earning foreign source dividends and interest as of 01.01.2014.

It has now been clarified that, Greek tax resident individuals should report foreign source dividends and interest in the context of their annual income tax return, instead of personally withholding and paying the relevant tax to the State at the time of earning the relevant income. This is with the exception of foreign source interest paid through a Greek bank, in which case, the bank qualifies as a paying agent and is liable to withhold and pay to the State 15% tax on the relevant gross amount of interest.

Filing of nil withholding tax returns

It is clarified that withholding tax filing obligations remain applicable, even in the event that no withholding tax is

payable to the State, as a result of the application of a Treaty for the Avoidance of Double Taxation. However, in the event that there is no tax liability in accordance with domestic legislation (e.g. in relation to management fees paid to foreign entities without a permanent establishment in Greece), it is no longer required to file a nil withholding tax return.

Participation exemption and withholding tax exemption of qualifying intra-group payments; Greek MoF publishes guidelines (POL 1039/2015)

The Greek MoF issued guidance (POL 1039/2015) addressing the conditions for application of the tax exemption status of both inbound and outbound dividends and intercompany payments of interest and royalties, falling within the scope of EU Directives (namely the EU Parent Subsidiary Directive and the EU Interest & Royalties Directive). Guidance in question concerns dividends, interest and royalties earned from 01.01.2014. Key points are summarised below:

- The participation exemption regime applies to both Greek and EU sourced dividends, as long as the conditions for application of the regime are met (i.e. minimum shareholding of 10% for more than 2 consecutive years).
- Nil withholding tax returns should be filed in relation to qualifying dividends, interest & royalties paid to both Greek and EU affiliated enterprises, accompanied by a documentation certifying fulfillment of the conditions for tax exemption.

A template of the required documentation is expected to be issued shortly by the MoF.

Capital gains from the disposal of shares, bonds and other securities; changes in law and MoF guidelines (Law 4316/2014 and POL 1032/2015)

Capital gains on transfers of securities by individuals

Law 4316/2014 has introduced a number of amendments to the scope of application and determination of taxable basis in respect of capital gains tax arising from transfers of securities by individuals.

The recently introduced Greek Income Tax Code lists in a restrictive manner the securities which, upon transfer, give rise to capital gains tax for individuals. These securities which originally were shares, partnership quotas, corporate and sovereign bonds, Treasury bills and derivatives now include any securities listed on a stock exchange.

Before the amendments, the holding of a minimum of 0.5% in the share capital and the acquisition of shares on or after 01.01.2009 were cumulative conditions for capital gains tax to apply only in relation to transfers of shares listed on a stock exchange. Under the recent statutory amendments, the minimum shareholding condition has now been extended to restrict from the scope of capital gains tax transfers of securities in general listed on a stock exchange and not just shares. Also, the restrictive condition related to the time of acquisition now applies in general to transfers of securities trading on a stock exchange or Multilateral Trading Platform, so that those that had been acquired before 01.01.2009 are, when transferred, outside the scope of capital gains tax irrespective of the percentage of participation in the share capital of a company. To be noted that listed shares sales tax at 0.2% is still applicable.

Guidance in the form of a circular issued by the Greek Ministry of Finance on 26.01.2015 (POL 1032/2015) clarified that warrants acquired as a result of the recapitalisation of the Greek systemic banks National Bank of Greece, Alpha Bank and Piraeus Bank are included in the definition of securities. Quotas in Greek Limited Liability Companies (EPEs), Private Companies (IKEs) and participations in joint ventures are also included in the definition, according to the guidance. On the other hand, the circular confirms previously existing statutory exemptions from income tax in respect of capital gains arising from the disposal of Greek corporate bonds issued under the regime of Law 3156/2003 and states that the same applies for capital gains arising from the transfer of corporate bonds issued by EU/EEA/EFTA companies. According to the guidelines, for bonds acquired on the secondary market, any difference as at maturity between the par value and acquisition cost of bonds is not covered by the scope of the provision taxing capital gains.

To be noted that the same circular contains further detailed guidance in relation to the scope of application and determination of taxable basis as well as the requirements for the tax exemption of non-Greek tax resident individuals, based also on the relevant statutory rules. It is clarified that the treatment of the disposal of shares in shipping companies is not affected by the rules interpreted by the guidance.

