Recent developments in corporate taxation

During the last couple of months, there have been many interesting developments on corporate tax matters coming from the Independent Authority for Public Revenue; we have selected a few which we summarise below:

Guidelines on the tax treatment of bad debts

- One of the most important additions in article 26 of the ITC was that bad debts may be written-off in case of a mutual agreement or judicial settlement providing for such a write-off, without the requirement for a provision to have been accounted for or for all legal actions for debt recovery to have been undertaken.
- Circular E.2205/2020 goes on to clarify that the deductibility of such write-off is considered as being in line with article 22 of the ITC, representing a taxpayer's ordinary business transaction, and that the law does not imply that the conditions of article 22 need to be re-examined in each case.
- Bad debts of up to EUR 300 per counterparty, including VAT, may be written-off for tax years beginning from 1.1.2020 onwards. The write-off should be performed within the tax year in which 12 months have lapsed from the date on which a debt has become due, regardless of whether appropriate legal actions have been taken to secure the right to recover it.
- The Circular clarified that these provisions shall apply to write-offs effected within tax year 2020 and onwards, regardless of whether the 12-month period is completed in the tax year in which the write-off takes place or has been completed in a previous tax year.
- It is also clarified that the burden of proof for informing, where possible, the debtor about the write-off is borne by the taxpayer, who must maintain the relevant information. For proof, the taxpayer can rely on any suitable means, such as: (i) proof of sending a registered letter to the last available address of the debtor; (ii) proof of service of an out-of-court letter; (iii) proof of successful sending and reading of e-mail, etc.
- The amount of EUR 300 is examined per counterparty and not per receivable, i.e. the total receivables from the same debtor should not exceed the amount of EUR 300, regardless of the number of transactions.
- A cap applies on the total amount of receivables that may be written-off, set at 5% of the receivables' balance at the end of each tax year.

Tax depreciations under finance and operating leases clarified by the IAPR

Ministerial Circular E.2206/2020 clarified the tax treatment of finance leases and the related depreciation rules.

In case of finance leases, as these are designated by both IFRS and Greek Accounting Standards (ELP) rules, the lessee should recognise a "right-to-use" asset in its Balance Sheet, corresponding to the leased item.

Furthermore, the depreciations computed under both regimes, can be tax deductible, provided that the leasing agreement is considered as a finance lease for both the lessor and lessee. Under this scenario, the lessor should simply recognise a receivable in its books, instead of a fixed asset.

What is more, in case of finance leases under both IFRS and ELP, the lessee should also recognise a finance cost (interest expense), which is also deductible, provided that the conditions of article 49 of ITC are met.

Earnings stripping rules further clarified

The IARP issued Circular E.2004/2021 with additional guidance on the application of the provisions of article 49 regarding the limitation of interest deductibility rules following their amendment in 2019.

The tax administration confirms among other things that exceeding borrowing costs are deductible up to the higher of (i) the three million euro (3,000,000) allowance set in the law and (ii) 30% of the taxpayer's EBITDA. Thus, if for example exceeding borrowing costs are above 3M and in excess of 30% of EBITDA which is below Euro 3M, an amount of Euro 3M would be deductible whereas under the previously applicable rules only an amount equal to 30% of EBITDA would be deductible. Exceeding borrowing costs below three million euro, are always deductible. In addition, it is clarified that the same calculation is to be used for determining the maximum deduction capacity when carrying forward non-deductible amounts from application of the rules in previous tax years.

As to the definition of exceeding borrowing costs following the amendment of the respective provisions, this shall be considered to refer to the amount by which deductible borrowing costs of a taxpayer exceed taxable interest revenues and other economically equivalent taxable revenues received by the taxpayer according to domestic law.

The Circular also confirms that the new definition of borrowing costs for the purposes of this article is expanded as compared to the previously applicable rules and now encompasses costs such as borrowing costs and capitalized interest.

25% discount of VAT and settled debts is not treated as taxable revenue

The IAPR clarified that businesses should not treat as taxable the extraordinary revenue arising from the 25% discount offered for timely payment of the March 2020 or Q1 2020 VAT and other settled debts in the context of the Legislative Act dated 11.03.2020. The reasoning of IAPR's circular E.2207/2020 is that the discount has been adopted in order to support businesses that have suffered serious economic implications from the Covid-19 pandemic, therefore should not be taxable at the same time. Likewise, it is not to be taxed in case of distribution or capitalization, as it does not qualify for business income.

Guidelines issued on super-deduction of advertisement expenses

By virtue of L. 4728/2020, a new article has been introduced in the Greek ITC providing a super-deduction for specific types of advertisement expenses incurred through TV, radio, internet and social media, in FYs 2020 and 2021. In particular, a super-deduction of 100% and 60% of the advertisement expenses will be deductible in FYs 2020 and 2021, respectively, under specific conditions and taking into account the level of similar expenses incurred in FY2019. For the businesses affected by Covid-19 pandemic, a lower threshold of FY2019 advertisement expenses applies. Circular E. 2033/2021 clarifies, among others, that the conditions for super deduction are considered separately for each FY, while it also applies to businesses that performed no advertising expenses during FY2019 or that were set up after 1.1.2020.

