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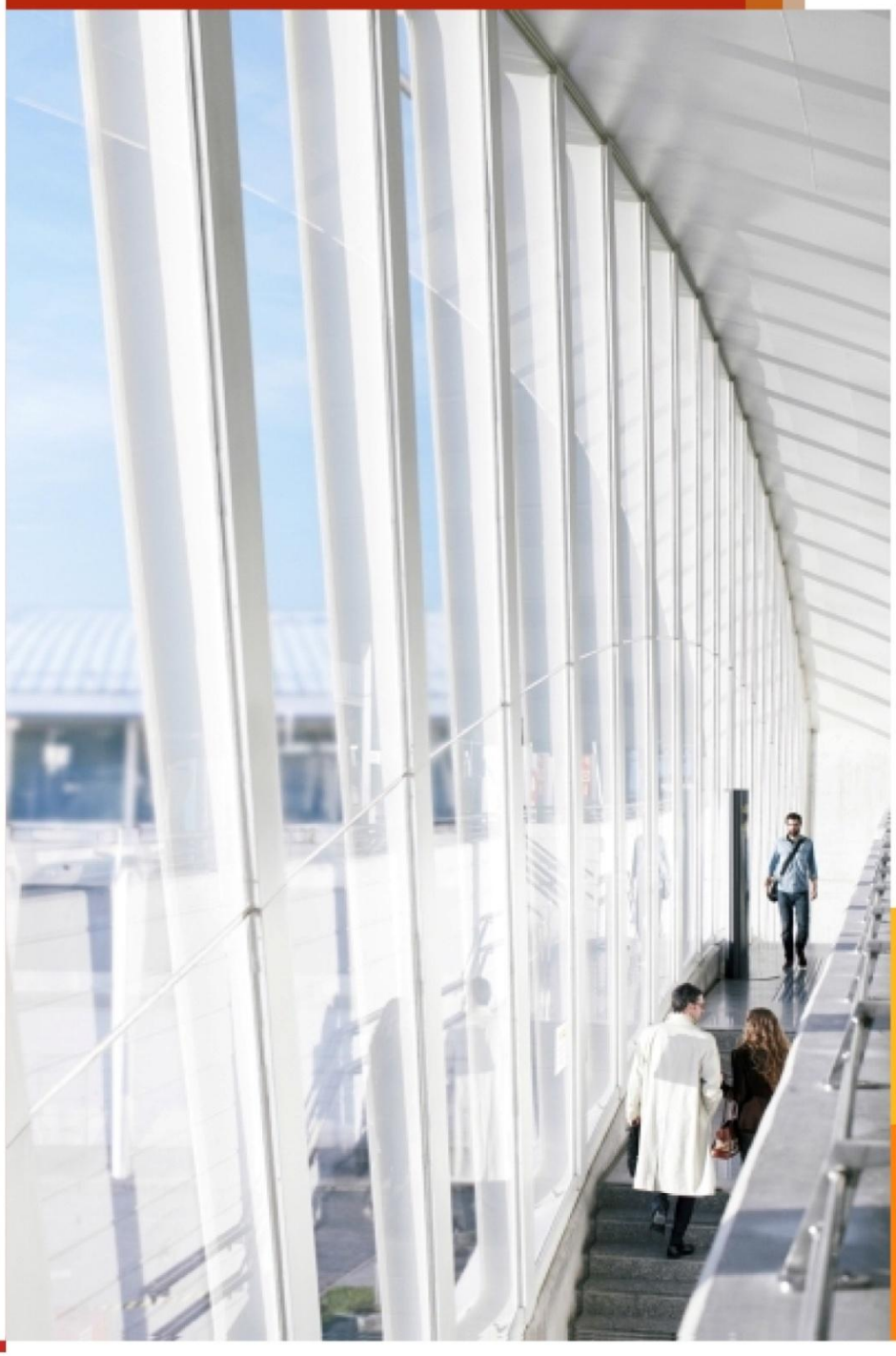
Tax Bulletin

January 2013

On 11.1.2013 the new tax law was ratified (its publication in the GG is still pending). Herein follows a presentation of the most important changes introduced in the Greek tax system.



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A. The tax scales at a glance – New tax rates

A.1 The New Tax Scales

A different income tax scale per category of income (employees-pensioners, sole proprietorships-freelancers, real estate and securities income) is established. The aim is to tax the income derived from business activities (even by companies) and freelancers in total at a maximum tax rate of approximately 33% (no tax free amount), any capital income to be mostly taxed at source, whilst the tax scale applicable to employee-pensioners is significantly simplified by the introduction of only three tax brackets. It is noted that the Scientific Committee of the Parliament has expressed reservations on the compatibility of the complete abolition of the tax free amount with the Constitution. It is noted that the Report issued by the Scientific Committee of the Parliament includes a reservation on whether the different tax treatment of the same amount on the basis of their source may constitute an infringement of the constitutional principle of tax

Income tax scale applicable to employees-pensioners

Income Bracket	Tax Rate	Tax Bracket	Total Income	Total Tax
25,000	22%	5,500	25,000	5,500
17,000	32%	5,440	42,000	10,940
Excess amount	42%			

Income tax scale applicable to sole proprietorships-freelancers

Income Bracket	Tax Rate	Tax Bracket	Total Income	Total Tax
50,000	26%	13,000	50,000	13,000
Excess amount	33%			

Income tax scale applicable to real estate and securities income

Income Bracket	Tax Rate	Tax Bracket	Total Income	Total Tax
12,000	10%	1,200	12,000	1,200
Excess amount	33%			

Income tax scale applicable to General Partnerships, Limited Partnerships and other private enterprises and joint ventures *(when keeping single entry accounting books)*

Income Bracket	Tax Rate	Tax Bracket	Total Income	Total Tax
50,000	26%	13,000	50,000	13,000
Excess amount	33%			

- The new tax scales apply for income received from the fiscal year 2014[1] (accounting period[2] 2013) onwards.

- A 50% reduction of the tax rate of the first bracket of the income tax scale (please refer to p.4) (namely 13%) for income of up to 10.000€ is provided for sole proprietorships and freelancers that are registered (commencement of business activity) from 1.1.2013 onwards and for the first 3 years of their business activities.

- A single tax rate of 13% is introduced for income derived from the sole agricultural business, commencing from fiscal year 2015 (accounting period 2014) onwards. With regard to the fiscal year 2014 (accounting period 2013) said income will be taxed at source on the basis of the progressive tax scale applicable to employees- pensioners.

The following table summarizes the amendments of the tax rates of corporate income tax, withholding and other taxes, as well as the entry into force of the new provisions.

