

Tax Newsletter

Information on recent tax law developments in Greece

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In this newsletter

A. Taxation of Income

- Determination of non-cooperating jurisdictions in the context of anti-avoidance tax rules
- Amendments to the Double Tax Convention between Greece and Switzerland
- IT-related service fees classified as “business income” by First Instance Court
- Amendments to the taxation of dividends distributed to individuals
- Bad debts: extension of scope of provision on full write-off

B. Transfer Pricing

- Amended penalty for delayed reporting of intra-group transactions

C. Taxation of Listed Shares

- Introduction of a 0.2 per cent tax on stock lending
- Capital gains tax on sales of listed

shares: further postponement by virtue of Legislative Act

D. Taxation of Property

- Special Duty on buildings powered by electricity: Amendments under Statutory Act dated December 16, 2011
- Clarifications regarding exemption from the Special Duty granted to buildings owned by not-for-profit entities
- Special procedure for the correction of erroneous data used for the assessment of the 2011 Special Duty

E. Miscellaneous

- Tax & customs overdue debt statutory settlement scheme

A. Taxation of Income

Determination of non-cooperating jurisdictions in the context of anti-avoidance tax rules

The Ministry of Finance has recently issued the annual Decision determining

the jurisdictions which are treated as non-cooperating for purposes of application of anti-avoidance provisions of the Greek Income Tax Code.

The countries listed in this Decision, which applies for transactions performed during fiscal year 2012, are the same as the ones included in the list for fiscal year 2011, with the exception of Chile, which has now been excluded. In particular, the listed countries are: Andorra, Anguilla, Antigua & Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Bermuda, Belize, the British Virgin Islands, Brunei, the Cayman Islands, the Cook Islands, Costa Rica, Dominica, Gibraltar, Grenada, Guatemala, Guernsey, Isle of Man, Jersey, Lebanon, Liberia, Liechtenstein, Malaysia, Marshall Islands, Montserrat, Mauritius, Monaco, Nauru, Netherland

Antilles, FYR of Macedonia, Niue, Panama, Philippines, St. Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Samoa, Seychelles, Singapore, Turks and Caicos, the US Virgin Islands, Vanuatu, Uruguay and Hong-Kong.

The recent decision of the Ministry of Finance appears not to take into account the latest OECD progress report on jurisdictions implementing the internationally agreed tax standard. According to the said report, dated December, 15, 2011, all of the abovementioned countries have already substantially implemented the internationally agreed tax standard, with the exception of Nauru and Guatemala (which have nevertheless been committed thereto).

Amendments to the Double Tax Convention between Greece and Switzerland

Law 4034/2011 ratified the Protocol signed on November 4, 2010 by Greece and Switzerland amending the relevant Convention for the avoidance of double taxation with respect to income taxes (the "DTC"). The amending Protocol introduced various amendments which follow the latest version of the OECD Model Tax Convention, the most important being the amendments made in the articles relating to dividends, interest, capital gains as well as to the exchange of information.

In particular, the key features of such amendments have as follows:

- *Replacement of Article 10 paragraph*

2 of the DTC "Dividends": Under the amended provision, the maximum dividend withholding tax rates that may be imposed by the Source State are:

- (i) 5 per cent on the gross amount of dividends when the beneficial owner is a company of the other Contracting State, other than a partnership, participating directly by at least 25 per cent in the share capital of the distributing company or
- (ii) 15 per cent on the gross amount of dividends in any other case.

Under the previous regime, the above rates applied only to distributions made by Swiss subsidiaries. Distributions made by Greek subsidiaries of Swiss parent entities could be subject to a maximum withholding tax rate of 35 per cent.

- *Replacement of Article 11 paragraph 2 of the DTC “Interest”*: Under the amended provision, the maximum withholding tax upon payment of interest in the source State has been reduced to 7 per cent (from 10 per cent) on the gross amount of interest.
- *New paragraphs 4 and 5 of Article 13 of the DTC “Capital gains”*: In the new paragraph 4, it is stated that capital gains originating from the alienation of shares or other participation rights that derive more than 50 per cent of their value from immovable property, either directly or indirectly, may also

be taxed in the State where such immovable property is situated. In paragraph 5, an umbrella clause is introduced by virtue of which any gains from the alienation of property that is not dealt with in paragraphs 1 to 4 of Article 13 are exclusively subject to tax in the alienator’s state of residence.

- *New Article 25 relating to the exchange of information*: The new article explicitly states, among others, that a Contracting State may not deny the provision of information held, among others, by financial institutions, nominees or other persons acting in a fiduciary capacity, provided that certain requirements are satisfied.

The date of entry into force of the aforesaid amendments is January 1, 2012.

IT-related service fees classified as “business income” by First Instance Court

The Administrative Court of First Instance recently issued Decision No 6495/2011, taking a position on the appropriate withholding tax treatment of IT-related fees paid by a Greek enterprise to a foreign provider.