As regards another highly debated issue, the recent statutory amendments in Law 4316/2014 relaxed the explicit conditions under which securities trading by individuals could be deemed as a business activity and thus trigger higher tax rates (up to 33%) as opposed to capital gains tax rates applicable to individuals (15%). The conduct of three similar trades within six months which was previously deemed as a business activity now excludes transactions on securities trading on Multilateral Trading Platforms in addition to the previously existing exemptions covering securities trading on stock exchanges, corporate bonds issued by listed companies and sovereign bonds.

Corporate actions (such as splits, capital reduction etc.) are now taken into account for purposes of calculation of the acquisition cost as part of the determination of the taxable basis for capital gains tax purposes. In cases of multiple share acquisition transactions, acquisition cost is set on the basis of the average acquisition cost (aggregate acquisition cost divided by number of shares).

The rules relating to the determination of the taxable basis for capital gains tax purposes have been amended to allow the offsetting of gains and losses arising from the transfer of all types of securities enumerated in the law whereas up to now gains and losses in relation to derivatives were intended to be treated separately.

Tax exemption of non-Greek resident legal entities (POL 1032/2015)

According to the guidance issued by the Greek Ministry of Finance in relation to the scope of the rule on the taxation of capital gains arising from the transfer of securities (POL 1032/2015: see also immediately previous section), capital gains earned from the disposal of the assets in question by foreign legal persons/ entities without a Greek permanent establishment (to which such gains are attributable) are not subject to Greek income tax. From the compliance point of view, it has now been clarified that there is no obligation for filings in Greece in order for such persons to be exempt.

Tax treatment of Greek and EU UCITS (POL 1032/2015, POL 1042/2015, and POL 1044/2015)

According to the guidance issued by the Greek Ministry of Finance in relation to taxation of capital gains arising from the transfer of securities (POL 1032/2014), the disposal of units in what is referred to as "UCITS" established in non EU/ EEA/EFTA jurisdictions, falls within the scope of capital gains tax. However, according to the guidance, capital gains arising from the disposal of shares and units in UCITS established in Greece and EU/EEA/EFTA jurisdictions are tax exempt. The tax exemption of the latter derives also from the jurisprudence of the CJEU. Similarly, guidance issued in relation to the taxation of dividends and interest (POL 1042/2015), clarified that profits from shares and units in UCITS established in EU/EEA/EFTA jurisdictions and "mutual funds" established in third countries fall in principle within the definition of dividend, but when it comes to profits in the form of dividends or other proceeds from shares and units in UCITS established in EU/EEA/EFTA, there is an income tax exemption.

As regards taxation of the relevant undertakings, previously existing statutory exemptions from income tax in respect of UCITS established and licensed by the authorities in Greece (which by virtue of Law 4099/2012 are

taxed on the basis of a percentage applying on the net value of assets under management) have been confirmed. It is notable however that it has been clarified that the income tax exemption applies also for UCITS established in EU/EEA jurisdictions (POL 1044/2015).

B. Indirect Taxes

New guidelines for the VAT exemption of imports for direct transport to another EU member state

On 21.01.2015 the Greek Ministry of Finance published new guidelines in relation to the procedure for the VAT exemption of imports of goods directly transported to another EU member state (in the context of an intra-Community supply). The new procedure applies to importers established both in Greece and in other EU member states.

Applicable requirements include the following:

- Importers established in other EU member states should acquire a Greek VAT number through the appointment of a (jointly liable) fiscal representative in Greece, unless explicitly relieved from such requirement by the competent Customs authorities. Customs authorities may approve of the relief in the event that the EU importer or his customs representative in Greece (i) holds an Authorised Economic Operator ("AEO") certificate and (ii) imports goods in Greece with direct transport to another EU member state, in order to fulfill relevant contractual obligations requiring a continuous flow of imports.
- The customer in the EU member state of final destination should be a VAT taxable person holding a valid VAT number.
- The importer must invoice the customer in the EU member state of final destination and hold a transport contract/transport documents reflecting the final destination of the goods, before the goods are removed from customs control and are loaded for transport to another EU member state. The above documents must be referred in the relevant customs declaration of import.
- After the import of the goods with a VAT exemption according to the above, the importer should submit supporting documents in relation to the intra-Community supply of the goods to the EU member state of final destination (e.g. copies of the relevant ESL lists and Intrastat returns of dispatch).