States with a preferential tax regime have been announced by the IAPR

Pursuant to the Greek Income Tax Code ("ITC"), a number of anti-avoidance rules apply in respect of certain transactions with persons residing in jurisdictions having regimes which are deemed to be preferential. Preferential regimes are determined annually through a governmental decision based on criteria set-out in the law. The Independent Authority for Public Revenue ("IARP") issued on 7.12.2020 Decision A.1267/2020 determining the states with a preferential tax regime for the tax year 2019. The list includes those States that qualify as preferential in accordance with one of the two criteria set out in article 65 of the ITC, namely their respective corporate income tax rates being lower than 60% of the Greek corporate income tax rate. The respective list includes among others Ireland, Cyprus and Bulgaria, whereas it does not include Oman and Seychelles, which have been omitted from the 2019 list compared to the respective list for tax year 2018.

E-books implementation postponed for 1 April 2021

Ministerial Decision A. 1300/2020 postponed mandatory data transmission to myDATA platform as of 1 April 2021 instead of 1 January 2021. Data pertaining specifically to Q1 2021 must be transmitted until 31 October 2021, so that a full year's transactions are uploaded to the e-books system. The Decision brought some changes involving, among others, the introduction of a new transmission method, the determination of the transmission timeline of retail transactions and transmission obligations of specific industries on a cumulative basis as well as the addition of new categories of taxes, duties and deductions in the value lists of fiscal documents' information fields.

Guidelines on benefits in kind

The IARP has provided by virtue of Circular E.2197/2020 certain clarifications on the taxation of benefits in kind (classified for purposes of income tax as salary or pension income). Highlights include:

- **Persons covered:** Benefits-in-kind cover not only employees, but also partners and shareholders of legal entities as well as their relatives as those are defined in Art.2 of the ITC.
- **Threshold of Euro 300:** It has been clarified that only the exceeding value (i.e. the value over Euro 300 per tax year) should be taken into account for the calculation of the taxable basis for salary/pension income earned by the employee (or partner/shareholder/ relatives).
- **Granting of use of company cars:** Aiming at the rationalisation of the calculation of taxable income derived from the use of company cars, the taxable value of the offering of the usage of company cars is now computed on the basis of a progressive scale and no longer as a flat percentage applied on the total pre-tax retail price ("PTRP") of a car. The new method results in the reduction of the taxable basis of the benefit in kind received by the abovementioned persons who will be using a company car with higher PTRP.
- The Circular clarifies that the granting of company cars exclusively for business reasons to specified persons (e.g. cars granted to salespersons, technical assistants and other employees whose work requires frequent transit outside the employer's premises – tool cars), with a PTRP which is lower than EUR 17,000, should not be treated as benefits in kind and therefore should not be added to the taxpayer's taxable basis. If however a PTRP exceeds such threshold, then the total PTRP of a company car would be taxed as benefit in kind from the first Euro. The Circular provides specific guidelines as to whether

tool cars, status cars, test-drive cars, service cars, etc. qualify as benefits in kind or not.

- The value of offering usage of company cars to the aforementioned persons (and the corresponding taxable basis) is not to be reduced in case such persons participate in car leasing costs.
- The value of zero or low-emission cars should not be taken into account for the calculation of the taxable employment income if their PTRP does not exceed EUR 40,000. In case the PTRP of a company car exceeds EUR 40,000, it is only the exceeding amount of the PTRP that should be added to the taxable basis of the employment income whereas the amount of EUR 40,000 is in all cases tax exempt.
- **Loans:** A previously existing obligation to have a written agreement in place in order for a loan not to be taxed as a benefit in kind by its total amount has been abolished. In this respect, irrespective of whether there is in place a written agreement or not, it is only the difference between the interest that would have been paid by the employee and the interest that was actually paid which is to be treated as benefit in kind in case of a loan.
- Salary advances of more than three months will not constitute a benefit in kind provided that they are repaid in full through consecutive salaries. Conversely, in the event that salary advances are repaid through monthly deductions from the employee's salary, they should be considered as a loan and therefore constitute a benefit in kind.
- **Entry into force:** Changes shall be applicable to benefits in kind earned in tax years starting as from 1st January 2020

Circular E.2208/2020 stock options and share award plans

On 24 December 2020, the Independent Authority for Public Revenue issued the long anticipated guidance for the interpretation and application of the new rules.

For more information, please refer to the link

Contact us:

Maria Zoupa

Partner | Tax & Accounting

m.zoupa@zeya.com

Kostas Stergiou

Director | Tax & Accounting

k.stergiou@zeya.com

Ioanna Tapeinou

Senior Associate | Tax & Accounting

i.tapeinou@zeya.com

Georgia Voutsa

Senior Manager | Tax & Accounting

g.voutsa@zeya.com