

Tax Flash

“Tax provisions in the context of the new bill by the Ministry of Development, Competitiveness & Shipping”

April 2012

The new provisions stipulate inter alia the indefinite extension of the provisions of L.D. 1297/1972 as well as the application of both L.D. 1297/1972 and L.2166/1993 to real estate companies, the tax losses' carry forward in case of mergers under L.2166/1993 as well as the further postponement of the capital gains tax on the sale of listed shares until 1.1.2013

On April 10, 2012 the Greek Parliament voted the new bill introduced by the Ministry of Development, Competitiveness & Shipping, which also includes significant tax provisions.

In particular, the new bill stipulates the following:

1. Provisions related to corporate reorganisations

- The application of L.D. 1297/1972 on tax free reorganizations is indefinitely extended retrospectively from 31/12/2011.
- The scope of L.D. 1297/1972 and Law 2166/1993 is extended also to real estate companies (relevant exception is abolished).
- When an enterprise is absorbed by an SA or an EPE under Law 2166/1993, the absorbing company is still entitled to carry forward its own existing tax losses under the conditions specified by paragraph 3 of article 4 of the Income Tax Code (applicable for absorptions effected on the basis of a transformation balance sheet prepared after the publication of the new law).

Despite the fact that no explicit reference has been included in the law, the explanatory report mentions that the right of tax losses' carry forward should also remain in the absorbing entity in the case of merger through absorption between banks, pursuant to L.2515/1997.

- A 25% exhaustive income tax shall be imposed on the taxed profits of an SA or EPE, in case they are transformed into a partnership. The same will apply to tax free reserves created from investments by virtue of an incentive law, as well as on tax free or specially taxed income reserves which remain at the time of transformation. Reserves of an EPE created up to 31.12.2010 from profits of former FYs are explicitly exempt from this provision.

2. Income tax provisions

- It is provided that the special duty on electrified buildings (ΕΕΤΗΔΕ) is not tax deductible from a company's gross income. It is also explicitly clarified that the following taxes, duties and contributions are not tax deductible: the capital gains tax due from the revaluation of real estate, the annual real estate tax (FAP), the real estate duty, the trade duty, the extraordinary contributions of article 5 of L.3845/2010 and article 2 of L. 3808/2009 and the extraordinary real estate property contribution.
- The 2% transaction tax on the sales of shares listed on the Athens Stock Exchange or foreign stock exchanges as well as on other internationally recognized stock markets is extended to transactions in shares which will have been acquired until 31.12.2012. Furthermore, the capital gains tax on the income from the sale of listed shares is to be applicable on transactions in shares acquired as of 01.02.2013.

- The minimum threshold for the exemption from the obligation of individuals to file an annual income tax return is decreased to € 5.000 (it was € 6.000), when this income only derives from the objective living expenses or is exclusively employment sourced (valid for income generated as of 01.01.2011).

3. Capital taxes provisions

- The filing of a common real estate property form (E9) (e.g. in case of spouses etc.) is abolished. As of 2012 each individual will file a separate real estate property form.

As a result, no need of filing a new real estate property form will arise in case of change in the marital status.

- Furthermore, the relevant annual real estate tax notes to be issued by the Ministry of Finance will address each individual separately, with retrospective effect as of 01.01.2010.

4. Other tax provisions

- The composition of the Committee for the Administrative settlement of tax litigation of art.70A of the Income Tax Code is amended by replacing one of the ex-judges or ex-State Legal Council Advisors by an additional Ministry of Finance officer.
- The obligation of submission of lease agreements to the tax authorities for validation is replaced by a requirement for electronic filing thereof.
- The joint liability of the new owner of real estate property as regards the stamp duty and water supply duty of the last three years prior to the real estate transfer is abolished.

5. Other law provisions

The new bill includes a number of other law provisions for the enhancement of investments in Greece, among which the following is provided:

- The introduction of a new corporate form, the “Private Company” (a special legal flash will follow with more detailed information thereon).
- Modernisation of the legal framework regarding trademarks and partnerships.
- Amendment of certain provisions of investment incentive L.3299/2004 and L.3908/2011 (e.g. postponement of the obligation to file a loan approval etc.).
- Improvement of the investment law using “fast track” procedures.
- Extension of the possibility of establishment of “free zones” and customs warehouses (e.g. allowing the commercial and industrial activities therein etc.).

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