The case concerned the cross-border provision of Information and Communication Technology (ICT) services to a Greek enterprise. The said services comprised of operation, management, maintenance and technical support services regarding the

ICT infrastructure, the system software and the WAN intra-company network connecting the parent company with its subsidiaries, as well as the subsidiaries with each other.

The Court took the position that the payments in question may not be considered as falling within the scope of royalties under the relevant Double Taxation Convention between Greece and the state of tax residence of the foreign service provider. Therefore, the Court held that said payments should

qualify as business income, thus being exempt from withholding tax in Greece.

The Decision in question is of significance given the common practice of Greek tax authorities, who tend to

interpret the term “royalties” in a broad manner, thus erroneously considering that certain service fees (e.g. fees for advisory services, IT-related services etc.) are subject to withholding tax in Greece.

Amendments to the taxation of dividends distributed to individuals

Until now, in general, profits distributed by Greek AEs, EPEs and other similarly taxed entities to resident or non-resident individuals were subject to 25 per cent withholding tax with exhaustion of the relevant income tax liability of the recipient. However, according to such rules, individual shareholders are eligible to claim a refund of amounts of tax withheld on dividends, if their ove-

ral taxable income for the year of the distribution is taxed at marginal rates inferior to 25 per cent.

Pursuant to a bill which is expected to pass by the Greek Parliament within the following days, the abovementioned possibility for a refund, applicable only to individual taxpayers, is to be repealed.

Bad debts: extension of scope of provision on full write-off

Pursuant to article 31 paragraph 10 of the Greek Income Tax Code, for tax purposes, Greek enterprises are entitled to fully write-off bad debts which exceed the imputed bad debt reserve that may be deducted annually, provided that the enterprises have exhausted all judicial remedies for the recovery of such debt.

By virtue of article 13 of Law 4013/2011,

write-off of a claim in the context of a “rehabilitation plan” ratified by a bankruptcy court, equals exhaustion of judicial remedies, and is thus sufficient for the full write-off of the relevant bad debt within the relevant fiscal year for corporate income tax purposes. The provision in question has been introduced in light of recent amendments of the Greek Bankruptcy Code.

B. Transfer Pricing

Amended penalty for delayed reporting of intra-group transactions

Pursuant to currently applicable transfer pricing documentation rules (article 26 of Law 3728/2008), enterprises are in principle obliged to report intra-group transactions

performed during the previous fiscal year to the Ministry of Development, Competitiveness and Shipping. The reporting obligation in question occurs annually and expires 4.5 months

following fiscal year end (e.g. May 15th, for fiscal years ending on December 31st).

Until now, enterprises which failed to report any such transaction or reported such transactions with delay were sanctioned by a penalty calculated at a 10 per cent rate over the value of the

relevant transaction.

According to the bill currently pending for ratification by the Parliament, the penalty in case of delayed reporting is Euro 5,000, increased by Euro 500 for each day of further delay and capped at the amount of Euro 50,000.

C. Taxation of Listed Shares

Introduction of a 0.2 per cent tax on stock lending

Pursuant to the bill submitted to Parliament, it is proposed that off-exchange loans of shares listed on the Athens Exchange become subject to 0.2 per cent tax, the relevant agreements and actions not falling within the scope of stamp duty. Based on the proposal, such 0.2 per cent tax will be applied on the value of the shares lent and will burden the lenders, whether individuals

or legal entities, unincorporated associations or blocks of assets, irrespective of their nationality and residence, and irrespective of whether they benefit from tax or duties exemptions by virtue of any other provision. It is proposed that said tax be applied and collected in the same manner as the existing 0.2 per cent tax on sales of listed shares.

Capital gains tax on sales of listed shares: further postponement by virtue of Legislative Act

A recently enacted Legislative Act extends once again the application of 0.2 per cent tax on sales of listed shares acquired up to and including March 31st, 2012, while sales of such shares acquired on or after 1st of April 2012 will be subject to the recently introduced capital gains taxation regime. According to such regime, introduced by law in March 2011, gains from any sales of listed shares will be taken into consideration to form the taxable basis of individuals and Greek book-keeping entities.

(For more details, please refer to our March 2011 Tax Newsletter).

The scope of the above sales tax regime covers on-exchange or off-exchange shares listed on the Athens Exchange and on foreign stock exchanges or on another internationally acknowledged stock exchange institution (in the last instance, if shares are sold by Greek tax residents or Greek permanent establishments of foreign enterprises).

To be noted that a previously announced further postponement of the capital gains taxation regime has not

been concretely proposed yet by means of a tax bill.

