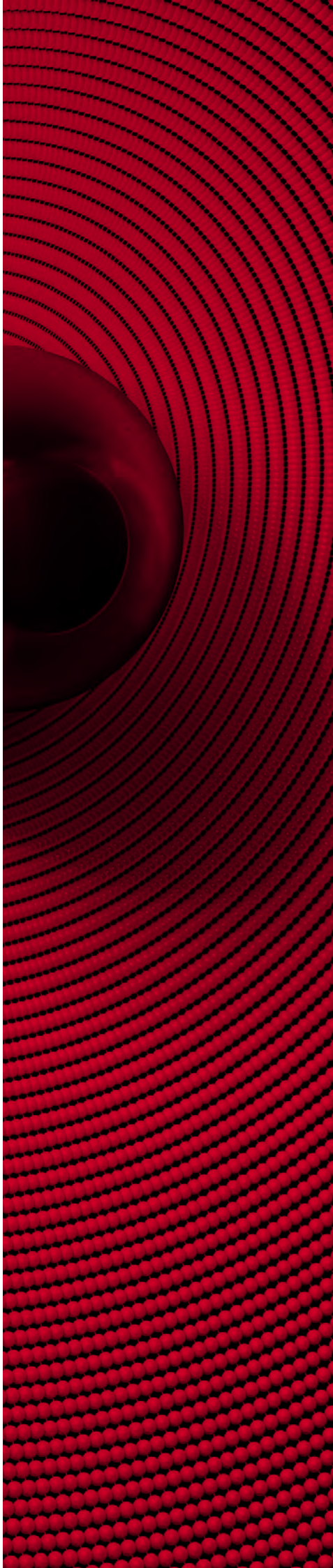
ZEPOS & YANNOPOULOS | 130 YEARS AHEAD OF OUR TIME

July 2023

Recent Corporate & International Tax News

In this newsletter we summarize some of the recent developments in corporate and international tax affecting businesses in Greece



Clarifications on the withholding tax applicable on management fees and other payments to Greek branches of Swiss and certain other non-resident legal persons or entities

In general, under the income tax legislation as interpreted up to now by administrative guidelines, management fees and payments for technical, consulting and similar services provided in Greece through Greek permanent establishments of legal persons and entities resident outside the EU, were subject to withholding tax at 20%.

Through Circular E. 2019/2023, the Independent Authority for Public Revenue specified that no Greek withholding tax applies in respect of such payments when such payments are made to permanent establishments of Swiss tax resident enterprises as well as to permanent establishments of enterprises that are tax resident in states that have entered with Greece into a convention for the avoidance of double taxation which has a non-discrimination article similar to the one in the convention with Switzerland.

Those other states are the following:

San Marino, Azerbaijan, Egypt, Albania, Armenia, Bosnia and Herzegovina, Georgia, UAE, UK, Israel, Canada, Qatar, China, Korea, Kuwait, Morocco, Mexico, Moldavia, S. Africa, Ukraine, Uzbekistan, Russia, Serbia, Singapore, Turkey, Tunisia, USA.

This treatment is based on the fact that the same payments are not subject to withholding tax when made to Greek legal persons and entities and therefore, based on the relevant convention non-discrimination provisions which prevail over domestic legislation, taxation of persons resident in the relevant states should not be more burdensome.

It has been clarified in the guidelines that the above exemption does not apply to payments made (i) by general government entities for supplies of products and services, where the withholding tax rate is 1% in respect of liquid fuel and tobacco products, 4% in respect of all other products and 8% in respect of services and (ii) remuneration for technical works where the withholding tax rate is 3%. Such payments are subject to withholding

tax also when made to Greek legal persons.

In accordance with the new guidelines, previous guidelines on the above matters (provided in Circulars POL 1120/2014 and POL 1007/2017) cease to be applicable, to the extent contradictory, as of the date of issuance of the Circular, i.e. as of 30 March 2023. Any such taxes withheld shall not be refunded but may be offset with income taxes payable in respect of the relevant tax years.

Administrative guidance aimed at the prevention of double taxation in relation to profits distributions derived from temporary timing differences

Under income tax legislation (i.e. art. 47 par. 1 of the Income Tax Code), any distributed or capitalised untaxed profits of legal persons and legal entities are to be treated as business income and are to be taxed as at the time of such distribution or capitalisation, regardless of the existence of any tax losses. The Independent Authority for Public Revenue issued, in Circular E. 2089/2022, guidance aimed to address situations of potential double taxation which may arise when such profits relate to temporary timing differences.

Temporary timing differences occur where, due to differences between book values and tax bases of assets, liabilities or other items of the financial statements, revenues or expenses are realised at different times for accounting and tax purposes respectively, but such differences are expected to be reversed in a future point in time. For example, such a situation may occur if in certain tax years a fixed asset depreciation rate for tax purposes is lower to the rate deployed in the accounting books, thus resulting to a higher tax base whereas in subsequent years this situation is reversed. If, however, in such subsequent tax years the relevant higher untaxed accounting profits were distributed and tax was thus imposed under art. 47, par. 1, double taxation would occur.

