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Structural tax reforms approved after new law ratified by the Greek Parliament

The Greek parliament ratified Law 4549/2018 on 14 June 2018. The law includes changes to the Income Tax Code, VAT Code and Tax Procedures Code. The most significant income tax and VAT changes are covered below.

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Changes to Income Tax Code

In principle, the changes to the Income Tax Code are applicable retroactively as from the beginning of the 2018 tax year, unless otherwise stated below.

Corporate income taxation

Transfer of losses

Tax losses carried forward by a legal entity are forfeited when there is a change in ownership of more than 33% within a fiscal year. An additional condition for forfeiture of tax losses is introduced under the new law; namely, losses will not be forfeited unless the entity also changes its business activity within the same and/or the following fiscal year, and the new business activity represents more than 50% of the annual turnover compared to the fiscal year before the change in ownership took place.

The explanatory report for the new law notes that the new provision on the transfer of losses constitutes a “lex specialis” enumerating the conditions, under which the right to carry forward losses is forfeited and applies also in case where the change in ownership results from a corporate transformation. Consequently, general anti-avoidance rules applicable to corporate transformations (e.g. mergers, de-mergers etc.) does not apply with respect to the right to carry forward tax losses, which is to be governed by the newly introduced rule analyzed above.

These changes will have retroactive effect as from 1 January 2014.

Depreciation

A new provision on tax depreciation is introduced, which states that energy-related or water-saving costs are depreciable according to the applicable rates, increased by 100%. However, it is clarified that if the initial depreciation rate exceeds 10%, the increased rate should not exceed 110%.

The definition of "financial leasing" is deleted from the tax law and is replaced by a reference to the relevant definition of the Greek General Accounting Standards law. Accordingly, there is now a single test for tax and accounting purposes as to whether a lease qualifies as financial, allowing thus the lessee instead of the lessor to compute and deduct depreciation instead of reporting a lease payment expense.

Withholding taxes

A new provision is introduced, under which a legal entity is subject to withholding tax at 15% on its undistributed profits if it changes its accounting books from double entry to single entry. The withholding tax also is applicable to a *Societé Anonyme*, a limited liability company or a private company that is transformed into a partnership and thus changes its accounting books from double entry to single entry.

Noncooperative states

The definition of "noncooperative states" is amended to include jurisdictions that have not signed the Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters and are not committed to the automatic exchange of financial information starting in 2018. For Greek tax purposes, expenses paid to residents of non-cooperative states are non-deductible, unless it can be proven that there was no tax avoidance or tax evasion in place. Additional onerous consequences apply in other tax areas (e.g. ownership taxes with respect to real estate etc.).

Calculation of corporate income tax – tax credit

With respect to intragroup dividend income from EU subsidiaries that is not eligible for the participation exemption, the amount of the underlying corporate income tax (and not merely the amount of tax withheld at source) is creditable to the extent it relates to the dividends.

Tax incentives

Two new articles (71D and 71E) are introduced into the Greek Income Tax Code that provide tax incentives to address unemployment and promote audiovisual productions, respectively.

Deductibility of employers' social security contributions

Article 71D, provides, *inter alia*, that 150% of employers' social security contributions pertaining to recruitment of full-time employees is deductible from gross income. The limit of deductibility for the contributions is 14 times the minimum salary for the job for an unmarried employee more than 25 years old.

Audiovisual productions

Article 71E, provides, *inter alia*, for a reduced tax base for individuals or legal entities that are subject to tax in Greece and invest in audiovisual productions. Specifically, 30% of eligible expenses incurred in Greece for each production will be deductible from taxable income. The eligible expenses will be determined by a ministerial decision. However, the provision will not cover investments in audiovisual productions financed by grants.

The deductible expenses, along with any other aid received for the same audiovisual production, may not exceed 50% of the production costs.

General provisions

Tax residence

An individual is considered tax resident in Greece if he/she is present in Greece for more than 183 days within any 12-month period, or if his/her center of vital interests is in Greece. The new law modifies the concept of “center of vital interests” and defines it as the place where an individual has his/her personal, economic *and* social ties (previously, it was defined as the place of an individual’s personal, economic *or* social ties).

