

Tax Flash

“Law on development investment tools, provision of credit and other provisions”

April 2013

A new law was ratified on 26.3.2013 (its publication in the Government Gazette is still pending). We hereby outline the most important amendments introduced by this law, which includes some interesting tax developments such as some changes in the shipping taxation regimes and new depreciation rates.

A. Individuals

A.1. Tax residence

- The irrebuttable presumption of taxing individuals, having transferred their residence or habitual abode in states with a preferential tax regime, on their worldwide income in Greece for a period of five years following the relocation, is converted into a rebuttable presumption, providing the option of proving that the individual actually has its residence or habitual abode in such state.

In any case, the ambiguity on the determination of states with a preferential tax regime for the purpose of individuals' taxation, where the respective tax rates are specified on the basis of a tax scale, remains. However, such irrebuttable presumption continues to apply when transferring the residence to states that have been included in the catalogue of non-cooperative states.

- The new law makes specific reference to the documentation required to be submitted by individuals having their residence or habitual abode abroad but receive income in Greece, namely a certification issued by the competent foreign tax authority, a copy of the tax assessment sheet or of the annual tax return. More specific provisions apply for foreign employees of enterprises subject to L.89/1967.

By a decision of the Minister of Finance, for the fiscal year 2012, the deadline for filing the respective documentation evidencing the foreign tax residence status, which lapsed on 29.3.2013, has been extended until 28.6.2013.

A.2. Registry of Assets

- The Registry of Assets provisions will apply to all individual tax resident in Greece, and not those holding a Greek tax registration number, as was the previous provision.
- Shares held in companies incorporated under L.D.2687/1953 or L.27/1975 (shipping companies) are excluded from the Registry of Assets.

It is noted that despite the fact that this provision has been included into Greek legislation from 2010, a comprehensive system for the registry of assets has not been implemented yet in practice, but constitutes an announced aim of today's government.

B. Corporate Income Taxation

B.1. Transfer of non-listed shares

- It is clarified that the sale of non-listed shares that have been acquired up to 30.6.2013 are subject to taxation on the basis of article 13, par.2 of the ITC, as in force prior to its amendment with L.4110/2013, i.e. subject to a 5% tax imposed on the transfer value.
- For transfers of non-listed shares that took place from 23.1.2013 until the publication of the law, the tax will be paid within one month from the publication of the law, without the imposition of penalties.

The aforementioned provision was introduced in order to alleviate the controversies raised after the replacement of article 13, par.2 of the ITC by article 2, par.7 of L.4110/2013, i.e. whether transfers of non-listed shares that were acquired up to 30.6.2013 could be considered as not subject to taxation.

B.2. Depreciation

- The entry into force of the new depreciation rates, as stipulated by article 3, par.22 of L.4110/2013, is amended. The new rates will apply also to fixed assets acquired before 1.1.2013.
- Amortizable expenses are included in the scale of depreciation and will be depreciated at a fixed rate of 10%.

As the new rates may result to material changes in the determination of taxable results going forward, it is advisable to evaluate the impact in a timely manner.

C. Shipping

C.1 Documentation for the receipt of shipping income

- The new law sets out the documentation required to be submitted by Greek tax residents for the receipt of dividends from ship owning companies, for covering their annual expenses (article 16 and 17 ITC). Such documentation shall be used either together with their annual income tax return or upon a relevant tax audit.
- The following documents should be adduced:
 - a certification issued by the ship owning company or the holding company indicating the shareholder, the dividend paid and the vessel of which the exploitation gives rise to such dividend;
 - a copy of the license of operation of the ship management company in Greece in case of ship owning companies with foreign-flagged vessels (article 25 of L.27/75) and a

certification issued by the competent department of the Ministry of Mercantile Marine on the registration and management of the vessel; and

- a copy of the foreign exchange import receipt (ΒΑΣ) or certification of assigning foreign exchange.
- It is clarified that the payment of dividends may be undertaken via the ship management company in Greece, which may also proceed to the certification of the receipt of dividends. In such case, the ship management company is not obliged to record the amount of dividend in its accounting books.
- Additionally, it is stipulated that the amounts of imported foreign exchange may be paid directly to legal entities in which the beneficiaries of said amounts participate.
- The aforementioned amendments apply to pending audit cases, as well as any other case where the origin of income from shipping activities is being audited.

C.2 Annual contribution payable by companies of article 25 of L.27/1975

- The annual contribution payable by offices or branches of foreign enterprises established in Greece by virtue of article 25 of L.27/1975 and that are exclusively engaged in the chartering, insurance, brokerage etc. of vessels flying a Greek or foreign flag exceeding 500 gross tons, as well as in the representation of ship owning companies, is reduced by 50%.

Bracket of annual total foreign exchange (USD)	Rate %	Tax per bracket	Total foreign exchange (USD)	Total tax (USD)
200,000	5	10,000	200,000	10,000
200,000	4	8,000	400,000	18,000
Exceeding	3			

- It is clarified that the annual contribution is not imposed on Greek or foreign companies incorporated by virtue of article 25 of L.27/1975 that are also engaged in the management of vessels.
- The obligation of filing a special tax return for calculating the annual contribution and payment of 1/4 thereof is postponed until the end of March of each year. The remaining installments shall be payable in June, September and December.
- In case of delayed or inaccurate tax returns, the penalties of the Code of Tax Sanctions apply (L.2523/1997).

