

# Tax Newsletter

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20 January 2016

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## ***Direct Taxes***

### ***Preferential/non-cooperative tax jurisdictions; revised guidelines by the Greek MoF***

The Greek MoF has recently issued two decisions listing the jurisdictions that should be treated as preferential tax regimes or non-cooperative tax jurisdictions for year 2015 (Decisions No. 1277/2015 and No. 1279/2015, respectively).

By way of reminder, transactions with entities established in preferential tax regimes or non-cooperative tax jurisdictions are subject to increased scrutiny from a Greek tax perspective, primarily in relation to the tax deductibility of the relevant expense, as well as within the scope of CFC and transfer pricing legislation.

*Annual withholding tax certificates; compliance obligations*

The Greek MoF has recently issued guidelines (Ministerial Decision POL 1274/2015) on the obligation of Greek enterprises to prepare and submit their annual withholding tax certificates for calendar year 2015.

This Decision prescribes the requirements concerning type, content and procedure for electronic submission of withholding tax certificates for salary income and income from business activity. It also introduces for the first time the obligation of Greek enterprises to submit online any withholding tax certificates related to income from dividends, interest and royalties, and at the same time it addresses the relevant formalities thereof.

As also applicable for calendar year 2014, the submission of withholding tax certificates for all the above types of income will have to be performed online through an application available in the tax authorities' electronic system (taxisnet).

The deadline for submission of the 2015 certificates for salary income and income from business activity expires on 15 February 2016 while for dividends, interest and royalties the respective deadline expires on 31 December 2016.

*Indirect Taxes**Exceptions from application of domestic reverse charge on technical projects*

Law 4281/2014 (published in Government Gazette vol. 160 on 8 August 2014) has introduced, with effect from 8 August 2014, the application of domestic reverse charge on technical projects performed for public authorities which are taxable persons with the right to deduct input VAT. Accordingly, the contractors do not charge VAT on their invoices but the public authorities self-assess the applicable VAT.

Law 4339/2015 (published in Government Gazette vol. 133 on 29 October 2015) and Law 4351/2015 (published in Government Gazette vol. 164 on 4 December 2015) introduced exceptions to the above application of the domestic reverse charge, with retroactive effect from 8 August 2014. Relevant guidelines have been provided by the Greek MoF (Decision No. 1264/2015). The exceptions concern major projects. In specific, projects<sup>1</sup> funded by the European Regional Development Fund and the Cohesion Fund, for which the total eligible cost exceeds EUR 50,000,000 and projects promoting sustainable transport and removing bottlenecks in key network infrastructures, where the total eligible cost exceeds EUR 75,000,000. Accordingly,

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<sup>1</sup> These are projects falling within the scope of article 100 of Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 and article 39 of COUNCIL REGULATION (EC) No. 1083/2006 for periods 2014-2020 and 2007-2013 respectively.

contractors involved in the above projects will be charging VAT on their invoices to the public authorities and pay it to the treasury.

*Deduction of input VAT on capital goods intended for use free of charge; Recent CJEU ruling and impact in Greece*

The Court of Justice of the European Union (“CJEU”) recently ruled on the right of deduction of input VAT on the acquisition or production of capital goods intended for use free of charge (CJEU Judgment C-126/2014, “Sveda” UAB). According to the CJEU, a taxable person has the right to deduct the input VAT from the acquisition/production of such goods, even if they are intended for use free of charge, provided that (a) they enable other taxable transactions to be carried out and (b) there is a direct and immediate link between the expenses associated with the input transactions and output transactions or the person’s economic activity as a whole.

The above decision of the CJEU may shed light to the current uncertainty in relation to the indirect tax treatment of similar transactions performed by Greek taxable persons. In specific, in the past the Greek MoF had accepted the deductibility of input VAT incurred from the purchase/production of capital goods which are intended to be granted for use free of charge in the context of the grantor’s taxable activity and with a view to generate taxable transactions (Decision No. 1184/1995).

However, the Greek Administrative Supreme Court later adopted a different position in 2010 (Judgment No. 3529/2010) by ruling that the granting of use of capital goods free of charge falls outside the scope of VAT and is subject to stamp tax. The consequence of such judgement is that input VAT on the acquisition/production of such goods would not be deductible.

In view of the conflicting position taken by the Court, the Greek MoF has addressed a query to the Greek Legal Council of State (see Circular of the Ministry of Finance 1041/2014) requesting a clarifying decision on the matter. The recent CJEU decision may assist in resolving the dispute to the direction of recognising that input VAT incurred from the acquisition/production of capital goods used free of charge should be recognised as deductible, to the extent that their use is linked to the economic (taxable) activity of the taxable person.

