ZEPOS & YANNOPOULOS

Tax Newsletter

Greek MoF releases draft guidelines on 26% tax on payments to blacklisted/preferential regimes and other relevant transactions (art. 21 of Law 4321/2015)

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A new rule has recently been adopted in Greece, imposing significant restrictions on the tax deductibility of payments made to preferential tax regimes, non-cooperative tax jurisdictions, as well as in the context of related party transactions (art. 21 of Law 4321/2015). Restrictions in question involve the prepayment of 26% tax on the value of such payments, under certain circumstances (for further details please refer to our March Tax Newsletter).

The new rule has triggered significant turmoil in the market, mostly due to the significant cash flow impact, as well as the strong indication of a potential violation of EU legislation.

On April 23, 2015, the Greek Ministry of Finance released a draft of the highly anticipated Decision, requesting comments from the market. Highlights of the draft Decision are as follows:

- The 26% tax is referred to as a "tax prepayment", as opposed to the term "withholding tax", which is mentioned in the provision of the Law. This comes to clarify that the tax burden in principle lies with the payor, not the payee, since it is imposed on the basis of a preliminary disallowance of the relevant expense of the payor.
- Intra-group transactions are explicitly excluded from the scope of the restriction, provided that the transactions in question are in compliance with Greek transfer pricing legislation, namely art. 50 of Law 4172/2013 adopting the arm's length principle and art. 21 and 22 of Law 4172/2013 concerning transfer pricing documentation and APA's, respectively.
- Domestic transactions are explicitly excluded from the scope of application of the new rule.
- An automatic pre-approval procedure is proposed in relation to specific types of transactions (e.g. transactions with listed companies, purchase of commodities traded in organized markets, ship chartering fees, aircraft rentals), involving

particular filing requirements from the part of the taxpayer, while relieving from the obligation to prepay 26% income tax on the value of the expense.

- Also, a pre-approval procedure is proposed in relation to any type of transaction, under the condition that the taxpayer has appropriate evidence for purposes of proving the business substance of the transaction. Appropriate type of evidence to this end is specifically mentioned in the proposed Decision and includes extensive information in relation to the invoicing entity (e.g. tax residence certificates, copies of financial statements, clientele lists, rental fees, number of employees and related salary costs).
- Taxpayers are eligible to set-off the 26% tax prepayment against their overall income tax liability for the relevant fiscal year, provided that they treat the relevant expense as non-deductible.

It is proposed for the Decision to apply in relation to invoices issued after September 1, 2015.

For further information, please contact us directly

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