Recent developments in corporate taxation

During the last couple of months, there have been many interesting developments in corporate tax matters; we have selected a few which we summarise below

Personal and joint liability of directors - lack of fault clarified in Decision A.1082/2021

Decision A.1082/2021 issued by the IAPR pursuant to the applicable legislation, clarified which persons should be excluded from directors' joint liability due to lack of fault, although such persons are in principle considered to fall within the ambit of the provisions of article 50 of the Code of Tax Procedures ("CTP") regarding personal and joint liability of directors.

As per the Decision, this lack of fault assessment would be relevant in the context of a tax audit, whereby the competent tax authorities in each case should examine whether the persons are found to have lack of fault, potentially falling under any of the indicative cases outlined below. This examination should in any case take place before the imposition of any measures on the basis of joint liability rules under article 50 of the CTP.

In this respect, according to the indicatively enumerated cases, the above-mentioned persons should in principle be deemed to have lack of fault indicatively in case of:

- Liquidation of the managed legal person according to a special provision of law or a court decision setting the time and method for satisfaction of the creditors; liquidator's liability for debts created during his/her term should however be examined;
- Existence of an irrevocable acquittal of a criminal court or certain similar judicial authority decisions which assess a lack of fault;
- Appointment of an individual as the legal representative of a foreign legal person, which does not have a permanent establishment in Greece, for the purpose of fulfilling procedural obligations of a foreign legal person in Greece or the processing of specific cases;
- In cases in which persons who, although holding one of the positions provided in par. 1 of article 50 of the CTP, do not have actual involvement in the administration / management of the affairs of the legal person;

Guidelines on Statute of Limitation period for stamp duty - Circular E.2049/2021

In Circular E.2049/2021, tax authorities provided clarifications with regard to the Statute of Limitation in respect of stamp duty for periods as from 01.01.2014, governed by the provisions of article 36 of the Code of Tax Procedures, while Circular E.2147/2020 should be relevant for periods until 31.12.2013.

Specifically, it is clarified that the State has the right to assess stamp duty in principle within 5 years, starting from the end of the year during which the stamp duty return was due to be filed.

Exceptionally, for tax years as from 01.01.2018 onwards, the SoL period may be extended to 10 years from the end of the year within which the deadline for filing the stamp duty return expires in the following cases:

- if no tax return has been filed within the 5-year period.
- if any new or not possibly known information within the 5-year period comes to the attention of any Tax Administration Service, based on which it appears that the actual tax liability exceeds the one determined by a previous tax assessment and solely for the matter to which it relates.

Guidelines on the tax exemption of capital gains arising from the disposal of participations at the level of legal persons - Circular E.2057/2021

In **Circular E.2057/2021** the tax authorities provided clarifications with respect to the application of article 48A of the ITC, which introduced the capital gains participation exemption regime into domestic legislation. According to this rule, capital gains derived by Greek tax resident legal entities from the disposal of participations as from 1.7.2020 should be income tax exempt provided that specific conditions are cumulatively satisfied at the time of transfer, aligning with the relevant conditions of the EU Parent-Subsidiary Directive. Specifically, the transferred legal person should be tax resident in Greece or in the EU, should take one of the legal forms provided for in the Directive (SA (AE) or Limited Liability Company (EPE) or Private Company (IKE) or partnership (OE, EE)), whereas a minimum participation of ten per cent (10%) and a minimum holding period of at least twenty-four (24) months should be in place.

To this end, it is clarified that the starting point of the minimum holding of 10% is the date, during which the said holding is acquired irrespective of the acquisition method, while any corporate transformation resulting to universal succession does not affect the 24-month holding period calculation.

The Circular further clarifies that the disposal of shares includes any act of transfer such as the sale, the contribution of shares to cover or increase the capital of a company, the exchange of shares and the transfer of shares within the context of corporate Law 4548/2018 for capital decrease or dividend distribution in kind.

It is highlighted in the Circular that the provisions of article 48A of the ITC should be applicable to income earned as from 1.7.2020 onwards.