Income Category	**Previously applicable tax rates**	**New tax rates**	**Entry into force**
Corporate Income Tax	20%	26%	Fiscal year 2014 (accounting period 2013) onwards
Dividend Withholding Tax	25%	10%	Profit distributions approved by the G.M. or other competent body from 1.1.2014
Interest payable on corporate bonds, bank deposits etc.	10%	15%	Interest payable or credited from 1.1.2013 onwards.
Interest payable on bonds issued by the Greek State and treasury bills	10%	15%	Interest arising from titles from 1.1.2013 onwards.
Interest Withholding Tax paid to foreign beneficiaries	40%	20% for individual - beneficiaries	Interest paid or credited from 1.1.2013 onwards.
		33% for legal entities - beneficiaries	
Taxation at source of dividends and profits paid by a foreign S.A. and LLC respectively to individuals	25%	10%	For income received from fiscal year 2014 (accounting period 2013) onwards.
Taxation of the transfer of shares held in S.A.s not listed on the Stock Exchange	5% (imposed on the consideration)	20% (imposed on the capital gains)	Transfer of shares acquired from 1.7.2013 onwards
Derivatives Income	15%	20%	Income received from fiscal year 2014 (accounting period 2013) onwards
BoD Members Fees and interest derived from funding titles and preferred shares, bonuses paid to employees. Salaries and other remuneration paid by LLCs and other legal entities to partners and administrators	35%	40%	Income received from fiscal year 2014 (accounting period 2013) onwards

[1] Fiscal year is generally the year in which a company files the income Tax Return for the respective accounting period. Thus for example, for an accounting period ending on 31.12.2013 the fiscal year is 2014.
[2] The accounting period is defined as the time period in which the relevant income is generated, and in principle includes a 12-month period, even though such period may be shorter or longer, subject to certain conditions. The accounting periods may extend over multiple accounting periods.

A .2 Extension of the taxable basis for income and shipping taxation

Under the new law income that was not subject to tax until today, is now taxed.

Income Category	New Tax Rates	Entry into force
Amounts paid to beneficiaries and correspond to insurance premiums paid by the enterprise in the frame of group life insurance plans of its employees	*1) Lump sum payments:* <= 40.000 euro 10% Exceeding 20% *2) Periodic payments* 15% 50% surcharge applies in case of a premature redemption (15% - 30% - 22,5%)	From publication in the GG
Amounts paid to shareholders in case of share buybacks by Greek S.A.s	10%	From publication in the GG
Vessels flying a foreign flag, which are managed by Greek or foreign ship management companies established in Greece	Tonnage Tax (on the basis of the gross tonnage and age of the vessel)	From 1.1.2013

B. Taxation of Individuals – Partnerships

B.1 Definition and determination of income

- Any income derived from the exercise of a sole proprietorship (provision of services) or freelancers is considered as employment income, if the following conditions are cumulatively met:

  a) a written agreement with individuals and/or legal entities for the provision of services has been concluded, and

  b) the individuals and/or legal entities receiving such services are less than 3, or, if more than 3, a percentage of 75% of the gross income derived from the exercise of the sole proprietorship or freelancer activities is received from one of those individuals or legal entities receiving such services.

This constitutes an important amendment, since it attempts to treat employees that are hired by one employer on a non-employment basis, without requiring the challenge of the legal nature of their relationship (dependent or independent employment), solely by fulfilling absolute objective criteria. Another crucial matter refers to the treatment of such cases from a social security law perspective, where criteria deeming the existence of a dependent employment relationship when providing services to only one employer, already exist (please refer to L.3846/2010). The given tax bill, however, explicitly only refers to the tax perspective.

- The special method of taxing bonuses granted to credit institution executives is extended until the fiscal year 2014.

B.2 Reductions of tax for employees and pensioners – receipt system (article 1)

The tax free amount of income is repealed and the reduction of the corresponding tax arising on the basis of the tax scale applicable to employees-pensioners is introduced

- The tax free amount is repealed and the system of reducing the tax arising on the basis of the income tax scale applicable to employees – pensioners is amended.

It is noted that the Scientific Committee of Parliament has expressed reservations on the compatibility of the complete abolition of the tax free amount with the Constitution.

- The amount of tax reduction amounts to 2,100€ for income received by employees and pensioners up to 21,000€ and by 100€ for every additional income of 1,000€, up to the total maximum of 2,100€. If the tax arising is less than 2,100€, the amount of the reduction is limited to the amount of tax.

- The provision of the expense reduction of tax, presupposes, with some exceptions, the collection of receipts (purchase of goods and provision of services), which is determined at 25% of the declared and taxed personal income, limited up to the amount of 10,500€ and on the additional condition that relevant expense receipts have been included in the duly filed income tax return. The ensuing balance between the required and adduced amount of receipts is subject to additional tax imposed at a rate of 22%.

- The above expense receipts take into account the receipts received for services in relation to the repair and maintenance of properties, the transportation of goods, the maintenance and repair of cars-motorcycles, spare parts of cars and motorcycles, taxi and petrol, as well as tuition and foreign language lessons expenses. *It is noted that the wording of the law seems to allow receipts issued in other EU Member States.*

- The amount of tax arising on the basis of the progressive tax scale applicable to employees-pensioners is further reduced by a percentage of 10%, solely for expenses concerning:

    a) Medical and hospital expenses of the taxpayer and the persons in his care, for the part that is not covered by insurance funds and/or companies and which exceed 5% of the taxable income, with a maximum amount of reduction of 3,000€.
    b) Adjudicated alimony paid by one spouse to the other, up to a maximum amount of reduction of 1,500€.
    c) Donations and grants of specific instances and to restrictively listed bodies and organizations, with a maximum amount of reduction of 5% of the total income taxable on the basis of the general provisions.

- A series of expenses that are taken into consideration for the reduction of tax, such as mortgage loan interest, rents, tuition fees etc. are abolished.

- The amount of tax is reduced by 200€ for the taxpayer himself and for every individual living in the same property or in his care, provided that:

    a) these individuals suffer from a diagnosed disability of at least 67% and above on the basis of an expert's opinion,
    b) are disabled army officers or soldiers,
    c) are war victims,
    d) being disabled or victims of the resistance or civil war receive pension from the public sector.

- Foreign residents receiving Greek sourced income are excluded from the above reductions, with the exception of EU residents that earn more than 90% of their income in Greece.

B.3. Taxpayers' Obligations (article 8)

The obligation of filing an income tax return is extended to persons that were under no such obligation previously

- Amendments are introduced with regard to the persons liable for filing an income tax return, the deadline of filing income tax returns and the content of income tax returns.

  More specifically:

    - Every individual that has completed 18 years of age is obliged to file an income tax return.
    - Foreign residents are obliged to file an income tax return with respect to the income arising in Greece, as well as when subject to the provision of deemed income and imputed income (articles 16 and 17 of the ITC), irrespective of whether the exemptions of article 18, par.g' of the ITC apply or not.
    - The deadline for filing an income tax return is specified as of 01.02 to 30.06 of the respective fiscal year, and not until the 1st of March as previously applicable.
    - All the exceptions applicable for filing an income tax return are repealed, except of the cases of extended accounting periods (exceeding 12 months) for legal entities and disaffirmance of inheritance.

- An obligation of declaring all income, whether tax exempt or not, in the income tax return of individuals is established.
- The aforementioned obligations refer to income tax returns filed from the fiscal year 2013 (accounting period 2012) onwards.

B.4 Taxation of Partnerships (article 3)

A new method of taxing partnerships (General Partnerships, Limited Partnerships), other personal enterprises and joint ventures, depending on the maintenance of single entry or double entry accounting books is specified

- A progressive income tax scale for income derived by partnerships is introduced, establishing two income brackets, taxable at a tax rate of 26% for income up to 50,000€ and 33% for any exceeding amount, provided that single entry accounting books are kept. In case double entry accounting books are kept, partnerships are taxed under the CIT rate of 26%. In essence, the respective corporate income taxation of capital companies applies in the latter case for distributions of profits, namely a withholding tax of 10% and a direct reference to the provisions of the Corporate Income Tax Code is made. This provision applies to income received from the fiscal year 2014 (accounting period 2013) onwards.

