

Tax Flash

“Urgent regulations relating to the implementation of the mid-term fiscal strategy 2012-2015”

February 2012

A. New bill

The Greek Parliament enacted on 31.1.2012 the bill on “Urgent regulations relating to the implementation of the mid-term fiscal strategy 2012-2015”. From a tax point of view, the relevant provisions stipulate the following:

- An amendment of the tax treatment of dividends and profits distributed by Greek societies anonymes (AE) or limited liability companies (EPE), when beneficiaries are individuals Greek Tax residents. The 25% WHT will exhaust the tax liability of those individuals, regardless of the amount of their taxable income (applicable to distributed profits of FY 2010 onwards).
- A fine ranging from € 10.000 to € 100.000, depending on the gross income, shall be imposed on Societes anonymes (AE) and limited liability companies (EPE), for which no tax certificate has been issued whilst such companies will be subject to a priority tax audit by the competent tax authority.
- The reduction of the fine for late filing imposed on an entity subject to the obligation for filing a list for its intra-group transactions according to article 26 of Law 3728/2008. In particular, such fine which to this day was calculated as 10% on the value of the relevant transaction will be reduced to a final € 10.000 fine plus a standalone € 1.000 fine for each calendar day of filing delay, capped at € 100.000.

We would like to clarify that the fine for non-filing of the aforementioned list of intra-group transactions remains 10% on the value of said transactions.

- A 0.2% tax shall be imposed on borrowed over-the-counter (OTC) shares, listed on the Athens Stock Exchange, calculated on the basis of their value. The tax liability shall be borne by the lender regardless of nationality, place of residence, domicile or seat as well as of whether the lender is entitled to a tax or duty exemption stipulated in other provisions. It is explicitly stipulated that the pertinent contract agreement and any relevant act shall be exempted from stamp duty.
- The possibility of calculation, with indirect methods, of the gross income, outputs, taxable profits and VAT due by the taxpayer by the use of one or more of audit techniques by the tax auditors (e.g. on the basis of the principle of proportions; the analysis of the liquidity of the taxpayer; the equity of the taxpayer; the relationship of the selling price to the total turnover; and the amount of bank deposits and expenditures in cash).

Prior to issuing the tax imposing act, on the basis of findings that came up from the use of the above indirect audit techniques, the taxpayer must be mandatorily called for hearing, in order to counter argue on disputed audit findings.

It is likely that the determination of taxable income in such indirect manner will be challenged on the basis of Constitutional Principles and EU Law.

- A debtor to the State can be granted of a tax clearance certificate when the total of its certified and cleared debts vis- a-vis the Greek State is less than the entirety of the certified and cleared monetary claims he has against the Greek

State, regardless their cause and as long as the set-off requirements are fulfilled.

- The provisions for the settlement of overdue debts owed to the state are amended. In the event that it is opted to fall under the new rule an exemption from the surcharges for late payment is provided, depending on the number of installments, whereas any owed amounts will not be further burdened with surcharges until their payment. To fall under the new rule, an application must be filed until 29-2-2012, whereas its application can extend also to debts that have already been under other regimes of payment facilitation through installments.
- It is explicitly stipulated that the Committee for Out-of-court Resolution of Tax Disputes stipulated by article 70A of Income Tax Code shall deal with the out-of-court resolution of all tax disputes arising in the course of the same tax audit, if the Committee is competent for the out-of-court resolution of at least one of such disputes. There are also changes in the composition of the Committee, in order to enhance the independence thereof.

Please be reminded that the scope of this Committee is the out-of-court resolution of tax disputes, following a tax audit, arising in any tax area, when the dispute materiality, regarding either main charge or fines, exceeds € 50.000.

B. Ratification of Legislative Acts (a) of December 16, 2011 (Government Gazette Issue A' 262/16.12.2011) and (b) of December 31, 2011 (Government Gazette Issue A' 268/31.12.2011)

The two recent Legislative Acts (LA) (a) of December 16, 2011 (Government Gazette Issue A' 262/16.12.2011) and (b) of December 31, 2011 (Government Gazette Issue A' 268/31.12.2011) are expected to be ratified by a bill introduced for adoption before the Greek Parliament on January 19, 2012.

- (a) The first one includes special regulations on the Duty on Built Surfaces supplied with Electricity, as well as on the rebate and the entry fee stipulated for pharmaceutical companies or holders of authorizations for pharmaceuticals.