- The distribution of profits by a foreign ship owning company maintaining an office or branch in Greece by virtue of article 25 of L.27/1975 that is exclusively engaged in the chartering, insurance, brokerage etc. of vessels, to Greek individual tax residents is subject to tax at a rate of 10%.
- This tax applies to dividends paid or credited from accounting period 2012 (fiscal year 2013) onwards and shall be rendered to the Greek State by the beneficiary of the dividend.
- It is clarified that the payment of such tax exhausts the tax liability of the individual and no further extraordinary or special contribution shall be imposed on such amounts.
- The 10% tax also applies to cases of distributions of profits by the abovementioned companies in the form extraordinary fees and percentages (bonus) to BoD Members, directors and officials, in addition to the regular remuneration, exhausting the tax liability of the beneficiaries for said income.

The imposition of 10% dividend tax upon the distribution of profits by foreign companies of L.27/1975 (except for those engaged in the management of vessels) to Greek shareholders is worth noting, since the factors for distinguishing between those dividends and other dividends payable by foreign companies (other than ship owning companies) remains unclear.

Such provision could be seen as providing a basis for considering dividends paid by such companies prior to 2012, as well as dividends payable by ship management companies of L.27/1975 (as deriving from shipping activities) as fully exempt from dividend taxation. However, the interaction of the new provisions with the existing dividend taxation regime remains unclear.

The extension of the 10% tax to profits distributed to management of companies subject to the contribution is interesting, although the treatment of such fees paid by ship management companies does not seem to be governed by the new provisions.

D. VAT

- Article 4 of Directive 2008/08/EC with regard to the place of provision of services for hiring means of transport is integrated in the Greek VAT Code.
- Article 1 of Directive 2010/45/EC, according to which the transport of goods by taxable persons to another Member State with the purpose of providing valuations or additional works on such goods (toll manufacturing), provided that after the conclusion of works such goods are returned to the same taxable person in Greece, is not considered as a supply of goods, is integrated into the Greek VAT Code.

- Article 16, par.2d of the VAT Code is amended, and the case where VAT is due at the time of collecting advance payments is limited to cases of provision of services.
- Entry into force of the provisions from 1.1.2013.

E. Tax Audit

E.1. Establishment of an Audit Authority for Taxpayers with Great Wealth

- A special audit authority is established under the title “Audit Authority for Taxpayers with Great Wealth”, competent for the whole Greek territory. Its commencement of operation is set at one month from the publication of the law.
- The competencies of the Audit Authority for Taxpayers with Great Wealth include the performance of provisional, temporary and ordinary tax audits, as well as the audit of real estate property and of the annual expenses of individuals. The audit of foreign real estate companies not disclosing their ultimate beneficiary individuals and of Greek real estate companies in which a foreign legal entity participates without disclosing the ultimate beneficiary individuals, are also assigned to the Audit Authority for Taxpayers with Great Wealth. Moreover, the Audit Authority for Taxpayers with Great Wealth is also competent for the certification and enforced collection of revenue of taxpayers with great wealth.
- Pending cases before the Interregional Audit Authority shall be completed by the Audit Authority for Taxpayers with Great Wealth, not requiring the issuance of a new audit order and by the same tax auditors, transferred for this purpose to the Audit Authority for Taxpayers with Great Wealth.

E.2. Establishment of an Audit Authority for Large Enterprises

- The tax office for Large Enterprises is converted into a special audit authority and is renamed as “Audit Authority for Large Enterprises”, with commencement of operation within one month from the publication of the law.
- The Audit Authority for Large Enterprises is responsible for the performance of ordinary audits of taxpayers with annual gross income exceeding 25m Euros, affiliated enterprises irrespective of gross income or parent companies of affiliated enterprises drafting consolidated financial statements irrespective of the accounting period and the amount of gross income, and enterprises resulting from restructurings, as well said enterprises prior to the restructurings. The Audit Authority for Large Enterprises is also competent for the enforced collection of revenue of large enterprises located in the whole Greek territory.

- The Audit Authority for Large Enterprises will audit pending cases, except for those assigned to the Audit Authority for Taxpayers with Great Wealth.
- From the commencement of operation of the Audit Authority for Large Enterprises, all competencies regarding large enterprises are transferred from the Tax Office for Large Enterprises to the regional competent tax offices and the tax office (FAE) Athens, with the exception of those transferred to the Audit Authority for Large Enterprises.

E.3. Interregional Audit Authority

- The audit of taxpayers with annual gross income exceeding 3m Euros and up to 25m Euros is assigned to the Interregional Audit Authority.
- The competency of the Interregional Audit Authority extends to the enforced collection of debt certified by the tax offices.
- The competency of the Interregional Audit Authorities of Athens and Thessaloniki are further specialized.
- The above changes enter into force within one month from the publication of the present law.

E.4. Other Issues on Tax Audits

- The Head of the auditing authority is obliged to propose cases for audit to the General Directorate of Tax Audits and Collection of Public Revenue on the basis of incriminating data at his disposal.
- It is specified that the cases which are imminently subject to prescription will be audited on the basis of their tax interest and by using methods of risk assessment and the probability of collecting the amounts to be certified.
- The State's right to issue tax assessment sheets for cases imminently subject to prescription and for which an audit order has already been issued, is extended for 2 more years.
- A supplementary tax audit assessment sheet may be issued in cases where new information on transfer pricing based on the Ministry of Development regime (article 26 of L.3728/2008) comes to the attention of the competent tax authorities.

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F. Code of Collecting Public Revenue

- The new law introduces the option to notify the confiscation, as well as the negative statement on the existence of third parties' debt, as provided by the Code of Collecting Public Revenue, by electronic means.