In order to rectify such type of situations, the guidelines specified that no income tax under art. 47, par. 1 shall be computed in respect of amounts distributed or capitalised in a current tax year in case that, due to temporary timing differences, tax had already effectively been paid in previous years in respect of such amounts. Conversely, in case tax had not previously been paid, income tax under art. 47 shall be computed, whereas in the tax years when the relevant temporary differences over which art. 47 tax has been computed would otherwise affect the tax basis, they will be deducted from the taxable income of the relevant year.

The Circular also addresses relevant situations of double taxation having already occurred in the past. In such cases there is a possibility of filling an amended income tax return to report a deduction from taxable income in respect of the tax year when double taxation had occurred. If such deduction results in an increase of tax losses carried forward, amended income tax returns reporting such increased tax losses carried forward may also be filed for the relevant subsequent tax years. Such amended tax returns

can be filed until 30 June 2023 without incurring any penalties.

The tax authorities have also provided guidelines on how to report the relevant temporary timing differences. These guidelines are comprised in Circular E. 2034/2023 issued in May for providing instructions on how to fill in the annual income tax returns for the tax year 2022.

Administrative guidance on tax audit assessments when affecting the taxable base of time-barred tax years

In Circular E. 2082/2022, the Independent Authority for Public Revenue clarified the tax treatment to be followed in case that a tax audit assessment in respect of a certain tax year affects the taxable base of a previous tax year which however can no longer be assessed by the tax authorities due to being time-barred. This may occur for example in cases of issuance of credit invoices resulting in the reduction of revenues of previous years or in cases of expenses concerning another tax year. In such cases, the tax difference resulting from the tax audit assessment is to be charged in respect of the year audited. Thereafter, the tax corresponding to the adjustment is computed by reference to the relevant (time-barred) tax year but charged in respect of the oldest, non-time-barred, tax year under audit.

Legislative amendments and guidance for the exemption of meal vouchers from social security contributions

Recent legislative amendments effective as of 1st January 2023, in conjunction with guidelines provided by the Social Security authorities, determine the conditions for the exemption from social security contributions of meal vouchers provided by employers in printed or electronic format. The amendments concern par. 1 of art. 145 of Presidential Decree 80/2022 and par. 1 of codified art. 9 of Law 2336/1995 on benefits in kind to employees whereas the relevant guidelines have been provided through Circular 22/2023.

In specific, meal vouchers shall be exempt from the above contributions on the following conditions, provided that those conditions are met cumulatively.

- They are granted on a monthly basis to employees by employers for covering the employees' food needs during their work;
- Their value does not exceed six Euro per working day;
- They are exchanged only for meals, ready meals, ready-to-eat foods, and beverages consumption; and
- They are exchanged in a network of stores contacted with the food voucher issuer under agreements setting the manner vouchers shall be accepted and exchanged by the beneficiary employees.

Determination of non-cooperative states and states having preferential tax regimes for the year 2021

Income tax anti-avoidance rules, such as a ban on tax deductibility and certain other restrictions, apply under Greek legislation in respect of transactions with persons deemed to be subject to a preferential tax regime in another state or residing in states deemed to be non-cooperative. Such states are determined annually through governmental decisions based also on international best practices in the field of administrative cooperation and exchange of information in tax matters, as per OECD standards.

Decision No A.1028/23, in respect of the tax year 2021 has added to the list of non-cooperative states Algeria, Vietnam, Belarus and the Republic of the Congo, whereas Eswatini, Jordan, Mauritania, Namibia and Paraguay shall only be deemed non-cooperative until a specified date within 2021 set in the decision. The state of Oman was omitted from the 2021 list.

Decision No A.1027/23, determining for the tax year 2021 the states whose tax residents shall be deemed as being subject to a preferential tax regime, has excluded from the 2020 list the state of Sri Lanka.

Volume discounts no longer required to be reported for VAT purposes

Under recent amendments to the VAT Code introduced by virtue of art. 31 of Law 5024/2023, as of 24 February 2023, discounts based on turnover (volume discounts), are no longer from such date required to be reported to the tax authorities. Prior to this amendment such discounts could reduce the taxable amount for VAT purposes only on the condition that their rates were reported by the supplier at least four months in advance. Changes were introduced in alignment with EU legislation (art. 79 of the VAT Directive).

Option for commercial leases to be subject to VAT can now be exercised throughout the year

The VAT Code provided up to now that an option for commercial leases to be subject to VAT could be exercised either before the first use of the property or, if it was exercised after the first use, within 30 days from the commencement of the next fiscal year. By virtue of a recent legislative amendment (through art. 30 of Law 5024/2023), the relevant option by the lessor can now be exercised either before the first use of the property or any time thereafter, in which case it is effective as of the next VAT period. The same applies in respect of the revocation of the option.

For further information please contact

Maria Zoupa
Partner

m.zoupa@zeya.com

Daphne Cozonis
Partner

d.cozonis@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
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640

www.zeya.com
subscribe
LinkedIn