In particular, the Legislative Act stipulates that for real estate supplied with electricity but not used as residence and covering a built surface exceeding 1.000 m², the Duty shall be calculated, at a rate reduced by 30% for the part of the real estate exceeding 1.000 m² and by 60% for the part of the real estate exceeding 2.000 m².

As regards the rebate paid for 2011 and the entry fee, the Legislative Act stipulates that said amounts are income tax deductible as productive expenses for the paying entity.

- (b) The second Legislative Act, includes regulations on the tax treatment of the sale of shares listed on the Athens Stock Exchange or on any other foreign (i.e. non-Greek) stock exchange and the special tax on advertisements broadcasted by TV.

In particular, the taxation under the general income tax provisions of capital gains arising from the sale of shares listed on the Athens Stock Exchange or on any other foreign (i.e. non-Greek) stock exchange shall be postponed for April 1, 2012 instead of applying from January 1, 2012 and particularly when said shares are acquired on April 1, 2012 onwards. Up to

Reduction to the Duty on Built Surfaces supplied with Electricity

Postponement of capital gains taxation in Listed Shares

that date the special 0.2% tax on the value of said shares to be sold (“transaction duty / transfer duty”) shall be still applicable, whereas the gains eventually arising from that sale shall be still exempt from income taxation.

The special taxation of T.V. advertisements stipulated by article 12 of Law 3845/2010 (as amended by Law 3899/2010) shall be postponed for January 1, 2013 instead of January 1, 2012.

C. New bill prepared by the Ministry of Development, Competitiveness and Maritime Affairs

A bill prepared by the Ministry of Development, Competitiveness and Maritime Affairs is expected to be soon introduced for adoption before the Greek Parliament. The bill includes, among other, tax provisions as well as provisions regulating a newly introduced Form of incorporation.

1. Tax provisions

- The income tax exemption introduced by Law 3182/2003, regarding Pleasure Yacht Maritime Companies and their shareholders by application of articles 1 and 2 of Law 27/1975, will remain in force following Law 3842/2010.
- Reclassification of tax calculation basis for second class ships, as defined in 3 of Law 27/1975, per registered ton (GROSS) of the ship, applicable for fiscal year 2011 onwards.
- Exemption from the special tax and the lump sum contribution, stipulated by articles 2-4 of Law 3790/2009, from 1.1.2012 onwards, for professional pleasure boats.
- Conditional exemption from customs and excise duty charges of the import and supply of victuals, fuel, lubricants and other consumable items not being subject to the provisions for “special destination regime” and are intended for the supply of professional pleasure boats.
- It is clarified that the VAT exemptions stipulated by the pertinent EU and Greek VAT legislation shall be also applicable to Professional pleasure boats.
- Provisions are also included regarding VAT due in case a professional pleasure boat license ceases to be valid.
- It is stipulated that in case a professional pleasure boat license ceases to be valid the tax liability for the luxury tax shall be borne and the tax shall be due if such yacht has been exempted from VAT on the grounds of its classification as a professional boat following the entry into force of article 17 of Law 3833/2010.

2. New corporate entity form, the Private Company

- The new company form shall be a corporate company, ex lege commercial, constituting a separate legal entity, with the option to be also established as a sole/single member company, of limited duration, with registered office in Greece, not being subject to state supervision and with a minimum (share) capital of € 1.
- It is stipulated that the shareholders may participate in the company either through share capital contributions or through non-share capital

New corporate entity, a more modern and flexible limited liability company

contributions or through guarantee contributions. It should be noted that it is the first time where a new way of participating in a commercial/capital company is introduced into the Greek company law, that of the guarantee contribution, which is neither related to contributions in kind, nor in cash, since any such shareholder is entitled to participate in the new company only by means of undertaking the liability for the debts of the company.

- The statute of incorporation of the private company and its amendments as long as they are private documents, as well as the shareholders resolutions and minutes may be also drafted in one of the EU official languages.
- It is stipulated that said companies may be established from 1.3.2012 onwards, whereas the filing of an application with the competent One-Stop Authority may be seen as the establishment of a new private company.

To be noted that due to the fact that the new bill prepared by the Ministry of Development, Competitiveness and Maritime Affairs constitutes currently only a draft bill, we will revert in the future with a new tax flash on the new corporate entity form, because on the one hand the introduction of a new corporate entity form is a quite significant development, on the other hand however there are still many open issues thereon in the draft bill published so far.

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