- The entrepreneurial fee received by the general partner is no longer taxed as business income.

The differentiation of the tax rate applicable to partnerships, on the criterion of accounting books kept, raises concerns on the infringement of the principle of tax equality.

C. Corporate Income taxation

C.1 Business Income (article 3)

- The returns derived from derivative financial instruments are no longer treated as business income, but will in any case be treated as securities income.

Already under L.4051/2012 special attention is required to be paid in relation to an obligation of withholding tax on payments derived from derivatives from abroad, which according to the prevailing practice were not subject to any withholding.

- The salary paid by all the legal entities included in article 101 par. 1 – and not only of LLCs –to partners and administrators is considered as business income.

- The option of providing counter evidence (rebuttable presumption), already applicable for the deductibility of expenses charged by companies established in non-cooperative states or states with a preferential tax regime, is extended to the case of article 30, par. 5 of L.2238/1994 (sales made by Greek enterprises to companies situated in such states).

C.2 Taxable basis– Taxable Person – Tax Calculation – Tax Deductibility (article 9)

- ✓ ***The tax rate is increased to 26%***
- ✓ ***The special method of taxing of banking and insurance enterprises is repealed***

- **The tax rate applicable to legal entities is increased from 20% to 26%. The new tax rate is applicable for income of the fiscal year 2014 onwards.**

- The special method of taxing domestic banking and insurance S.A.s, as well as branches of foreign banking and insurance enterprises is abolished and all the relevant provisions are repealed.

- The provision regarding the deductibility of provisions for banks is simplified, making a simple reference to the 1% deductibility rate applicable to the amount of the annual average loan balances. The references to exceptions from the granting of loans of specific categories, as well as the special deductibility rates applicable to mortgage, investment and shipping banks are repealed.

- The method of deducting the debit difference arising for legal entities by virtue of their participation in the program for the Greek debt restructuring (PSI) is deductible in **30 annual equal installments**. For the calculation of the loss incurred after the valuation of securities, the initial acquisition cost, instead of the cost of the previous valuation, is taken into consideration, provided that the difference has not been set off with a reserve, according to the provisions of article 38. Entry into force from the entry into force of L.4046/2012. *With the latter addition an interpretative issue concerning the calculation of losses for companies that have proceeded or were obliged to proceed to the devaluation of their bonds, according to the provisions on valuation of the already repealed Code of Books and Records, is resolved.*

C.3 Taxation of Dividends and Distributed Profits (article 6)

- The withholding tax rate on dividends or profits capitalized or distributed by domestic S.A., LLCs, P.C.s and associations is decreased from 25% to **10%.** This withholding tax exhausts the tax liability of the beneficiaries. This provision applies to distributed profits approved by the General Meeting or any other competent body from 1.1.2014 onwards. The same reduction occurs with respect to the withholding tax rate applicable to profits remitted by foreign branches to their head office.

- The same reduction applies to dividends received by individual Greek residents received from foreign S.A. and LLCs (effective for income received from fiscal year 2014 – accounting period 2013 onwards). The possibility of crediting the foreign tax imposed is provided (on the condition that a relevant provision is included in the respective DTT) – until now the law did not provide for a credit of foreign tax, but only for a reduction of the taxable amount by the amount of the foreign tax paid (i.e. the tax was imposed on the net amount). *Under the new provisions, the avoidance of double taxation on foreign dividends, the compatibility of which with the provisions of DTTs was questionable under the previous regime, is rationalized. However, from the wording of the law it seems that this rationalization refers to foreign S.A.s only.*

- The provision on the exemption of dividends received by domestic parent companies from their EU subsidiaries is amended. According to the new wording, it is clarified that the exemption also applies to the case where the profits of the parent company do not suffice for the creation of a reserve. *This constitutes an amendment in compliance with a requirement set by the European Commission, which considered that contingency of the exemption on specific requirements may be in contravention to the Parent-Subsidiary Directive.*

- On the other hand, it is for the first time provided that in case of distributing the reserve created by dividends received from foreign subsidiaries, both the underlying CIT and dividend withholding tax that may have been paid by the foreign subsidiary is credited against the Greek dividend withholding tax.

- In addition, the provision on the credit of foreign tax payable on dividends received from abroad, in case the aforementioned exemptions do not apply, is amended: under the new provision this possibility is now only provided for dividends received from a foreign subsidiary established in the EU. *This amendment causes various difficulties for companies with non-EU subsidiaries, and it is difficult to grasp the underlying rationale of this provision, if not just a technical oversight.*

- Finally, it is clarified that in case of distributing or capitalizing untaxed reserves that have been formed according to L.3299/2004, L.2601/1998, L.1262/1982 and other incentive laws, with the exception of L.3908/2011, such amounts shall be added to the profits of the company within the accounting period in which the distribution took place. An exemption applies for reserves that are capitalized according to L.1473/1984 (article 13) and L.1892/1990 (article 101).

C. 4 BoD Members Fees – Bonus paid to employees (article 6)

- The withholding tax rate applicable on fees, salary payments etc. of S.A. BoD members and LLC and P.C. administrators and partners or employees in the form of any kind of bonus is increased from 35% to **40%** from fiscal year 2014 onwards. *It derives from relevant wording that the withholding tax is also applicable in cases of distributing net profits (i.e. after calculating the relevant tax), which would constitute a situation of obvious double taxation. Nevertheless, given that such cases are no longer frequent, the practical implications may be minor.*

C.5 Deductibility of expenses (article 3)

Certain incidental and not very drastic amendments on the deductibility of expenses are introduced, the most important of which being the amendment of the rates of depreciation. It is noted that the issuance of Decisions by the Minister of Finance enumerating the deductible and non-deductible expenses is repealed. Nevertheless, the Ministerial Decisions already issued remain applicable to the extent that they do not contravene the provisions of the new law (e.g. Ministerial Circular (POL) 1005/2005).

- A reference is added pursuant to which taxes, contribution etc. that are in principle not deductible, may be deductible when recharged by the company to their counterparties. In addition, the deductibility of the special solidarity contribution of L.4093/2012 (concerning electricity producers from renewable sources of energy and combined electricity and heat production) in equal installments and within a five-year period is provided.