For monitoring purposes, the amount of the tax exempt capital gains resulting from the transfer of participations should be recorded in a special reserve account by legal persons maintaining double entry books, regardless of the adequacy of profits, even in situations where the legal persons are loss-making.

In case of distribution of said reserve, a 5% dividend withholding tax is applicable to dividends, with the possibility of being further exempt by application of the EU Parent-Subsidiary Directive provisions.

Expenses incurred in relation to the transfer of participations under article 48A of the ITC (e.g. notarial expenses, taxes, third-party fees, etc.) should not be tax deductible, on the rationale that capital gains arising from the disposal of said participations are tax exempt.

Losses arising from the disposal of participations may be tax deductible under the condition that they have been subject to valuation until 31.12.2019 and they have been recorded in the books or the audited financial statements of the company. For the recognition of the loss from the transfer of participations, the transfer should take place from 1.1.2020 to 31.12.2022 (final loss) and further the transferred participations should exist and be evaluated on 31.12.2019.

Credit of tax paid abroad in priority pursuant to Double Tax Treaties - Circular E.2089/2021 endorsing recent Supreme Court decisions

Pursuant to **Circular E.2089/2021**, important clarifications have been provided with respect to the possibility of crediting the tax paid abroad by

persons falling within the scope of article 45 of the ITC ("Greek taxable legal persons").

Having regard to the Decisions 652/2020 and 653/2020 issued by the Supreme Administrative Court, which assessed the deduction of foreign taxes and the application of domestic provisions of Law 2238/1994 (former ITC, applicable until tax year 2013) in conjunction with the Greece – Cyprus Double Tax Treaty, as well as the fact that the provisions of the former ITC are substantially similar to the respective provisions of the current ITC (Law 4172/2013), the Circular clarifies the following:

- States with which Greece has concluded a Double Tax Treaty:
  - The tax paid by a Greek taxable legal person in a country with which Greece has concluded a Double Tax Treaty (DTT) for income that arises and is taxed there according to the relevant DTT, is deducted from the total amount of tax due by this person in Greece, under the terms and conditions and up to the amount defined by the applicable provisions of the relevant DTT that provide for the credit of the tax.
  - Such tax paid abroad is deducted in priority over the other taxes of par. 3 of article 68 of the ITC.
  - In case that after the deduction of the other taxes a credit balance arises, the difference is refunded.
- The rationale behind the priority in the deduction of the foreign tax paid over the other taxes lies in the overriding power of the DTT provisions over the domestic ITC provisions.
- States with which Greece has not concluded a Double Tax Treaty:
  - For the tax paid by a Greek taxable legal person for foreign income arising in a country where there is no DTT in place with Greece, the clarifications provided with Circular 1060/2015 would be still applicable.
  - This means that such tax should be ***deducted last, after the other two categories of taxes*** from the total tax due following the order of priority of the domestic provision, i.e. a) the tax withheld, b) the tax prepaid and c) the tax paid abroad.

Guidelines on the treatment of foreign tax losses deriving from an EU/EEA permanent establishment – Circular E.2100/2021 allows to offset when they are incurred at the level of the permanent establishment

In Circular E.2100/2021 the tax authorities provided clarifications with respect to the treatment of losses derived from abroad from the exercise of business activities through a permanent establishment, in accordance with article 27 par. 4 of the ITC.

Foreign losses may not be utilised for the calculation of a tax year's profits or be offset against future profits, with the exception of losses arising from business activities exercised through a permanent establishment situated in an EU/EEA country with which Greece has concluded a DTT, according to which profits from business activities are not treated as tax exempt.

The Circular makes reference to the C (2019) 4841/25.7.2019 Note of the Commission, contesting the formerly applicable guidelines and interpretation provided with Circular 1200/2016, and now clarifies that losses arising from business activities exercised through a permanent establishment situated in an EU/EEA country should be taken into account for the calculation of the Head office's taxable income at the time when the losses are incurred at the level of the permanent establishment. As per the previously applicable position, losses could be taken into account only upon discontinuation of the permanent establishment, a position adopted on grounds of avoidance of double usage of the losses.