D. Taxation of Property

Special duty on buildings powered by electricity: amendments under Statutory Act dated December 16, 2011

The Special Duty Law, enacted in October 2011, was amended by means of a Statutory Act dated December 16, 2011. Key amendments have as follows:

- The coefficients applicable for the calculation of the Special Duty for certain non-residential properties, whose surface exceeds 1,000 m² have been reduced by 30 and 60 per cent for the part of the building surface that exceeds 1,000 and 2,000 m² respectively.
- The common areas of buildings used exclusively for tourist/hotel activities (such as receptions, W/Cs Etc.) that are exempt from the Special Duty have been determined by the recent Act in a deemed manner. In particular, they are deemed to amount to a 35 per cent of the buildings that are subject to the Special Duty. This provision applies retroactively as from the enactment date of the Special Duty in October 2011.
- Under the previously applicable rules, an exemption from the Special Duty was granted to buildings owned by foreign States that are used as Embassies or Consulates under the condition of reciprocity. Pursuant to the recent Act, the exemption is extended to also cover buildings used as residence of Ambassadors and General Consuls.
- In cases of financial leasing arrangements, it is exceptionally allowed for the lessor and lessee to agree on the entity that will undertake the burden of the Special Duty. In particular, contrary to the main rule applicable to leased buildings whereby the Special Duty is paid by the lessee yet it burdens the owner, in cases of financial leasing agreements the lessor and lessee can agree that the Special Duty will burden the lessee, provided that the lessee is entitled to purchase the property upon termination of the lease.
- The 2012 Special Duty will be collected in five equal installments within the period from April 2012 to January 2013. The collection of the 2011 Duty was made only in two installments.
- The assessment date of the 2012 Special Duty is now set to be March 31, 2012 instead of the previously

applicable date, which was April 28, 2012.

- Under the previously applicable provisions, settlement arrangements for the payment of the Special Duty between taxpayers and electricity suppliers were not possible. Under

the new provisions, the settlement terms with the electricity providers for the payment of amounts due for electricity consumption are also extended on the amounts of the Special Duty that have been assessed in the meantime.

Clarifications regarding exemption from the Special Duty granted to buildings owned by not-for-profit entities

The Special Duty law provides for an exemption from the Special Duty that applies, among others, on not-for-profit foreign legal entities (e.g. entities pursuing religious, educational, charitable, cultural, benevolent, etc. activities) for the buildings they use for their activities, subject to the condition of reciprocity.

In case that the Special Duty has been assessed by the electricity supplier, the entities entitled to the exemption should first pay the Special Duty and

subsequently ask for its refund from the State. In this respect, a special application should be filed to the competent tax office along with various supporting documentation evidencing their not-for-profit activities .

Especially as regards the condition of reciprocity, a recent ministerial decision (POL 1244/2011) states that a certificate should be obtained in this respect by the Ministry of Foreign Affairs.

Special procedure for the correction of erroneous data used for the assessment of the 2011 Special Duty

The procedure for the correction of erroneous data that have been used for the assessment of the 2011 Special Duty has been determined by Ministerial Decision Pol. 1244/2011. All parties involved, namely taxpayers, municipalities, the General Information Systems of the Ministry of Finance and the electricity suppliers, should proceed to specific actions within specific deadlines. Applicable deadlines expire on January 20th for taxpayers, January

27th for the municipalities and February 10th for the General Information Systems of the Ministry of Finance.

Following delivery of the updated data by the General Information Systems of the Ministry of Finance, the electricity suppliers will reassess the 2011 Special Duty. Any difference between the new assessment and the amount actually paid as a Special Duty in 2011 will be

set off against the Special Duty due for year 2012. Any negative balance arising

out of such set off shall be refunded from the electricity suppliers.

E. Miscellaneous

Tax & customs overdue debt statutory settlement scheme

The bill currently pending for ratification before the Greek Parliament provides, among others, for the settlement of overdue tax and customs debts toward the Greek State.

The debtors wishing to enter into the overdue debt settlement scheme have to file a respective application with the competent tax/customs authority until February 29th, 2012. The settlement may take place either by lump sum payment or by payment of up to sixty equal monthly installments, with considerable benefits for the debtors (e.g. reduction of “late payment surcharges” as provided by the Greek

Code for the collection of public revenues; provision of monthly tax clearance certificate; suspension of criminal proceedings, etc.). In case of failure to pay three consecutive monthly installments or even the last two installments, the relevant benefits are revoked.

The lump sum payment or the payment of the first installment must take place when the relevant application is filed by the debtor. The rate of discount as far as the late payment surcharges are concerned depends on the number of installments opted for, as shown in the following table:

Settlement of overdue debts (payment in installments)	Reduction of late payment surcharges (per centage %)
lump sum payment	100
2 – 12	90
13 – 24	75
25 – 36	60
37 – 48	45
49 – 60	25

Several procedural details and clarifications are expected to be determined by

means of relevant Ministerial guidelines.

For further information, please contact us directly

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