
Recent tax developments in Greece

Law 4438/2016, ratified on 23 November 2016, regulates a number of pending issues on the tax regime governing corporate reorganizations in Greece. The same law also takes a step towards the implementation of the Mutual Assistance Procedure to avoid double taxation of enterprises. On another topic, the Ministry of Finance has published interpretative guidelines (POL 1165/2016), impacting tax compliance obligations of Greek enterprises, in relation to (i) deadlines for transfer pricing reporting & documentation and (ii) the annual tax certificate audit.

Tax neutral re-organizations; amendments to legal framework

The new law introduces amendments to the provisions of the Income Tax Code ("ITC") governing re-organisations involving Greek and/or EU companies and allowing, under conditions, these to be performed in a tax neutral manner:

Anti-abuse provision

Regarding share-for-share exchanges and mergers performed under Article 53 respectively 54 ITC, a rule similar to that already provided for contributions of assets has been adopted, providing that, for the prevention of abuse of the relevant provision, tax authorities may impose conditions for their application.

Expansion of tax reliefs

Furthermore, contrary to other tax incentive laws governing domestic reorganisations (i.e. Laws 1297/1972 and 2166/1993), to date the existing provisions of the ITC provided relief only from income tax. Pursuant to a new provision, regarding reorganisations conducted under Articles 52-55 of the ITC (e.g. mergers, spin-offs, contributions of assets), all agreements and acts required for the reorganisation (e.g. decisions of the statutory bodies of the companies involved in the reorganisation), publication of these acts in the General Commercial Registry and registration thereof will be exempt from any tax including stamp tax and any other duty in favor of the Greek State, as well as from any duty, charge or right in favor of any third party, with the exception of capital accumulation tax. As regards VAT and income tax, the new law confirms application of the existing VAT and ITC rules.

The above will apply with respect to reorganisations initiated after publication of the new law. According to the law's explanatory report, the new provisions aim to harmonize the ITC provisions on reorganisations with those of Laws 1297 and 2166 which grant wider tax and other reliefs. Consequently, it shall henceforth not be possible to submit reorganisations to the provisions both of the ITC and simultaneously of other incentive laws.

Legal framework for the implementation of the Mutual Agreement Procedure ("MAP")

A new provision has been inserted in the Greek Code of Tax Procedures (L. 4174/2013) by virtue of L. 4438/2016, concerning the Mutual Agreement Procedure ("MAP"). The MAP process is available under Double Tax Treaties (DTT) and the European Arbitration Convention (90/436/EEC) as incorporated in Greek legislation through L. 2216/1994.

The purpose of the MAP process is to allow tax authorities of the contracting states to resolve by mutual agreement (or sometimes through arbitration if that is provided under the applicable DTT) disputes relating to the interpretation or the application of the relevant Treaty.

The scope of the MAP process as provided in the EU Arbitration Convention is narrower, focusing exclusively on the resolution of double taxation issues which arise in the context of transfer pricing adjustments.

The MAP process was effectively not applicable in Greece, although provided in the law, in the absence of guidelines on the procedure for implementation, including the party authorized to ratify a MAP decision.

The new rules authorize the General Secretary for Public Revenues to issue and/or ratify MAP decisions. The General Secretary is also authorized to provide further guidelines on the procedure for application of the MAP process.

The new rule is an indication of Greece's intention to align with the minimum standards set out in the OECD Report on Action 14 of the BEPS project, concerning the effectiveness of the dispute resolution mechanism.

Interpretative guidelines on transfer pricing compliance and scope of tax certificate

The Greek MoF has issued interpretative guidelines (POL 1165/2016), in relation to new tax rules ratified in August 2016 (L. 4410/2016), concerning (a) transfer pricing compliance rules and (b) the scope of the tax certificate audits. In specific:

Transfer pricing compliance

The deadline for reporting intra-group transactions performed during the previous fiscal year and drafting the annual Transfer Pricing file is extended, so as to coincide with the deadline for filing the annual corporate income tax return. The new deadline applies for fiscal years starting from 1 January 2015.

Annual tax certificate audit

According to L. 4410/2016, for fiscal years starting from 1 January 2016, Greek enterprises are no longer obliged to obtain an annual tax certificate, as part of their annual statutory audit of accounts. The previously applicable penalty for the failure to obtain a tax certificate has been abolished.

According to the law, findings reported in tax certificates of enterprises opting to obtain such certificate under the new regime may be taken into account by tax authorities, for tax audit purposes. The law does not provide, however, if an unreserved tax certificate shall also be taken into account by tax authorities for tax audit purposes.

The Ministerial Decision now clarifies that, as opposed to the previously applicable regime, the failure to obtain a tax certificate does not constitute a tax audit selection criterion and therefore should not be taken into account by tax authorities.

For further information, please contact:

Maria Zoupa

T (+30) 210 69 67 073

E m.zoupa@zeya.com

Elina Filippou

T (+30) 210 69 67 150

E e.filippou@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640

www.zeya.com

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior permission. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgment of author, publisher and source must be given.

Nothing in this newsletter shall be construed as legal advice. The newsletter is necessarily generalised. Professional advice should therefore be sought before any action is undertaken based on this newsletter.