It is further clarified that in order for such foreign losses to be utilised, said losses need to be separately recorded and in a way so that the

country of the losses' origin may be easily identified each time.

Furthermore, regarding non-EU permanent establishment losses, Circular 1200/2016 would still be relevant, providing that such losses may not be utilised for the calculation of a tax years profits or be offset against future profits.

Guidelines on the deductibility of corporate social responsibility expenses – Circular E.2107/2021

The IARP has provided by virtue of **Circular E.2107/2021** clarifications with respect to the application of the provisions of article 22 ITC regarding the tax deductibility of expenses for corporate social responsibility actions.

In principle, corporate social responsibility expenses are deductible to the extent that the general deductibility rules provided in article 22 of the ITC are satisfied, provided also that business should have generated accounting profits in the tax year in which the CSR costs are incurred (with the exception of CSR actions at the request of the State). In the past, Circular 1113/2015 provided that corporate social responsibility costs are considered to be for the benefit of the business and in the scope of ordinary commercial transactions, therefore qualifying them eligible to be tax deductible (subject to the rest of the conditions of article 22).

The Circular provides further that CSR definition and framework has been determined in accordance with the Announcement issued by the European Commission on 25.10.2011 (COM (2011)681) as well as by International Organisations, such as the OECD and the UN.

In accordance with the guidance, charities, simple donations or sponsorships, such as charitable actions, commercial sponsorships through which businesses promote their brand or products or actions aiming at achieving public relations, do not constitute CRS actions.

Law 4799/2021 introduces reduction in corporate income tax rate among other tax changes previously announced by the Greek Government – clarifications provided with Circular E.2125/2021

A number of changes have been introduced by virtue of Law 4799/2021 including the announced income tax measures aiming to support affected households and businesses. Such measures are also anticipated to serve as a bridge to the post-coronavirus era by attracting new investments and leading to economic growth.

The key changes on taxes introduced by Law 4799/2021 can be summarised as follows:

- Reduction of the corporate income tax rate applicable to all legal persons and legal entities from 24% to 22% (except for Greek credit institutions subject to a special regime concerning deferred tax assets) - effective as from the tax year 2021.
- Reduction of the income tax advance payable by legal persons and legal entities from 100% to 80% - effective as from the tax year 2021, i.e. the advance tax payable in 2022 will refer to 80% of the tax due for tax year 2021.
- Especially for the tax year 2020, the income tax advance payable by legal persons and legal entities is further reduced to 70%.
- Increase of the income tax advance payable by domestic credit institutions and branches of foreign credit institutions to 100% for the tax year 2020 onwards.
- Reduction of the income tax advance payable by individuals exercising business activities from 100% to 55% - effective as from the tax year 2021.
- Extension of the suspension of the special solidarity contribution payable by individuals in the private sector until the tax year 2022.

