Recent Corporate and International Tax News

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.

Determination of non-cooperative jurisdictions for the tax year 2020 – Decision A. 1246/2021

The Independent Authority for Public Revenue ("IARP") has issued recently its annual list of non-cooperative jurisdictions for the tax year 2020, which means that payments to those jurisdictions should not be tax deductible, unless it is evidenced that the respective payments reflect actual transactions and do not result in the transfer of profits or income with the aim of tax avoidance or tax evasion.

The IARP, among other changes to the list, which can be found in Decision A. 1246/2021, has removed from the list the Republic of North Macedonia, Ecuador, Kenya, Curacao and Marshall Islands which were in the 2019 list, while Haiti, Jordan, Madagascar, Maldives, Panama, Thailand, Seychelles, Tanzania – among others – have been added to the 2020 list although not included in the 2019 list.

Guidelines on the taxation of the one-off compensation granted as a result of the termination of an employment or other contractual relationship – Circular E. 2212/2021

Circular E. 2212/2021 provides clarifications with respect to the taxation of compensations granted in a lump-sum as a result of termination for any reason of an employment or other contractual relationship between a payor and a recipient of compensation.

In specific, it is clarified that in such cases, a beneficial progressive scale provided in paragraph 3 of article 15 of the Income Tax Code (above a EUR 60,000 tax-exempt threshold) constitutes the basis for the calculation of the income tax due at the level of employees and other compensation recipients.

In this context, it is further clarified that said compensation is not required to arise from the unilateral termination of an employment contract or to fulfil the legal requirements with regard to compensation entitlement, as set out by the employment law provisions. Therefore, even if the relevant compensation is provided on a voluntary basis by an employer, the beneficial progressive scale should be applicable.

Guidelines on the tax treatment of expenses pertaining to a share capital increase – Circular E. 2209/2021

Circular E. 2209/2021 resolved questions that had arisen in relation to the deductibility for income tax purposes of costs in relation to share capital increases incurred by legal persons or legal entities falling under the scope of article 45 of the Income Tax Code. The questions had arisen because a prerequisite for the deductibility of costs is that they should have been recorded as expenses in the books of the relevant period, whereas, on the other hand, under the Greek Generally Acceptable Accounting Principles and the IFRS, expenses related to a share capital increase are to be accounted for as a deduction from equity.

In this context, it has been clarified that the aforementioned accounting treatment should not affect the tax treatment of the respective costs, which are treated as deductible expenses on the basis of articles 22 and 23 of the Income Tax Code during the tax year concerned.

Moreover, it is further clarified that the tax deduction of the aforesaid expenses should be performed on an out-of-books basis through the filing of the income tax return of the respective tax year.

Guidelines on the calculation of depreciation on fixed assets at the level of companies following a corporate transformation under Law 1297/1972 – Circular E. 2219/2021

As a general principle, the tax depreciations for assets transferred in corporate merger or transformation operations under the provisions of Law 1297/1972 (which provides for tax neutrality for such operations), are calculated on the basis of the undepreciated values of the assets before the relevant operation, increased by a part of any surplus arising as a result of the assets' valuation for purposes of the operation. The relevant part of the surplus is calculated pro rata to the undepreciated value. As a result, the surplus value corresponding to the depreciated value is not deductible.

In Circular E. 2219/2021 the tax authorities provided clarifications with respect to the calculation of depreciation in cases where valuation leads to an amount which is lower than the undepreciated value for tax purposes (devaluation).

In particular, it is clarified that in such cases, depreciations should be performed on the basis of the (lower) value determined upon valuation.

Determination of the minimum cost of teleworking – Document 98490/2021

By virtue of article 67 par. 4 of Law 4808/2021, it is provided that the employer should bear the costs incurred at the level of its employees as a result of teleworking, under certain circumstances.

In this context, the Minister of Labor and Social Affairs issued document 98490/2021 determining the minimum costs that should be borne by employers on a monthly basis as follows:

i. an amount of EUR 13 corresponding to the use of home-office;

ii. an amount of EUR 10 corresponding to telecommunications – unless telecommunication expenses are covered by the employer under a distinct agreement with the network provider; and

iii. an amount of EUR 5 corresponding to equipment maintenance – unless the respective equipment has been provided by the employer.

It has been further clarified that in case an employee teleworks for less than 22 days in a month, the above-mentioned teleworking expenses should be calculated on a pro-rata basis in accordance with the actual days of teleworking.

In addition, from a tax perspective, it is noted that the payment of the respective amounts should be deposited in the employees' payroll account separately from the monthly salary and in no case should these amounts be treated as salary, since they constitute expenses.

Guidelines on amending income tax returns filed by legal persons or legal entities and leading to income tax refunds as a result of corrections of errors in their financial statements – Circular E. 2228/2021

In an important Circular (E. 2228/2021) the tax authorities provide clarifications with respect to the possibility of filing an amending income tax return and requesting a refund of tax unduly paid, in cases of errors in the financial statements of prior years.

The issue had arisen due to the fact that on the one hand, in accordance with the Accounting Standards Board (SLOT) a correction of an error should be recorded in the financial statements of

the year during which the error is detected regardless of whether such error refers to previous tax years, whereas on the other hand in accordance with the income tax provisions, taxable profits are determined on the basis of the accounts drafted in accordance with the accounting principles. In view of the above, it is clarified in the Circular that the filing of a late amending income tax return – as a result of an error correction as per the above – concerning the tax year during which the error occurred, with the aim of ensuring the proper representation of tax data, should be permissible subject to the applicable penalties. In this respect, it is further noted that legal persons or legal entities filing amending income tax returns as a result of error corrections as per the above, should properly indicate and document the reason of the inconsistency between the income tax return and their financial statements, as further detailed in the Circular.

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