- The provision concerning the depreciation of fixed assets is amended, introducing a mandatory depreciation on a fixed basis, (and not on a reducing balance method, as per the company's choice) by using fixed depreciation rates stipulated in the law. The new rates apply for fixed assets acquired from 1.1.2013, however certain transitional provisions apply for companies having elected the reducing balance method in the past. In relation to new fixed assets, the depreciation commenced from the month in which these were firstly used or set into operation and is calculated on the remaining months until the end of the accounting period. More specifically, the new depreciation rates per fixed asset and business sector, according to the NACErev2 classification, are as follows:

Sectors	**Category of deprecating assets, movable or fixed**	**Stable depreciation rate on an annual basis**
For all sectors	Land	0%
	Buildings	4%
	Machinery	10%
	Equipment (other than PCs and software)	10%
	PC equipment and software	20%
	Transport of individuals	10%
	Transport of goods	12%
	Intangible Assets and rights	10%
	Other fixed assets	10%
Exceptionally for certain sectors	Land (Mines-Quarries), except for activities supporting of mining	5%
	Transport of individuals (leasing and renting of cars and light motor vehicles/training)	12%
	Transport of goods (leasing and renting of trucks)	16%
	Other means of transportation (long-distance railway passenger transport, long-distance railway transport of goods, transport by vessels, transport by place)	5%
	Intangible assets and rights	100%

	Creative activities, art and entertainment	50%
	Production of films, video and television programs	50%
	Other fixed assets	50%
	Leasing and renting of good for personal or domestic use	30%
	Renting and leasing of other machinery, equipment and tangible assets	30%

- The maximum acquisition cost of fixed assets which may be depreciated in total within the accounting period in which they were used or put into operation is increased from 1,200€ to 1,500€.
- It is explicitly provided that the lessor proceeds to the depreciation of a building constructed by the lessee, when the latter is bearing exclusively all expenses.
- An incentive for investment is provided for enterprises in the research and technology (R&D) sector, by recognizing the amount of realized expenses increased by a percentage of 30% as a deductible expense.
- The deductibility of the amounts referring to provisions for staff leaving indemnity is abolished.
- The expenses of organizing informative conferences and meetings for employees or clients of the company outside the prefecture in which the company has its registered seat or operates a branch, are deductible but capped at 300€ per participant.
- For the deductibility of the amounts paid by the enterprise for kindergartens or day care, an additional condition of issuing the respective records in the name of the enterprise and indicating the child's data is introduced.
- Taxing the benefits provided, in cash or in kind, as a reward of the employees' performance, as employment income is introduced as an additional condition for the deductibility of these expenses.
- The amounts paid for internet access are recognized as tax deductible (at a percentage of 50%, since as they assimilated to mobile expenses).
- Insurance contributions paid to primary insurance and occupational funds that have been established by law and refer to legal entities' partners and/or directors are explicitly recognized as tax deductible.

C.6. Income derived from securities and the transfer of shares – income derived from group life insurance plans (articles 2,6 and 7)

- ✓ ***The tax rate imposed on income received from interest and bonds is increased***
- ✓ ***The method of taxing the transfer of non-listed shares of S.A.s is amended with the imposition of a 20% capital gain tax, instead of a 5% tax imposed on the transfer value.***
- ✓ ***Taxation of the capital gains derived from the sale of listed shares***

C.6.1 Interest (articles 2 and 6)

- The tax rate applicable to interest on deposits and bonds is increased from 10% to **15%**. This provision includes interest on deposits that are paid or credited from 1.1.2013 onwards, and interest on bonds issued by the Greek State and treasury bills from 1.1.2013 onwards. Following the abolition of special method of taxing banks, taxation at source of such income does no longer concern S.A.s, LLCs and P.C.s.

- The obligation for individual Greek residents of rendering the withholding tax due (15%) on interest received from deposits abroad or bond loans issued abroad and which remain abroad, to the Greek State, is explicitly provided. For this purpose, the Greek tax resident individual should file a respective withholding tax return before the competent tax office by the 31 January of the year following the payment or credit and by submitting the relevant original document issued by the foreign bank or credit organization evidencing the amount of interest paid or credited in the bank account held abroad during the previous fiscal year, the tax withheld and the date of payment or credit.

- The option of crediting the tax paid abroad (provided that a relevant provision in the respective DTT applies) – until today the law did not permit the deduction of tax paid abroad, but only the reduction of the taxable amount by the corresponding foreign tax paid (i.e. the tax was imposed on the net amount) is now introduced. *Even though the applicable tax rate is increased under the new provisions, the manner of avoiding double taxation on foreign interest WHT, the compatibility of which with the respective DTT provisions was until now questionable, is rationalized.*

- The withholding tax rate applicable on interest paid by individuals to foreign beneficiaries is amended. In case of individual beneficiaries a **20%** withholding tax is imposed, whereas in case of a legal entity a **33%** withholding tax applies. The aforementioned applies, if not otherwise provided in the relevant DTT.

- The tax rate on securities income, other than dividends and interest derived from shares and founders titles generated by profit distributions of S.A.s, to foreign legal entities-beneficiaries is reduced from 40% to **33%** (application to interest paid or credited from 1.1.2013 onwards).

- A **20%** tax is imposed on securities income (other than dividends) of foreign individual-beneficiaries (application for interest paid or credited from 1.1.2013 onwards).

C.6.2 Capital gains derived from the sale of non-listed shares (article 2)

- The method of taxing the transfer of S.A. shares not listed on the Stock Exchange is amended by introducing a capital gains tax of 20%. For the calculation of said capital gain, the acquisition cost is deducted from the minimum value of the shares at the time of transfer, which is calculated according to the formula of art.13 par.2 of L.2238/1994. The resulting value is compared to the consideration agreed and the acquisition cost is deducted from the higher amount in order to determine the capital gain taxed at source.

- The capital gains tax exhausts the tax liability, except for legal entities of art.101 of L.2238/1994 (S.A., L.L.C.,), which are taxed according to the general provisions. In such case, the 20% capital gain tax is credited against the corporate income tax liability, and if higher shall be refunded.

- This new tax provision applies to capital gains derived from the sale of shares originally acquired from 1.7.2013 onwards. *The wording of this provision seems complex, since the article providing for a 5% tax is replaced, even though this tax remains applicable for shares originally acquired until the above date.*

C.6.3 Derivative Financial Products (articles 2 and 6)

- The specific provision was harmonized with L.3606/2007 on the definition of derivatives.
- The withholding tax rate applicable to derivative income is increased from 15% to 20%.
- Said withholding of tax exhausts tax liability for individuals, partnerships and non-profit making organizations. Legal entities are taxed on the basis of the general provisions.
- The lump-sum payment of the tax by the beneficiary of the income is provided, by filing a withholding tax return, should a Greek credit institution not be involved.

C.6.4 Capital gains derived from the sale of listed shares (article 2)

- Capital gains derived from the sale of listed shares originally acquired from 1.7.2013 onwards are taxed at a rate of 20%. Said withholding tax exhausts the tax liability of individuals, whereas in the case of legal entities-beneficiaries said income is further taxed according to the general provisions, a credit being provided for the tax already withheld.

Following to a series of amendments and postponements with regard to the introduction of a capital gain tax applicable to listed shares, the legal uncertainty on whether and how said taxation will apply, still remains.

- The 0.2% stock exchange transaction duty is maintained, even after the introduction of the capital gains tax.

C.6.5 Group Life Insurance Plans (article 7)

- A withholding tax is imposed on amounts payable to beneficiaries that correspond to insurance premiums paid by a company for group life insurance plans of their employees. The tax rate is set at 10% for lump-sum payments of up to 40,000€, 20% for any amounts exceeding 40,000€ and 15% for periodically paid benefits, but is increased by 50% in case of early redemption. Every payment made to an employee that has established a pension right or is over 60 years of age is not considered as an early redemption.
- The tax is withheld when the insurance companies are making the payment.
- Withholding tax exhausts the tax liability.

Under this provision, the issue of non-deductibility of insurance premiums paid by the enterprise remains, even though the latter are finally subject to taxation, even if special taxation, On the other hand, no reference to the taxation of such programs until today is being made. Therefore, it could be argued that, with the introduction of the new provision, an interpretation presumption for the "a contrario" non taxation of these seems to be created.