Annual CIT return; guidelines just issued

- The deadline for the filing of the annual income tax returns by legal entities for the tax year 2020 expires on 27 August 2021. The CIT ensuing from such returns is payable in eight equal monthly instalments; the first two of which being due by the end of August 2021 and the remaining six instalments being due by the last working day of the subsequent 6 months.
- Ministerial Decisions A. 1128/2021 and A.1112/2021, as well as Circular E. 2112/2021 recently issued provide the content of N and E3 forms of the annual income tax return, as well as necessary guidance and instructions for the completion thereof for the tax year 2020. Among others, N and E3 tax forms have been adapted to cover certain legislative amendments that took recently place in the ITC as well as special provisions regarding Covid-19 tax-related regulations enacted in 2020.
- Amendments introduced in the forms of the annual income tax return for the tax year 2020 indicatively include:
  - The field of the income tax advance has been reduced to 70%;
  - New fields have been added for amounts related to tax incentives and super-deduction of expenses and depreciation provided in articles 22Β, 22Γ, 24, 71ΣΤ and 71Ζ of the ITC (e.g. super-deduction of specific advertisement expenses incurred in 2020, rental expenses and depreciation for the use of zero or low emission electric cars as well as set-up and operation costs of the charging stations for same, expenses for the implementation of e-invoicing through certified E-invoicing Providers etc.);
  - Tax-free amounts of subsidies, indemnities and deductions granted due to Covid-19 pandemic (e.g. deductions for timely payment of tax liabilities, reimbursement for non-collection of rents, non-refundable amounts of the financing scheme in the form of refundable advance, standard costs subsidy etc.) will have to be declared in special fields added in said forms;
  - Two separate codes are provided for the declaration of foreign tax amounts depending on whether or not a DTT exists, while a new table has also been inserted for additional information on the foreign tax declared (country, type of income, foreign tax amount paid and foreign tax amount allocated to the Greek income declared);
  - New fields have been inserted for the completion of information related to the amounts and conditions of capital gains participation exemption for the purposes of application of article 48A of the ITC.

myDATA developments

- Ministerial Decision A. 1054/2021 postponed further the mandatory data transmission to the myDATA platform as of 1 July 2021 instead of 1 April 2021. Transactions of the first semester of 2021 will still have to be transmitted by 31 October 2021 so that a full year's transactions are uploaded to the e-books system.
- Additional guidelines and clarifications on various operational and technical aspects of the system have also been released by the Independent Authority for Public Revenue (IAPR) via an updated Q&A available on their website. These mainly refer to the applicable transmission methods, to codification of specific types of transactions (e.g. imports/exports, intracommunity transactions etc.) and to timing aspects in the reporting of transactions.
- Most importantly, the IAPR has provided guidance in relation to the imposition of sanctions in case myDATA requirements are not met. In particular, it has been clarified, in line also with the existing legal framework, that no penalties and sanctions are to be imposed in case of non-compliance with the

myDATA obligations. This also captures any irregularities related to overdue or inaccurate submissions for 2021.

Tax depreciations of costs and deductibility of expenses for businesses affected by the Covid-19 pandemic - Circular E.2110/2021

By virtue of **Circular E.2110/2021**, guidance is provided with respect to the tax depreciations and the deductibility of expenses effected at the level of businesses whose operations have been suspended by virtue of State Decision for a certain period of time due to the Covid-19 pandemic and the respective measures to limit its spread.

In specific, the following cases are mainly addressed:

- Fixed assets: Legal persons may perform tax depreciations even for the months of the tax year during which they were not operating, given that fixed assets were not in use during all months of the tax year due to the extraordinary conditions created by the Covid-19 pandemic, while such fixed assets were readily available to operate during the time of the suspension of operations. The same applies also to companies that after the period of suspension decided not to reopen, assessing the unfavorable conditions created by the Covid-19 pandemic (limited economic activity, low expected revenues, high operating costs).
- Invoiced expenses related to cancelled or postponed events: Expenses incurred at the level of legal persons, which were related to events that have been cancelled due to the conditions created by the pandemic (e.g. airplane tickets, rental of conference / exhibition venues, etc.) are deductible in the tax year to which they relate, provided that the conditions laid down in Articles 22 and 23 of the ITC are met, irrespective of the fact that the respective service was not provided.
- On the contrary, in case the specific events were postponed, relevant expenses are deductible in the tax year in which the relevant services will be provided.
- It is noted that businesses should be able to evidence by any appropriate means that the suspension of their operation or the cancellation of events, such as conferences, exhibitions, etc., which have already been invoiced, constitutes a result of the extraordinary circumstances caused by the pandemic.
- Social security contributions: Given that for 2020 the deadline for the payment of social security contributions due by the employers has been extended in the context of measures to address the negative effects of the pandemic, these contributions, if paid on time and up to the deadline for the preparation of financial statements, are deducted from the gross revenue of companies in the tax year to which they relate.

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