

Tax Newsletter

Significant restrictions on the tax deductibility of expenses; article 21 of Law 4321/2015

27 March 2015

On 21 March 2015 a new rule entered into force, heavily restricting the tax deductibility of expenses incurred by Greek enterprises. According to earlier Government announcements, the key objective of the new rule was to counter tax avoidance in relation to transactions with preferential tax regimes and non-cooperative jurisdictions, with a particular focus on triangular structures (i.e. structures whereby there is a distinction between the entity delivering the goods and the entity invoicing the respective supply). However, the provision that has just been ratified by the Greek Parliament is wider in scope.

The new provision (i) introduces a restriction on the tax deductibility of an extensive scope of payments (ii) imposes a preliminary obligation to pay 26% tax on the value of such payments under certain circumstances and (iii) shifts the burden of proof to the taxpayer, in relation to the substance of relevant transactions.

The new provision applies in relation to payments made to:

- Entities established in non-cooperative jurisdictions (i.e. blacklisted states).
- Entities established in preferential tax regimes (a number of EU member states fall within the definition of preferential tax regimes, as set out in the Greek Income Tax Code and relevant Ministerial Guidelines, including Cyprus, Ireland and Bulgaria).
- Associated enterprises, in the event that the Greek paying enterprise has not complied with applicable transfer pricing documentation requirements in relation to the specific transaction.
- Entities that do not have the appropriate resources, either at their premises or at the level of the group, in order to perform similar type of transactions.

The level of compatibility of the new rule with EU legislation and international tax treaties is highly questionable. This has also been commented upon by the Scientific Committee of the Greek Parliament. Furthermore, a number of questions arise in relation to the practical implementation of the rule and its interaction with other provisions of the Greek Income Tax Code (e.g. transfer pricing legislation).

It is anticipated that the Greek Ministry of Finance will soon provide detailed guidelines for the implementation of the new rule and may potentially refine its scope of application, taking also into consideration the comments of the Scientific Committee and the significant market reactions.

For further information, please contact us directly

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