C.7 Transfer Pricing (article 11)

- ✓ ***The definition of the meaning of affiliated enterprises and the obligation of documentation is extended to other transactions.***
- ✓ ***An obligation for Greek affiliated enterprises to maintain a transfer pricing documentation file for their intra-group transactions is introduced and the time of its drafting and submission of the summarized table of transfer pricing information before the General Secretariat of Informative Systems is specified.***
- ✓ ***The cases for non-documented transactions are specified.***
- ✓ ***The option for obtaining an Advance Pricing Arrangement is introduced.***
- ✓ ***Penalties are rationalized.***
- ✓ ***The parallel legislative framework for transfer pricing (Ministry of Finance – Ministry of Development) is abolished, transitional provisions apply.***
- ✓ ***The provisions on thin capitalization are integrated in article 39 of the ITC.***

- The definition of the meaning of affiliated enterprises is extended to include the cases where the possibility of influence in one of the affiliated enterprises exists.

- It is explicitly provided that the arm's length principle is applicable to loan agreements, the transfer of shares, parts or participation percentages in civil law society or joint ventures (except of joint ventures for technical projects) and real estate, realized between Greek and its affiliated companies.

- The obligation for documenting the prices of intra-group transactions between Greek enterprises and their permanent establishments abroad, as well as of permanent establishment of foreign enterprises in Greece is extended to affiliated companies of the head office abroad.

- An exemption from the documentation of intra-group transactions is provided for foreign commercial-industrial companies that are incorporated in Greece by virtue of L.89/1967.

- An exemption from the documentation obligation is provided for liable companies for their transactions with one or more affiliated enterprises, the value of which does not exceed the amount of 100,000 € or 200,000 € in total, on the condition that the gross profits of the accounting period for all affiliated enterprises does not exceed or exceeds the amount of 5,000,000 €, respectively.

- An obligation for Greek affiliated enterprises (as well as branches of foreign enterprises) to keep a transfer pricing documentation file for their intra-group transactions is established.

- Specification of the time of drafting the transfer pricing documentation file before the General Secretariat of Informative Systems, prior to the issuance of the tax certificate, and in any case within 50 days from the end of the accounting period (for balance sheets closing after the 30.12.2012). The file is accompanied by a summarized table of transfer pricing information, which is submitted electronically at the General Secretariat of Informative Systems within the same deadline as applicable for the

drafting of the documentation file. Exceptionally for the accounting period 2012, the documentation file should be drafted and the respective summarized table of transfer pricing information should be submitted until 10.5.2013.

- The keeping of the transfer pricing documentation file at the company until the lapse of the prescription period for the State's right to impose taxes, as well as for the time that the case is pending before the courts, is provided.

- The submission of a transfer pricing file before the competent audit authority, in the frame of an ordinary tax audit, within a reasonable time not exceeding 30 days, is mandatory.

- The tax office of Large Enterprises is specified as the competent tax office for the performance of audits, which will perform the audit by taking into account the OECD Transfer Pricing Guidelines on multinational enterprises and of the tax authorities, as regulated by a decision to be issued by the Ministry of Finance.

- The obligation for updating the transfer pricing documentation file in case of a change in the market conditions influencing the data included in the file, is introduced.

- The cases of not-documented intra-group transactions are specified and the determination of the relevant prices by the competent audit authorities, on the basis of data available from every source is provided. The following cases are considered as transactions not documented:

  a) non keeping or non submission of the transfer pricing documentation file before the competent audit authority,

  b) keeping of an insufficient or inaccurate transfer pricing documentation file, provided that the relevant audit checks for the accuracy of calculating or documenting prices of intra-group transactions cannot be performed, and which cannot be remedied by additional information provided to the audit authorities,

  c) non providing or providing of insufficient or inaccurate additional information, to the extent that the relevant audit checks of prices of intra-group transactions, cannot be performed.

- The manner of determination of the prices of intra-group transactions is introduced, depending on the acceptance or not by the tax authorities of the range of prices or profits at any price or profit margins within the accepted range or at the median price of the accepted range of prices or profit percentages, respectively.

- The option for obtaining an Advance Pricing Approval of the methodology of specific future intra-group transactions, following an application submitted before the General Directorate of Tax Audits and Collection of Public Revenue of the Ministry of Finance is provided. Object of the Advance Pricing Approval constitutes the total of the criteria used for the determination the prices of intra-group transactions, as well as every other matter concerning the pricing of such transactions, with the exception of the specific transactions price between affiliated enterprises and the specific profit margin, gross or net, of such transactions.

- The decision of the Advance Pricing Approval cannot exceed two years, whilst the option of its renewal, review, revocation or cancellation under certain circumstances is provided.

- The revision of the Advance Pricing Approval in case of a subsequent completion of mutual settlement proceedings on the basis of the respective DTT or EC Treaty on the

avoidance of double taxation in case of profit adjustments of affiliated enterprises is provided.

- The obligation to retain the documentation data concerning the Advance Pricing Arrangement for the whole duration of maintaining the respective transfer pricing file, is introduced.

- The limitation of the tax audit, in case of granting an Advance Pricing Approval decision, to the verification of the terms of the decision, as well as the equal application of important assumptions, is provided.

- The independent fine of 20% on the additional net profits that was imposed in case of an infringement of art.39 of the ITC (infringement of the arm's length principle) is abolished.

- The imposition of an independent fine, in case of non-submission or delayed submission of the summarized table of transfer pricing information table is provided, which is calculated at a percentage of 1/1000 of the declared gross profits of the enterprise, and which cannot fall below the amount of 1,000 € and exceed the amount of 10,000 € in case of a delayed filing, and cannot fall below 10,000 € and exceed the amount of 100,000 € in case of non-filing of a summarized table of transfer pricing information, as well as non-provision of the transfer pricing file.

- Art. 26 of L.3728/2008 is abolished from the publication of this law and transitional provisions apply.

- The amended provisions on the documentation of intra-group transactions apply to intra-group transactions that are realized during the accounting periods commencing from 1.1.2012 onwards.

- For accounting periods 2010 and 2011, the tax audit of intra-group transactions will be performed on the basis of the data of the transfer pricing documentation files drafted according to the provisions of art.26 of L.3728/2998 (Ministry of Development Legislation).

- The transfer pricing documentation files that had been submitted before the Ministry of Development (Directorate of Costing and Market Research of the General Secretariat of Consumption) and that refer to accounting periods 2010, 2011 and 2012 will be handed over to the Ministry of Finance.

- The tax audit of transfer pricing documentation files for accounting periods 2008 and 2009 will be realized by the aforementioned directorate of the General Secretariat of Consumption, according to article 26 of L.3728/2008.

- The imposition of an independent fine (1/1000 on the gross profits, that cannot fall below the amount of 1,000€ and exceed the amount of 10,000€ specified in article 4, par.5 of L.2523/1997) due to the delayed submission of the intra-group transaction list provided in article 26 of L.3728/2008 (in case that until the publication of the present law the fine of article 26 of L.3728/2008 has not been assessed) is introduced.

- It is provided that the aforementioned Directorate of the Ministry of Development will from now on only have access to the transfer pricing documentation files for reasons of market research, and for this reason the tax secrecy is lifted.

