

Recent tax developments in Greece

Two laws have been ratified within December 2018, introducing, among others, changes in tax provisions, including the gradual reduction of the corporate income tax rate to 25% over the next four years. Section A summarizes the new tax provisions. Section B highlights recent court decisions, on a broad array of tax matters. We are proud of having successfully litigated the cases on cash pooling stamp tax and the airline special contribution.

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A. Changes in tax rules

Gradual reduction of corporate income tax rate to 25%

The 29% nominal corporate income tax rate is gradually reduced over the next four years to 25%. Reduction will take place by one point annually, as follows:

- 28% for fiscal year 2019
- 27% for fiscal year 2020
- 26% for fiscal year 2021
- 25% for fiscal years 2022 onwards.

The reduced rates do not apply for credit institutions for which the 29% rate remains unchanged.

Capital gains from the disposal of real estate property

Taxation of capital gains arising upon the disposal of real estate property has once again been postponed until 31 December 2019.

ENFIA on property owned by individuals

The imposition of real estate (“ENFIA”) supplementary tax for fields (plots outside city planning zones) owned by individuals has once more been suspended for year 2019 ENFIA. Furthermore, individuals holding property of a total value of less than Euro 60,000, will enjoy a 30% reduction on their ENFIA bill for year 2019. A smaller reduction of up to Euro 100 will apply for owners of property of a higher total value.

Separate income tax returns for spouses

Following the landmark Supreme Court Decision 330/2018 ruling that spouses have the right to file separate income tax returns, the new law introduces the relevant legal framework. Separate tax filing is subject to a prior irrevocable statement that should be submitted to the competent tax authority by the end of February of each year. In the event of separate filings, each spouse should cover his/her own deemed expenses for purposes of assessment of his/her annual income tax liability. Additional guidance from the Ministry of Finance is expected on practical matters concerning the filing of the returns and the assessment of annual income taxes.

Revisions of the Inheritance and Gift Tax Code

- Person liable to submit a gift tax return

Both contracting parties are jointly liable to file the relevant gift tax return, before the tax authorities. Until recently, in the event of an unofficial gift, such obligation was with the gift beneficiary.

- Statute of limitation

The right of the tax administration to assess and impose inheritance and gift taxes has been time barred for tax obligations which have arisen up to December 31, 2003.

B. Domestic case law on tax matters

Stamp tax on cash pooling

Our tax litigation team successfully litigated a stamp tax dispute concerning cash pooling arrangements entered into by a Greek subsidiary of a multinational group. Despite the consistently

negative case law concerning stamp tax assessments, the Court of Appeals ruled that the obligations arising from cash pooling schemes are not executed in Greece, as per the territoriality rule of stamp tax litigation. What is important is that the Greek State did not appeal before the Supreme Administrative Court against this decision and therefore the latter has now become irrevocable and the tax authorities should normally follow it in future tax audits.

Extraordinary contribution on airline companies

Our tax litigation team has successfully challenged before the Court of Appeals the legality of assessing the extraordinary contribution on profits of enterprises (that was introduced for years 2008 and 2009) on an international airline company, operating under a tax exempt status. The Court ruled that the right of the tax authorities to assess the contribution had been prescribed.

Capital Accumulation Tax on share premium

Decision 1774/2018 of the Supreme Court confirmed that share premium amounts are not subject to Capital Accumulation Tax, unless they are drawn to the nominal share capital. The Supreme Court has ruled in line with an older Decision (no. 3015/2009) justifying the position on the grounds that share premium does not immediately lead to the acquisition of voting rights or rights to dividends, as is the case upon the contribution into the nominal share capital.

The decision comes to resolve the dispute triggered by Circular 1144/2014 of the Ministry of Finance, endorsing an opinion of the Legal Council of State (No 113/2009), according to which share premium should be subject to Capital Accumulation Tax.

Special Solidarity Contribution within the scope of Double Tax Treaties

The Supreme Administrative Court recently ruled (Decision No 2465/2018) that the Special Solidarity Contribution (SSC) assessed on individuals earning any type of taxable or tax exempt Greek source income, constitutes a tax on income or at least a tax “substantially similar” to income tax. As such, the Court ruled that SSC should fall within the scope of taxes governed by Double Taxation Treaties. The case concerned the level of protection of a UK tax resident earning Greek source income, under the provisions of the Double Taxation Treaty between Greece and the UK.

The above decision is contradictory to the position recently adopted by the Legal Council of State (Decision No 18/2018), according to which, the SCC was considered as falling outside the scope of Double Taxation Treaties, due to its extraordinary nature. The Ministry of Finance has endorsed the decision of the Legal Council of State (Decision POL 1099/2018). Therefore, a reaction by way of a revised Decision following the Supreme Court ruling is likely.

Foreign tax resident individuals who have earned Greek source income, that should not have been taxed at the source state, under the relevant Double Taxation Treaty, may benefit from the above Supreme Court ruling.

Supreme Court rules ENFIA tax basis as a rebuttable presumption

The Supreme Court, at its recent decision No. 1357/2018, ruled that statutory values and in particular zone prices per location constitute predetermined values that aim to reflect the fair market value of the properties that a diligent, well informed and unrelated Seller and Purchaser would be willing to accept for the transfer of the property.

Relevant statutory values constitute a rebuttable presumption for computing the market values of real property. Therefore taxpayers have the right to challenge the validity of statutory values and predetermined zone prices to the extent that they serve for the basis for the assessment of taxes, including ENFIA assessments.

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