*Excise duty imposed on wine*

On the basis of Law 4346/2015, excise duty is imposed on wine that is released for consumption in Greece as of 1 January 2016. The rate of the duty is EUR 20 per hectoliter (“HL”) of final product. The obligations arising from the aforementioned law and the relevant administrative guidelines are summarised as follows:

- Excise duty becomes due upon release of the wine for consumption in Greece. Such duty, along with VAT, is declared to Greek customs through an excise duty declaration (“DEFK”), which is submitted electronically.
- The application of excise duty on wine is suspended in case the wine is placed in a bonded warehouse, which requires the issue of special licences by the customs authorities and the submission of a guarantee, whose value depends on the type of activities performed (i.e. production, processing or mere holding of the wine that is stored in the bonded warehouse).
- Given that wine shall be subject to excise duty for the first time (until now the rate of such duty was nil), the relevant administrative guidelines provide for a “transitional period” during which the following obligations are imposed:
  - i. Wine production and/or processing businesses must acquire a licence of bonded warehouse and warehouse keeper no later than 30 April 2016.
  - ii. The stock of wine maintained until 31 December 2015 must be reported by 31 January 2016. Furthermore, such stock must be placed in a bonded warehouse no later than 30 April 2016, otherwise excise duty and VAT shall become due and payable by 30 April 2016. In the event that part of the stock is sold before the issuance of the required licences for storage in a bonded warehouse, the corresponding amount of excise duty and VAT shall become due. However, wine can be exported before the issuance of said licences without payment of excise duty, to the extent a relevant guarantee covering the amount of such duty is deposited to the customs office.
  - iii. Volumetric counting of tanks must be effected within 2 years (i.e. by December 2017). Further guidelines are expected to come out in this respect.

Small producers whose annual wine production does not exceed 1,000 HL are under the obligation to file a DEFK and pay excise duty and VAT upon the production of wine. Such producers are not under the obligation to obtain licences for storage of wine in bonded warehouses. Furthermore, small producers are subject to special reporting obligations towards the customs authorities and must proceed with the payment of excise duty and VAT on the stock of wine maintained on 31 December 2015 by 31 January 2016.

An exemption from excise duty is provided for wine (up to 1,000 liters annually) that is produced by private individuals and is consumed by the producer and members of the producer’s family or guests, to the extent that no sale is involved.

### *CJEU finds Greek vehicle registration tax incompatible with EU law*

On 14 January 2016, the CJEU ruled on case C-66/15, European Commission vs Hellenic Republic, concerning the imposition of registration tax for vehicles that are

brought in Greece under a lease agreement. The Court ruled that Greece's failure to distinguish between the amount of registration tax due on vehicles brought into Greece on a temporary basis under a lease agreement, compared to the registration tax due on vehicles that are brought into Greece and are registered and exclusively used in Greece, violates the freedom to provide services provided by articles 56-62 of the Treaty on the Functioning of EU ("TFEU"). The case in question is of particular interest in what regards foreign vehicle leasing companies entering into relevant agreement with Greek lessors.

Furthermore, in another recent case (case C-402/14, Viamar) the CJEU ruled that the aforementioned registration tax qualifies as a charge having equivalent effect with a customs duty. Therefore, the Court rules that imposition of the tax is prohibited by article 30 of the TFEU in the event that a motor vehicle is imported in Greece and then re-exported to another EU member state without ever becoming registered in Greece. In that case, according to the CJEU, the registration tax collected upon import in Greece should be refunded once the vehicle is re-exported.

### ***Shipping taxation***

#### ***Commission repeats questions on compatibility of Greek tonnage tax regime with EU state aid rules***

In 2012, the Commission expressed concerns as regards the compatibility of certain provisions of the Greek tonnage tax regime with EU state aid rules and to this end it addressed a relevant letter to the Greek authorities. Such provisions include the application of the regime in question to specific types of vessels and the introduction of tax exemptions for shareholders of shipping companies, as well as operators (such as maritime intermediaries and brokers) that do not provide maritime transport services.

Following relevant exchanges with the Greek authorities, the Commission has now sent to Greece a set of proposed measures which, in its view, should be adopted in order to ensure compliance with EU state aid rules. Publication of these measures is yet pending. Greece has two months to inform the Commission whether it agrees to the proposed measures. If not, the Commission may open a formal state aid investigation.

### ***Miscellaneous***

#### ***Annual tax certificate for Greek enterprises; impact on tax audits***

The Greek MoF recently issued a decision (No. 1006/2016) concerning the impact of unreserved tax certificates on the tax authorities' right to conduct an ordinary tax

audit. The Decision in question, which is in acknowledgment of a related decision of the Greek Legal Council of State (NSK 256/2015), concludes that:

- Enterprises which have been subject to a statutory audit and have obtained an unreserved tax certificate may, nevertheless, be subject to an ordinary tax audit by the Greek tax authorities for the same fiscal year, under generally applicable rules.
- The Greek administration does not have the authority to issue a binding decision restricting the term within which tax authorities have the right to initiate an ordinary tax audit; therefore, the 5-year statute of limitation should apply equally, irrespective of whether an enterprise has obtained an unreserved tax certificate for the relevant fiscal year, or not.

The above decision applies with respect to fiscal years 2014 and onwards and confirms a significant change in the effect of annual tax certificates, compared to the ones obtained for fiscal years 2011-2013. By way of reminder, under the previous regime, tax authorities were prohibited from initiating an ordinary tax audit concerning fiscal years for which an unreserved tax certificate had been obtained, save for explicit exceptions set out in the law.

### *Greek Supreme Administrative Court orders revision of real estate values*

The Greek Supreme Administrative Court recently ordered the administration to readjust the statutory (objective) values of real estate (i.e. ordered the annulment of the administration's omission to do so), taking into consideration the recession of the Greek economy from year 2010 (Judgment No. 4446/2015).

In order to minimise the impact of the decision on the level of fiscal revenues, the Court ruled that revised values should be effective from 21 May 2015 and not earlier than that.

The judgment of the Plenary Session followed previous judgment No. 4003/2014 due to which the Court had set a six-month deadline to the administration for readjusting objective values of real estate.

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