- It is provided as an exception to the general provision that the expenses incurred in relation to the purchase of goods, the receipt of services and every other expense according to art.51B, par.1 of the ITC, which are paid to affiliated companies with registered seat in a non-cooperative state or state with a preferential tax regime, are considered as tax deductible from the gross income, without requiring any evidence by the Greek enterprise that these expenses refer to real and usual transactions that

are not carried out with the scope of tax evasion or avoidance, given that the keeping of a transfer pricing documentation file is provided. This provision applies for expenses realized from the fiscal year 2013 onwards.

The previous complexity due to the parallel applications of two separate legislative regimes (Ministry of Development and Ministry of Finance) is lifted by the amendments included in this new law, whist attempting to further harmonize the relevant transfer pricing with the OECD Guidelines, such as principally the establishment of an explicit obligation of updating the transfer pricing documentation files.

The adoption of Advanced Pricing Arrangements is a significant development.

Finally, it is very important that under the new developments, the meaning of not-documented transactions is connected to the inability to perform audit checks, whilst the imposition of penalties is rationalized.

D. Real Estate Taxation

D.1 Capital gains derived from the transfer of real estate (article 5)

The taxation of capital gains derived from the transfer of real estate is re-introduced into the Greek tax system and applies to transfers of real estate that were originally acquired from 1.1.2013 onwards.

- A **20%** tax is imposed on the transferor (seller) for the capital gains derived from the transfer of real estate or property rights that were originally acquired by whatever manner from 1.1.2013 onwards and that are further transferred for consideration. The capital gains tax exhausts the tax liability.

- The capital gains tax is imposed on the balance arising between the acquisition cost of the property and its sales price.

- The acquisition price of the real estate is defined as the value of the real estate at the time of its acquisition and the sales price is considered as the value at the time of its transfer, irrespective of the time of its registration before the land register. It is provided that the aforementioned acquisition and sales prices of real estate are determined either on the basis of the objective value or the system of comparable data (for areas where the objective values do not apply) or the consideration indicated on the transfer deed, if higher. The capital gain is adjusted in order to take into consideration the impact of inflation, on the basis of the following age coefficients:

Years of ownership	Age coefficients
From 1 to 5	0,9
From 5 to 10	0,8
From 10 to 15	0,75
From 15 to 20	0,7
From 20 to 25	0,65
Exceeding 25	0,6

- The cases that are considered as acquiring the initial ownership (e.g. adverse possession) or that do not constitute a further transfer (e.g. partition, exchange, consolidation of property) are not subject to the said tax.

- Capital gains up to 25,000 € realized from the transfer of real estate are not subject to capital gains tax, provided that the real estate is owned for a period of up to 5 years at least. Individuals realizing more than one transfer within a 5-year period are excluded.

- The profit derived by technical enterprises from their business activity of selling and buying real estate is excluded from the said tax, and will be taxed as business income.

- The profit derived from the sale of real estate, constituting a fixed asset of General Partnerships or Limited Partnerships, other personal companies and joint ventures is exempt from said tax and remains taxed as business income.

Although not clear from the wording of the law, it seems that this capital gains taxation is not applicable to cases of sale of real estate that are sold by S.A.s, LLCs and P.C.s, in which

case any profit is taxed on the basis of the general provisions. However, the uncertainty of the relevant provisions may create interpretative difficulties. The introduction of the capital gains tax on real estate was not accompanied by the expected reduction of the particularly high real estate transfer tax rates.

D.2 Declaration of Real Estate (article 19)

- The obligation of completing the declaration of assets until 30.6.2013 is extended to individuals, provided that they own property rights on plots beyond the city plans or settlements on 01.01.2013.

- The obligation of legal entities for filing a declaration until 30.6.2013 is established, which includes information on the real estate in which they own property rights as at 01.01.2013 including their other assets as at 1.1.2013.

E. Tax Audit

E.1 Tax Audit (articles 4 and 8)

- The determination of the gross and net income derived from business activity objectively (rejection of books) is limited to the case of non-maintenance of the prescribed books and records. The option of determining the gross and net income derived from business activity objectively in case of inadequate maintenance of the prescribed books and records, which has as a result the inadequacy or inaccuracy of data, is repealed.

- A new method of auditing books and records is stipulated, according to which in case of either concealment of taxable income or concealment of books, documents, goods or other data, the seizure of the above books and records is imposed. The ability of the tax authorities to request the assistance of prosecutors and judicial authorities for the performance of investigations is extended.

E.2 Tax Certificates (article 8)

- The obligation to issue tax certificates is extended to the Greek branches of foreign enterprises, which are mandatorily audited by certified auditors. The new provision applies to balance sheets closing after 30.12.2012.

E.3 Tax Secrecy (article 8)

- The removal of tax secrecy is also extended in case of data granted on order of the public prosecutor.

- The tax secrecy is strictened in relation to the access of public authorities and organizations to books and records of the Code of Tax Recording of Transactions kept by the taxpayer.

F.VAT

F.1 Imposition of VAT on professional leases (article 17)

- The right to elect to subject leases of property used for the exercise of professional activities, either independently or as part of mixed contracts, to VAT is introduced.

- The application of opting for the VAT regime is submitted by the lessor either prior to the use of the property, or within thirty days from the commencement of the accounting period, and is valid from the commencement of the latter. Especially for the first application, the application should be submitted until the 30th of June 2013, starting from 1.1.2013 on the condition that until 1.7.2013 the tax corresponding to the period from 1.1.2013 to 30.6.2013 is paid.

- The application of opting for the VAT regime may be revoked.

- The relevant provision applies as well to operators of shopping centers that have received a certificate of payment of VAT from the competent tax office until 31.12.2012 following a relevant application without examining the fulfillment of the requirements of the relevant Ministerial Decisions.

- The relevant provision applies to enterprises that had imposed VAT on the relevant actions prior to the 1.1.2013 and, therefore, have a right of deduction for the previous accounting periods, (unless tax assessments have been finalized – in such case an application of opting for VAT may be submitted until 30.6.2013). *It should be noted that the Scientific Committee of Parliament has voiced a reservation on the regulatory content of this provision, in view of the ECJ case law (C-396/98, Schlosstraße) in relation to the impact of legislative amendments following the realization of the acquisition expense of investment goods.*

This new provision meets a long-standing demand of the professional real estate industry, as the possibility of deducting the VAT of the cost of construction of the real estate leased under the VAT regime, is provided. Although no reference is made in the law, the choice of being taxed with VAT should be interpreted as resulting to an exemption from 3,6% stamp duty on rentals. It is to be noted that prior to the exercise of this option the lessor should examine its legal capacity to impose VAT on its counterparty on the basis of their agreement. This provision, however, does not clarify the treatment of construction VAT for property up to now exempt, but for which the lessor exercises his option to subject to the VAT regime and henceforth imposes VAT on the lease payments.

- Legislative improvements are included in order to clarify the once-off pro rata settlement, both for investment goods subject to a 5-year settlement period, and for real estate electing to fall within the VAT regime (article 8, par.2, case d of L.2859/2000) subject to a 10-year settlement.

G.Provisions on the organization of the Ministry of Finance

G.1 Department of Internal Affairs of the Ministry of Finance (article 12)

- The provisions on the Department of Internal Affairs, which may conduct research, collect, evaluate and use information relating to various criminal offences, are amended.

- The determination of criminal and disciplinary offences is included in the competencies of this Department.

- The cases for which an audit of the assets of the employees of the Ministry of Finance and other legal entities under its supervision, may be ordered, is extended.

