TAX newsletter
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Recent tax developments in Greece

During the past couple of months, the Public Revenues Authority and Greek courts have issued a number of interesting decisions and rulings on tax matters. Highlights, summarised in this newsletter, include an update on the much awaited Ministerial Guidance on the tax framework governing corporate re-organisations, the recently published guidelines on Mutual Agreement Procedure, as well as a summary of the much discussed Supreme Administrative Court ruling on the legality of rules extending the prescription period within which the State is entitled to assess taxes.

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Corporate re-organisations: Guidance on the application of articles 52-55 of Law 4172/2013

The Public Revenue Authority has issued by virtue of Circular POL 1057/2017 the much awaited guidelines on the tax rules concerning re-organisations of companies at a domestic or EU cross-border level. The rules, introduced under the fairly recently enacted new Income Tax Code (Law 4172/2013), had provided for the income tax neutrality of qualifying re-organisations implemented as of 1 January 2014 and, following further amendments, for relevant exemptions as to other taxes as of 28 November 2016.

The rules in question cover mergers, total and partial divisions, transfers of assets, exchanges of shares and the transfer of the registered office of an SE or SCE. Up to now, due to lack of guidelines, there was uncertainty as to their application, including their coexistence with previous regimes providing for tax neutrality of certain re-organisations as well as the circumstances triggering tax after having benefited from the roll-over relief granted by the rules.

The just issued guidelines set out in detail the types of re-organisations and types of companies - including IKEs - which are covered by the scope of the new rules and clarify that the existence of these rules does not preclude taxpayers from effecting qualifying re-organisations under the previous regimes providing for tax neutrality (Law 1297/1972 and Law 2166/1993) or without recourse to any such regime. Particularly as regards the provisions that had transposed the EU Merger Directive (Law 2578/1998), it is stated that those can apply in parallel on matters which are not addressed by the new rules.

The relevant authority clarifies that the tax provisions addressed do not affect the – corporate law governed - process of approval and consummation of mergers which regulates issues such as the valuation of assets and determination of share exchange ratio. Further, the circular provides detailed guidance, in 24 pages, by analysing separately each type of re-organisation whereas the authorities also provide examples illustrating certain matters, including situations of perceived abuse of the rules.

Mutual Agreement Procedure ("MAP"): Guidelines on implementation

Guidelines have been issued by the Public Revenue Authority, by virtue of Circular POL 1049/2017, determining the procedure for implementation of the Mutual Agreement Procedure ("MAP"). The Guidelines are in execution of the recently introduced provision in the Greek Code of Tax Procedures, according to which, the General Secretary is authorised to issue or ratify a MAP decision and provide guidelines on the relevant procedure.

The MAP process allows taxpayers who deem that they have been taxed in a manner contrary to a Double Tax Treaty ("DTT") by one or both of the contracting states, to submit their case within a specified deadline to the tax authorities of the state of their tax residence.

Although provided in the DTTs, the MAP process was to date not effectively applicable in Greece in the absence of guidelines on the procedure for its implementation. The purpose of the new guidelines is to remedy the situation, by clarifying practical matters, such as the competent authority to which a MAP request should be filed, the minimum content of the request, applicable deadlines and interaction between the MAP process and pending litigation in national courts.

Supreme Administrative Court ruling on extension of prescription periods

On 8 March 2017 the Supreme Administrative Court issued decision no. 675/2017 on the legality of rules extending the prescription period within which the State is entitled to assess taxes.

The Supreme Administrative Court held that legal provisions extending prescription periods in relation to tax assessments should be in accordance with the constitutional principle of limited retroactivity of tax laws. In this context, the Supreme Administrative Court ruled that an extension of the applicable prescription period is in line with the Constitution, as long as the relevant legislation enters into force, up to one year following the year within which the tax liability has arisen.

Moreover, the Supreme Administrative Court held that according to the constitutional principle of proportionality, the total prescription period, following any extension should still have a reasonable and fair term, though without defining the meaning of "reasonable and fair".

Given the significance of the matter, the Court has referred the case to be heard by the Plenary Session. The final decision is anticipated by the market with great interest, in view of its potential impact of the State's practice to introduce legislation repeatedly extending the prescription period within which the State is entitled to assess taxes.

Credit note for VAT unduly charged

Greek tax law has allowed the issuance of credit notes for VAT unduly charged, since 1 January 2015 (through article 8 par.6 of Law 4308/2014). This covers cases where VAT has been charged at a higher rate than the applicable one, or has been charged without being due at all (e.g. in cases of exempt, zero-rated or out of scope transactions). The Public Revenue Authority issued Circular no. 1052/2015 providing certain clarifications on the matter.

More specifically, credit notes may be issued for VAT unduly charged even before 1 January 2015, although not beyond the applicable prescription period (in principle five years). The VAT rate to be taken into account is the one that was applicable at the time that the initial invoice was issued. The issuer and the recipient of the credit invoice will need to amend the VAT returns that they had filed for the period within which the respective transaction, to which the credit invoice refers, took place.

Service fees paid to Greek PEs of EU entities exempt from withholding tax

According to a Ministerial Decision issued in 2014 (Circular POL 1120/2014), service fees (fees for technical, advisory and other similar services) paid between domestic enterprises are exempt from withholding tax. The same exemption applies for service fees paid to foreign tax resident enterprises providing relevant services in Greece, as long as they do not hold a permanent establishment (PE) in Greece. However, according to the same Ministerial Decision, fees paid to

foreign entities providing these services through a PE in Greece are subject to 20% withholding tax (according to domestic legislation).

The above interpretation is in direct violation of the freedom of establishment, granted under EU legislation. It is for this reason that the Public Revenues Authority has recently issued a new decision (POL 1007/2017), revoking the previous position and explicitly providing that service fees paid to EU tax resident enterprises for services provided in Greece are exempt from withholding tax, irrespective of whether the services are provided through a Greek PE of such foreign enterprise.

Tax deductibility of franchise fees

According to Circular POL 1029/2017, the Public Revenue Authority has re-adopted a past position of the administration, in relation to the tax deductibility of fees paid in the context of franchise agreements. Pursuant to the Circular, any fees paid by the franchisee to the franchisor should in principle be incorporated in the sale price of products supplied to the former by the latter. To the contrary, if charged separately and/or by other enterprises (not by the supplier of the goods), fees in question (e.g. trademark licence fees) are not recognised as tax deductible.

Taxation of distributions from previously untaxed corporate profits in case of availability of tax losses

According to a legislative amendment introduced by virtue of Law 4416/2016 with effect for tax years starting from 1 January 2017, previously untaxed profits which are distributed or capitalised by legal persons and entities are subject to corporate income tax without being offset with any tax losses available as at the year of distribution or capitalisation. The amendment marks a change to the position applicable up to 2016 based on the pre-existing legal provisions and relevant guidelines.

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