Individual income taxation

Capital gains

The method for calculating capital gains in the case of a transfer of securities acquired via inheritance, donation or parental gift is rationalized. The new provisions stipulate that, in the event of a transfer of securities acquired in one of these ways, the value on which the tax on the inheritance, gift or parental gift was calculated is considered to be the acquisition price for purposes of calculating capital gains. Under the previous regime, in the case of a transfer of such securities, the acquisition price was deemed to be the amount of tax paid for the securities’ acquisition, which posed a significant tax burden on taxpayers. The above provision applies to transfers of securities effected as from 1 January 2018.

Income from business activities

Income derived by an individual from his/her business activities is taxed on a progressive scale, with rates ranging from 22% to 45%, depending on the taxable income.

However, the amendments to the current legislation exclude certain transactions from taxation as business income.

Income derived by an individual from a transfer of assets that were obtained by inheritance or donation from up to second-degree relatives (parents-children, siblings, grandparents-grandchildren) will not be considered as profits from business activities for Greek tax purposes. Income derived from a transfer of assets that have been in a taxpayer’s possession for more than five years also will be excluded from being considered as profits from business activities. These changes apply for income derived as from 2018.

As from 2019, a single act of a partial or full transfer of immovable property, rights to immovable property or a shareholding whose value is at least 50% attributable to such property will not be regarded as a business transaction. The same treatment will apply for transfers of securities (shares of listed or unlisted companies, business shares, governmental or corporate bonds, treasury bills and derivatives).

Practically, this means that, as from the relevant fiscal year, the lower tax rate for capital gains taxation (15%) will apply, rather than the rate for the taxation of profits from business activities.

Changes to VAT Code

The new law amends the provisions of the VAT Code relating to taxable value and the special scheme for small enterprises.

Taxable value

A new provision is added, under which, in the case of certain supplies of goods and/or services involving related or affiliated entities (as defined in the Income Tax Code), the taxable amount is the “open market value” if the consideration provided is lower than this value. This is the case only if either the supplier or the recipient is not entitled to full rights to deduct input VAT.

The open market value also will be considered the taxable amount if the relevant supply of goods and/or services is VAT exempt in Greece and the supplier does not have full VAT deduction rights. This provision does not apply if both contacting parties perform an activity for which they have full deduction rights for input VAT, since, in such a case, the effect for the government would be neutral, as the increased charge of VAT would result in an increased deduction of VAT for the recipient of the invoice.

The new provision incorporates the relevant article of the EU VAT directive for the purpose of rationalization of the VAT system, as well as to prevent tax evasion and facilitate correct tax remittances in cases of affiliated or related entities, under certain conditions.

Another new provision is added that clarifies that, in cases involving an auction, the proceeds of the auction are considered as the taxable value, so that no challenges arise.

The new provisions are effective as from 14 June 2018.

Special scheme for small enterprises

As from 1 January 2019, taxable persons commencing their business activities will be allowed to qualify for the special scheme for small enterprises in their first year. It no longer will be mandatory to apply the scheme for two years, so taxable persons applying the scheme in their first year may be subject to the standard VAT regime as from the following year.

For the purpose of harmonization with the EU VAT directive, transfers of fixed assets and VAT-exempt transactions where there is no deduction right for input VAT will not be taken into consideration for the determination of the applicable threshold to qualify for the special scheme (currently, EUR 10,000 of gross revenue from taxable supplies).

To avoid the abuse of the special scheme, immediately upon exceeding the threshold of EUR 10,000, the taxable person is obliged to charge VAT, regardless of the time of the filing of the declaration for the change of the regime to the competent tax office.

To be reminded that under the special scheme for small enterprises, no VAT is due by the VATable person and no input VAT deduction is allowed; furthermore, no VAT returns need to be filed.

Extension of the application of the special (reduced by 30%) VAT rates in certain islands

By virtue of an Act of Legislative Content that was published on 29.06.2018, ***the application of the special (reduced by 30%) VAT rates*** (namely, 17%, 9% and 4%), ***is extended for the islands of Leros, Lesvos, Kos, Samos and Chios until 31.12.2018***.

It is also reminded that for the Mainland Greece and all other Greek islands, the standard VAT rates (namely, 24%, 13% and 6%) apply.

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