- The lifting of the tax, bank, stock exchange and business secrecy is extended for the facilitation of the work of the Department of Internal Audit.

- The mandatory filing to the Minister of Finance of an annual report on the work of the Department of Internal Audit is established.

H.Other provisions

H.1 Extraordinary Special Duty on Built Surfaces Supplied with Electricity (article 19)

- It is provided that the Extraordinary Special Duty on Built Surfaces Supplied with Electricity may no longer be collected through the utility bills for electricity, but may be assessed by the tax office following an application of the owner or holder of usufruct right before the competent tax office and the payment of at least the current and any due installments for the year 2012.

H.2 Taxation of vessels flying a foreign flag (article 24)

- The tonnage tax regime is imposed on vessels flying foreign flags, which are managed by Greek or foreign companies established in Greece on the basis of L.27/1975. The application of this provision commences from 1.1.2013 onwards.

- This tax burdens the ship owners or ship owning companies, whilst the ship management companies are jointly and severally liable for the payment thereof.

- An obligation of the liable parties for submitting before the Ministry of Mercantile Marine an annual statement indicating the name, flag, total tonnage and age of the vessel under the foreign flag is established.

- For calculating the tonnage tax (tax rates and tax brackets, criteria) and the special tax return and payment of tax, the provisions on the tonnage tax payable for Greek flagged vessels apply in analogy.

H.3 Freelancers' Duty (article 10)

- The amount of the Freelancers' Duty payable by legal entities is doubled (800€ annually for legal entities with registered seat in tourist areas and areas of population of up to 200,000 residents and 1,000€ annually for legal entities with registered seat in cities with a population exceeding 200,000).

- The amount of the Freelancers' Duty imposed on branches is doubled (600€ annually).

- The Freelancers' Duty is increased to 650€ annually for sole proprietorships and freelancers.

- The amount of the Freelancers' Duty remains unchanged (as imposed during the fiscal year 2012) for civil law non-profit making companies and individuals with income derived from the exercise of a sole proprietorship (provision of services) or freelancers' activities and that have a written agreement with up to three individuals or legal entities or a percentage of 75% of their gross profits derives from the same individual or legal entity.

- The new provisions apply for income tax returns filed from the fiscal year 2013 (accounting period 2012) onwards.

H.4 Code of Tax Recording of Transactions (article 23)

- The threshold of revenues realized by individuals from the sale of goods or provision of services, in aggregate or separately during the previous fiscal period provided for in article 3 of such code, is reduced from 10.000€ to 5,000€. This amount constitutes a threshold for the exemption from the obligation to maintain books and issue retail receipts.

I.Other Recent Developments

I. Other Recent Developments

I.1 Law incorporating urgent provisions

The Greek Parliament ratified on the 14.1.2013 the latest law bill incorporating urgent provisions, which included, amongst others, the content of six Legislative Acts. The provisions include the imposition of an annual special contribution on foreign ship management offices, the imposition of luxury living tax, the amendment of the Code of Tax Recording of Transactions (L.4093/2012), whilst the initial draft tax bill included the amendment of the provisions of L.2523/1997 (Code of Tax Sanctions), which was finally withdrawn to be resubmitted after further deliberation.

a. Annual contribution imposed on foreign ship management companies

An annual contribution is introduced for 4 years (2012-2015) on foreign ship management established in Greece by virtue of art.25 of L.27/1975, with the exception of offices that are already subject to tonnage tax, according to the tax law ratified on 14.1.2013.

- An annual contribution (referring only to fiscal years 2012-2015) is imposed on offices or branches of foreign enterprises that have been established in Greece by virtue of art.25 of L.27/197 and are engaged in the exploitation, chartering, insurance, average (damage) settlements, purchase, chartering or shipbuilding brokerage, or chartering of insurance of ships under Greek or foreign flag of total tonnage over five hundred (500) shipping tons, as well as the representation of ship-owner companies or undertakings, whose object is identical to the abovementioned activities.

- Greek and foreign companies of L.27/1975 that are engaged in the management or exploitation of vessels flying a Greek or foreign flag (that are subject to tonnage tax), as well as in other activities approved by the license of operation, are exempt.

- Passenger coastal ships or merchant vessels which perform internal routes are exempt.

- This contribution is imposed on the total amount of imported foreign exchange, calculated on a minimum 50.000 USD, and which is calculated on the following tax scale:

Bracket of annual total foreign exchange (USD)	Rate %	Tax per Bracket	Total foreign exchange (USD)	Total Tax (USD)
200,000	10	20,000	200,000	20,000
200,000	8	16,000	400,000	36,000
Excess amount	6			

- The obligation of filing a special tax return for calculating the contribution on the basis of the imported foreign exchange of the previous year is provided. The tax clearance statement is issued on the basis of this tax return.

- The contribution is calculated in USD and is paid in three equal installments (June, September, December) and in Euros (official foreign exchange rate applicable at the time of filing the special tax return).

- The directors, administrators and representatives of such companies are severally and jointly liable for the payment of the tax.

- In case of the non-filing or inaccurate filing of the respective tax returns, the additional taxes and fines provided in L.2523/1997, apply.

Following the reservations formulated by the Scientific Committee of Parliament, the companies engaged in the management or exploitation of vessels were explicitly exempt from the special contribution, in order to avoid the possibility of double taxation due to the imposition of tonnage tax on vessels under a foreign flag according to article 24 of the new tax law.

The objective of the special contribution raises concerns. The imposition of the special contribution on the total annually imported amount of foreign exchange, and not the profits, raises questions on the compatibility of the provision with the constitutional principle of taxable capability and the community principle of free movement of capital. It should be noted that due to the nature of such companies, the payment of tax may create the additional requirement of importing foreign exchange, which in turn increases the taxable base of the respective year.

To be noted that according to the Scientific Committee of Parliament, the concern referring to the compatibility of the provision with the principle of taxable capability is also raised due to the imposition of a reversely progressive tax scale (reducing the tax rate for increased amounts of foreign exchange).

b. Tax on luxury living

The special contribution that was imposed by article 30 of L.3986/2011 on income of 2010 declared in the income tax return of 2011 is permanently re-enacted as a tax imposed on luxury living.

- A tax of luxury living is introduced, which is imposed on the amount of annual deemed income arising from the ownership of large passenger cars with great engine power, airplanes, helicopters and swimming pools.

- The tax is calculated at a rate of 5% or 10% on the amount of the annual deemed income from passenger cars of 1929 to 2500 cc and of 2500 cc and above, respectively. The tax rate for the remaining objects is specified at 10% of the annual deemed income.

- Passenger cars of more than 10 years of age from the date of first circulation in Greece, as well as cars of disabled individuals, are exempt.

- The tax of luxury living will apply for income declared with the income tax returns of fiscal year 2014 onwards.

  Even though according to the introductory remarks of the tax bill, the imposition of the luxury living tax is aimed at the progressive participation of citizens in the public liabilities and tax justice, it could be argued that the imposition on the deemed (fictional) taxable basis infringes the constitutional right of tax paying ability, in view of the fact that the possession of the above objects does not constitute an objective manner of determining the tax paying ability of taxpayers.

It is worth noting that the Scientific Committee of Parliament raises the issue of the constitutionality of this tax, while it is not clear whether the object of this tax is the assets or the deemed income derived from the possession of these assets.

