TAX newsletter
03 August 2016

Recent Changes in Greek Tax Legislation

The present tax newsletter highlights some of the changes introduced by virtue of (a) the new investment incentive law (Law 4399/2016) and (b) the new tax law ratified by Parliament on 27 July 2016 (the law has not yet been gazetted) introducing changes in the fields of tax procedure, VAT & Customs and transfer pricing.

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Investment incentives

New law on investment incentives; overview

The recently voted Law 4399/2016 governs incentives for the establishment of private investment schemes, intended to promote regional economic growth but also large scale investments. The new regime is based on EU Regulation 651/2014, declaring *ex ante* certain types of aid/incentives compatible with the internal market (therefore not subject to special approval), while it focuses on the support of small and mid-sized undertakings, investment in innovative and pioneer technology as well as in low population, remote areas and/or Industrial Zones. It applies on new investment schemes, whereas for those that have already been subjected to previously applicable incentive

legislation (Law 2601/1998, 3299/2004 and 3908/2011), the relevant regimes will continue to apply. Key features involve the following:

Greek entities and Greek branches of foreign entities are eligible to apply for application of incentives for investments projects in all economic sectors, with the exception of certain projects in the sector of steel, coal, shipbuilding (which may only be allowed subject to European Commission's prior approval) and energy (again certain types of investment projects are allowed exceptionally, such as co-generation units, certain types of biofuels etc.). Special focus is placed on incentives for innovative clusters/SMEs or major investments but also on the support of small and mid- sized undertakings, which are offered more lenient compliance terms and higher incentive ratios. Among the novelties of the new law, eligible investments include the purchase of the entire assets of a business which is not in operation (closed factory) and of sustainable businesses facing financing problems, as well as the acquisition of intangibles (software, patents, rights).

The applicable percentages/amounts of the incentives depend, among others, on the location and type of the investment, the size of the beneficiary, as well the regional (as per areas identified in the Regional aid map C (2014) 2642/07.05.2014) or non-regional type of the investment. Another noteworthy novelty of the new law is that it allows the participation of the recipient to take the form of either own funds or full third-party funding, provided that 25% of the total investment expenses do not benefit from any type of State subsidy or similar aid.

Types of incentives offered are similar to those provided under previous regimes with the addition of the new concept of "fixed corporate income tax rate" and venture risk financing. Incentives may take the form of:

- Exemption from corporate income tax (over a period of 15 years; a Joint Ministerial Decision will determine the specific terms of the tax allowance); it stands as a (tax free) reserve consisting of profits before taxes calculated per the applicable percentage of the value of eligible investment expenses or of new equipment acquired with financial leasing.

- State subsidy of the investment and State subsidy of leasing expenses for the acquisition of new machinery and other equipment (leasing subsidy for a maximum period of 7 years); subsidies are applicable only for entities that have generated profits at least during one fiscal year within a period of 7 fiscal years prior to investment selection.

- Subsidy of employment cost (for new employment positions relevant to the investment plan and not receiving another type of incentive).

- Fixed corporate income tax rate for a period of 12 years following the completion of the investment project; applicable only for major investments.

- Venture risk financing through participation funds (in the form of equity, quasi-equity or loan).

Completion of pending investment projects qualifying under the previously applicable regimes (Law 3299/2004 and Law 3908/2011) is allowed under transitional provisions for the extension of applicable deadlines. The option of replacement of the remaining/unpaid portion of the subsidies with the incentive of corporate income tax exemption or the payment of subsidies in 7 annual installments is also offered to these projects.

Amendments to the cost-plus regime of L.D. 89/1967; also available for local service activities

Amendments to the cost-plus regime of Legislative Decree 89/1967 were also introduced by virtue of Law 4399/2016. Under the said regime, subsidiaries, branches and offices of foreign companies established in Greece may request a Ministerial pre-approval of the profit margin on the basis of which they will render specific types of services to related parties or their head office. To date, the cost-plus regime has only been applicable with respect to entities providing services exclusively outside Greece i.e. to their foreign related parties or head office.

The new law extends this scope also to services rendered to related parties or branches established in Greece, if the Ministerial Decision approving the entity's profit margin so provides.

Furthermore, to date, a Greek entity subjected to the cost-plus regime needed to employ at least four (4) employees and incur annual business expenses of a minimum of Euro 100,000. These thresholds may now be revised by virtue of a Ministerial Decision.

Tax procedure

Changes to the Code of Tax Procedure; highlights

The new tax law ratified by Parliament on 27 July 2016 introduces, among others, certain amendments with respect to the Code of Tax Procedure (Law 4174/2013). Some highlights:

- In the event of interfering with the operation of the Special Secure Fiscal Device for Record Signing, or of issuance of fiscal documents (invoices) without using such Device or through a non-approved Device, a new fine may be imposed, ranging from Euro 500 to Euro 20,000. The relevant provisions apply from 01 January 2016.

- The VAT fine imposed in the event of failure to issue an invoice, or of issuance of inaccurate invoices, may not be less than Euro 500 per tax inspection (reduced to Euro 250 for entrepreneurs with single-entry books). The above minimum amount could be increased to Euro 2,000 (or Euro 1,000 for entrepreneurs with single-entry books), in the event of recurring violations within a 5-year period. The new provision applies from 25 July 2016.

- The deadline for lodging a mandatory administrative appeal with the Dispute Resolution Directorate of the General Secretariat for Public Revenue is extended to 60 days, instead of 30, for non-Greek residents.