Excise goods are outside the scope of the above procedure.

In the event that the procedure for VAT exemption is not observed, the

relevant amount of the tax shall become due, along with relevant penalties for violation of Greek customs legislation.

Use & enjoyment rule: limitation of scope

Until now, Greek VAT rules provided for a very broad scope of application of the use and enjoyment rule covering (i) all B2B services rendered by Greek suppliers to non-EU entities, falling under the general reverse charge rule (ii) all B2C services rendered by non-EU entities to Greek non-taxable persons (iii) hiring of means of transport and (iv) certain B2C services rendered by Greek suppliers to non-EU recipients.

With effect as of 01.01.2015, law 4316/2014 has limited the scope of application of the use and enjoyment rule to (i) the hiring of means of transport (ii) the supply of telecommunications, broadcasting and electronic services to non-taxable persons established outside the EU and (iii) the hiring out of movable tangible goods to non-taxable persons established outside the EU.

Implementation of the Mini One-Stop Shop (MOSS) scheme

Law 4316/2014 has incorporated the provisions of Directive 2008/8/EC on the Mini One-Stop Shop (MOSS) scheme for telecommunications, broadcasting and electronic services supplied to non-taxable persons. With effect as from 01.01.2015, such services have become subject to VAT at the place, where the service recipient is established. The service provider is liable to charge and account for the VAT due. Under the scheme (EU and non-EU) suppliers of the above services may acquire or maintain a single VAT registration in any EU Member State through which they will charge and account for the VAT due in other Member States.

New simplified format of periodic VAT returns

In the context of the recommendations submitted by the OECD to the Greek Government for the reduction of administrative burdens, Circular 1198/2014 has introduced a new simplified layout of the periodic VAT returns filed by taxpayers established or registered in Greece. Taxpayers should complete the new format of the return in relation to transactions taking place after 01.01.2015. VAT refund claims have been incorporated in the new format of the returns, substituting separate refund claims that taxpayers had been filing until now.

Furthermore, following the abolition of the obligation to file annual VAT returns (for fiscal years ending after 01.01.2014), the result of adjustments that were made until now in the annual VAT returns (e.g. pro-rata, fixed assets

adjustments), will now be incorporated in the respective periodic VAT return. Clarifications are pending on this matter (e.g. whether adjustments should be reflected in the last VAT return of the relevant fiscal year).

Credit notes for VAT charged incorrectly

According to the rules that were applicable until 31.12.2014, if VAT was incorrectly charged in an invoice, the invoicing party was neither allowed to issue a credit note for the amount of VAT incorrectly charged nor to claim refund of such VAT. Nevertheless, the invoice recipient was allowed to deduct such VAT.

From 01.01.2015, taxpayers are allowed to issue credit notes for any VAT incorrectly charged, as provided in Law 4308/2014, introducing the new Greek Accounting Standards. The new provision allows taxpayers to reduce their VAT liability towards the State, while equally reimbursing their counterparty.

C. Tranfer Pricing

Transfer pricing audits; guidelines provided by the General Secretary for Public Revenue

The General Secretariat for Public Revenue has recently provided guidelines to tax audit authorities in relation to the appropriate application of transfer pricing legislation (document dated 19.12.2014). Guidelines focus on the following matters:

Reporting of intra-group transactions

Enterprises may submit annual intra-group transactions' lists for past fiscal years, even following initiation of a tax audit for the relevant fiscal year; the guideline is in response to debates between tax auditors and taxpayers on whether delayed submission should be sanctioned as failure to submit a transaction list altogether, to the extent that it takes place after the initiation of a tax audit.

Penalties for delayed reporting of intra-group transactions

The applicable penalty for delayed filing of transactions' lists concerning fiscal years ending up to 31.12.2013 is reduced to Euro 1,000, instead of the generally applicable penalty ranging between Euro 1,000 and Euro 10,000 and calculated at 1/1000 over the enterprise's turnover.

VAT impact of transfer pricing adjustments

The General Secretary has confirmed that the increase of a company's revenue resulting from a transfer pricing readjustment, should not affect the VAT liability of the audited enterprise for the relevant fiscal year.

For further information, please contact us directly

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