Finally, it is interesting to note that whilst the initially submitted tax bill included the imposition of this tax to pleasure boats, the latter were finally exempt, since according to the Ministry of Finance the imposition of an annual cruising and presence charge for all boats entering the Greek waters is planned. In a relevant announcement issued by the Ministry of Finance it is pointed out that the previously applicable luxury tax proved fatal for this sector and lead to a significant decrease in imports and activities.

c. Code of Tax Recording of Transactions

- Legislative Act of 19.11.2012, amending some articles of L.4093/2012 on the Code of Tax Recording of Transactions, is ratified.

- The option of indicating on the invoice a brief description of the kind of services, in case of simultaneous provision of multiple services, on the condition that a reference is made to an existing agreement between the issuer and recipient of the invoice, is repealed.

In any case, despite the fact that the aforementioned option was specifically repealed, it seems that the latter continues to apply by virtue of Directive 2006/112/EC of the Commission on the common VAT system.

d. Payment of the State's due debt

- Upon payment of the due liabilities of the State, the assessed debt of the beneficiaries in favor of the Greek State and Insurance Funds are withheld at priority.

e. Code of Tax Sanctions

- The tax bill included a provision on the application of penalties for infringements of the Code of Tax Recording of Transactions. More specifically, the Code of Tax Sanctions is partially amended, with the purpose of integrating the changes introduced by the abolition of the Code of Books and Records and its replacement by the Code of Tax Recording of Transactions, as well as the modification of the legislative framework on tax sanctions, as per the general intention of the Ministry of Finance. However, this provision was not ratified and according to the Ministry of Finance will be included in a new tax bill. For informative reasons and due to the intention of the Ministry of Finance of integrating this provision in a new tax bill, the most important changes of this provision are indicated below:

  - ✓ ***The disconnection of penalties from the value of the infringement, as the amount of sanction depends on the total gross profits or the expenses of the enterprise and the rate of increase.***
  - ✓ ***The penalties refer mainly to important infringements in the context of fraud and tax evasion, such as for example the issuance of false and fictitious invoices, non-issuance or non-recording of records, multiple recording on the basis of the same record.***

I.2 Code of Tax Recording of Transactions

Issuance of an interpretative circular providing directions on the application of the Code of Tax Recording of Transactions

- With Ministerial Circular (POL) 1004/4.1.2013 the Ministry of Finance provided directions and clarifications in relation to the application of the provisions of L.4093/2012 (Code of Tax Recording of Transactions).

However, ambiguities and issues requiring further clarifications by the competent tax authorities remain. Most certainly, many questions are already raised with regard to the obligation of keeping a warehouse book and/or cost accounting.

I.3 Recovery of illegal state aid granted in the form of special untaxed reserves

- L.4099/2012 (GG A' 250) includes amongst others provisions on the recovery of illegal state aid that was granted according to articles 2 and 3 of L.3220/2004.

According to the new provision, the issue of recovery of untaxed reserves of L.3220/2004 re-emerges, since the European Commission and European Court of Justice considered that the provisions of L.3614/2007 did not correctly apply the obligation of the Greek State for the recovery of illegal state aid. The new provision may lead to an additional payment of tax and interest for enterprises that have formed untaxed reserves on the basis of L.3220/2004.

- It is reiterated by the new law that the special untaxed investment reserves formed by enterprises according to articles 2 and 3 of L.3220/2004 from their undistributed profits during the fiscal years 2004 and 2005 constitute illegal state aid.

- The part of the staid aid corresponding to expenses incurred for covering the special reserve and fall within special categories, namely aid provided to small or medium scale enterprises, aid for professional training, aid for the agriculture sector and more specifically those concerning investments related to the production, documentation and trading in the reservation of the EC Treaty agricultural products, as well as aid falling in the provisions of L.2601/1998 or L.3299/2004, are excluded from the recovery.

- The amount of illegal state aid is determined as being equal to the amount of income tax of which the enterprise was exempt when forming the special untaxed reserve.

- The amount of recovery equals to the positive difference arising when deducting from the amount of tax exemption, incurred by the enterprise by forming the special untaxed reserve, the amount corresponding to the expenses which were realized by the enterprises for covering the special untaxed reserve, by incorporating the permitted aid per expense category, provided that these fall in specifically enumerated categories.

- In case in which enterprises that had proceeded to the recovery, according to article 47 of L.3614/2007, the (final) amount of recovery is calculated by deducting the already paid or assessed amounts, also taking into account their time of payment. The payable amount is assessed and should be paid in one installment, without the imposition of penalties of L.2523/1997. In case of a credit balance, this is refunded.

- The amount of interest is calculated on the basis of compound interest method for the time period from the lapse of the deadline for filing the income tax return of the fiscal year in which the profits forming the untaxed reserves were incurred (2004 and 2005) until the time of actual recovery of the total amount of illegal state aid. The interest rate is the interest reference rate specified by the European Commission and is published in the official journal of the EU for every fiscal year.

- The recovery of state aid will be effected by the issuance by the competent tax offices of audit clearance sheets, assessing the amounts of state aid as well as the corresponding interest.

When comparing the new law to L.3614/2007, it is noted that a different method of calculating the amount of state aid to be recovered, with the purpose of complying with the conviction decision of the ECJ (C-354/10) of the 31st July 2010, which established the infringement by Greece of the obligation of conforming to the decision 2008/723/EC of the Commission of the 18th July 2007, is specified.

More specifically, according to L.3614/2007 the beneficiaries were obliged to deduct the investment expenses realized from the amount of the special untaxed reserve formed, in order to tax the balance. However, according to the Commission, the base amount for calculating the respective tax should be the granted state aid itself, from which the investment expenses and not the amount of the untaxed reserve should be deducted, since only such method would allow the ascertainment of compliance with the at each time permitted integration of state aid. Indeed, the new law provides a new method of calculating the amounts to be recovered with the ultimate purpose of ascertaining the compliance with the permitted integration of state aid.

The new law also establishes a different, compared to L.3614/2007, method of recovering the illegal state aid. Contrary to L.3614/2007 that provided for the filing by the enterprises of supplementary income tax returns and payment of the amounts for recovery in four installments, the new law provides for the issuance by the tax offices of a tax audit clearance sheet for the assessment of the amounts to be recovered from the enterprises (amount of state aid and interest), for the time period up to the realization of the recovery of the total amount of state aid and the assessment of additional amounts for recovery in case of enterprises that had already proceeded to the recovery according to article 47 of L.3614/2007.

It is noted that remaining crucial issues are the degree at which the enterprises were entitled to incorporate their investments in other incentive law regimes (e.g. L.2601/1998 etc.) and the exact method of calculating the recovery.

Minor state aid is excluded from the recovery (Regulation 69/2001/EC), even though the ECJ decision seems to question the method of calculating this exemption, as had originally been enacted.

I.4 Deducibility of losses incurred due to events of force majeure

Issuance of Ministerial Decision 1006/9.1.2013 accepting the opinion of the Legal Council of State 524/2012 in relation to the deductibility of losses incurred in case of theft or robbery

- By its Ministerial Circular (POL) 1006/9.1.2013, the Ministry of Finance accepted the opinion of the Legal Council of State No 524/2012.

- According to this opinion, the loss incurred by an enterprise from the loss of an asset, either due to theft or robbery, constitutes an expense that is deductible from its gross profits of the accounting period in which such even occurred, provided that the loss is certain and final.

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