- The deadline for the notification of the tax authorities' registry of any changes to the taxpayer status has been extended from 10 to 30 days, whilst certain minor changes are not subject to any notification deadline whatsoever.

- In case of tax inspections in the residence of the taxpayer, an examining magistrate must be present along with the investigation teams.

- The deadline for claiming application of the tax leniency regime of Law 4337/2015 is extended until 30 October 2016.

Annual Tax Certificate becomes optional for FY 2016 and onwards

For fiscal years starting from 01 January 2016, Greek enterprises are no longer obliged to obtain an annual tax certificate, as part of their annual statutory audit of accounts. The previously applicable penalty for the failure to obtain a tax certificate has been abolished. According to the law, findings reported in tax certificates of enterprises opting to obtain such certificate under the new regime, may be taken into account by tax authorities, for tax audit purposes.

Breach of confidentiality: Increased penalties for MoF employees

The Greek tax procedure code provides that employees of the Ministry of Finance must not disclose under any circumstances information regarding taxpayers, which has come to the employees' knowledge during the performance of their duties. However, no specific penalties were stipulated in the event of non-compliance.

The new law introduces legislation to strengthen the confidentiality of information concerning taxpayers, by adopting provisions to penalise any breach of secrecy obligations. In particular, the new law stipulates that the breach of secrecy obligations as regards information and data relating to taxpayers constitutes violation of duty and breach of confidentiality, which may result in the permanent termination of the employee. It also introduces fines which range from Euro 1,000 to Euro 100,000, depending on the gravity of the infringement. Such fines are imposed by the Secretary-General for Public Revenue.

Further, according to the new law, fines of Euro 200,000 are imposed on companies which undertake projects by the Ministry of Finance in case of breach of secrecy obligations by their employees or directors.

Transfer pricing

Transfer pricing compliance & APAs: changes introduced

According to the new law, the deadline for the preparation of the annual Transfer Pricing file and the electronic reporting of intra-group transactions (the so-called "Summary Information Table") is extended, so as to coincide with the deadline for submission of the taxpayers' annual corporate income tax return. This is instead of the previously applicable deadline, expiring four months following fiscal year end. The extension applies with respect to compliance obligations concerning fiscal years starting from 01 January 2015.

On another topic, according to the new law, rulings on unilateral APAs (Advance Pricing Agreements) should be issued within 18 months, following submission of an application, instead of the previously applicable deadline of 120 days. The Secretary-General for Public Revenue has the authority to issue an act to further extend such deadline to up to 36 months following submission of the application.

VAT & Customs

Changes to the import VAT deferral scheme

Greek law provides for the application of a VAT deferral scheme on imports, allowing foreign businesses not to pay VAT at the time of import but to account for such tax through the filing of the respective periodical VAT return. The application of the above scheme is subject to the fulfillment of certain conditions, among which is the realisation of imports of a statistical value at least equal to Euro 300 million on an annual basis. A reduced threshold of Euro 120 million applies for the first five years of application of the scheme.

On the basis of the new law, the aforementioned annual threshold is reduced to Euro 250 million and to Euro 100 million for the first five years of application of the scheme, respectively.

In addition to the above, the new law provides that the non-fulfillment of one or more of the conditions for the application of the import VAT deferral scheme shall give rise to an obligation for payment of VAT corresponding to the part of the imported goods that have not been supplied intra-Community or exported from Greece. Furthermore, in such case a penalty of Euro 10,000 is imposed on the importer.

Imposition of special duty on electrically heated tobacco products

On the basis of the new law, a special duty with features similar to excise duty is imposed on tobacco that is used in electrically heated tobacco products. The rate of the duty is Euro 156.70 per kg of net

weight of tobacco mixture to be used in the aforementioned products. It is noted that electrically heated tobacco products are not subject to excise duty, since they do not qualify as "manufactured tobacco" in accordance with Directive 2011/64/EU.

New measures aiming at enhancing the control of the supply chain of tobacco and industrialised tobacco products

The new law introduces a number of measures aiming at enhancing control of the supply chain of tobacco and industrialised tobacco products, as well as of the equipment for the production thereof. Such measures include a licensing requirement of for intra-Community acquisition or supply, and for the import and export of tobacco, as well as the creation of a Central Registry of the supply chain of tobacco and industrialised tobacco products. Also, new obligations of increased diligence are imposed on licensed tobacco manufacturers, among which is the electronic submission of a list with transactions of their suppliers and customers relating to the trade of tobacco products and the reporting of any unusual or suspicious transactions.

Measures relating to the use of information technology for customs purposes

On the basis of a new law, a number of measures are introduced in compliance with EU requirements for the use of information technology for customs purposes. Such measures could be summarised as follows:

- Further exploitation of the Customs Information System (which is an EU information database aiming to facilitate customs authorities of EU member states to exchange personal and other data concerned with illicit activities provided by national laws) for the prevention, investigation and prosecution of serious violations of the law

- Creation of a special database of the aforementioned Customs Information System, referred to as "Customs Files Identification Database", which shall cover data in relation to persons or businesses that are subject to an investigation initiated by the competent authorities, to the extent certain conditions are fulfilled (e.g. when such person/business is suspected of committing or having committed a serious infringement of national law). Access to the aforementioned database will only be provided to specific authorities (i.e. the Directorate of Strategy of Customs Controls and Infringements of the Greek General Directorate of Public Revenue, as well as Europol and Eurojust).

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