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Tax Bulletin

Income Tax Code

September 2013

On 23.07.2013 L.4172/2013 which introduces the new Income Tax Code was published in the Government Gazette (Government Gazette A' 167/2013). Herein follows a presentation of the most important changes introduced.

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A. Introduction – the new ITC at a glance

Introduction

On 23rd July 2013, L.4172/2013 was published in the Government Gazette, which amongst others includes the new Income Tax Code (ITC), which will generally enter into force from 2014 onwards.

The new ITC constitutes one of the three pillars of the tax reform that the government hopes to complete within the autumn of 2013. The other two pillars refer to the Code of Tax Procedures, which was already ratified (L.4174/2013) and the Code of Tax Incentives, which is still under deliberation. The ratification of the latter, which has been announced to take place in autumn 2013, is expected to include some last, hopefully corrective and clarifying amendments to the new ITC.

The new ITC includes six parts that refer to the general provisions, income taxation of individuals, income taxation of legal entities and other entities, withholding tax issues, provisions on the combating of tax evasion and tax avoidance, as well as issues referring to the filing of income tax returns and the advance tax.

Despite the fact that the provisions of L.2238/1994 are not explicitly included in the abolished provisions, and as pointed out by the Scientific Committee of Parliament, the new ITC replaces the current ITC, at least for the part that regulates differently a specific issue, according to the general principle of the more recent law superseding the older. In any case, it is explicitly provided that the provisions of the new ITC will apply for income received and expenses realized in tax years commencing from 1-1-2014 onwards, with the exception of issues for which a different entry into force is provided. Conversely, an ambiguity is created on whether the provisions of the current ITC that regulate matters that are not provided for in the new ITC remain in force. Finally, a problematic issue refers to the parallel application of the provisions of articles 1-5 of L.2166/1993, 16 of L.2515/1997 and of L.D.1297/1972 in case of transactions that exclusively concern Greek tax residents.

Moreover, it is explicitly provided that the provisions of L.2778/1999 on the taxation of Real Estate Investment Companies and their subsidiaries, of L.3371/2005 on the taxation of Venture Capital Companies and Venture Capital Mutual Funds, as well as of L.27/1975 relating to shipping and L.D. 2687/1953 remain in force.

In reality, the new ITC and the subsequent Code of Tax Procedures introduce a new regime governed by a different philosophy, namely the establishment of general principles without extensive indicative examples, and the direction towards a substance over form approach. Given that these general principles are based on novel, for the Greek legal order, terms, it is possible that some legal uncertainty will arise with regard to their interpretation and practical application, and the issuance of interpretative guidelines by the tax authorities are awaited with interest.

The new ITC at a glance

- A system of general principles and rules, rather of extensive case-by-case regulation.

- The basic tax rates are not amended.

- 4 new categories of income are introduced for individuals, each one triggering a different tax treatment (i.e. the meaning of total income no longer applies):

  - Income derived from employment and pensions
  - Income derived from business activities
  - Capital income (dividends, interest, etc.)
  - Capital gains income (sale of real estate property, shares, bonds, etc.)

- The definition of tax residence is introduced with clarity also for legal entities, encompassing cases of legal entities that are effectively managed in Greece.

- All business expenses are deductible, subject to some general conditions, with the exception of some explicitly enumerated expenses. It is noted that particularly strict conditions apply for the deductibility of loan interest expenses (interest capping rules of 25% on EBITDA replacing a 3:1 debt to equity ratio).

- A new general method of taxing capital gains (regarding shares, equities, bonds, derivatives) at a tax rate of 15% is introduced.

- The exemption on dividends received by parent companies from their subsidiaries established in Greece and abroad is significantly broadened – the same applies to dividend withholding tax.

- New provisions on business restructurings, according to the standards of the respective European Directive (Merger Directive) are introduced.

- Various rules on the combating of tax avoidance are introduced, such as for example the provision on Controlled Foreign Companies (CFC).

B. Definitions

The new ITC includes definitions of legal terms used.

- It is explicitly provided that the legal terms of private law that are used in the new ITC apply accordingly for the interpretation and application of the respective provisions, except for the cases where by application of the principle of autonomy of the tax legislation, their meaning is construed differently in order to meet the requirements of the tax legislation, and in the given case the ITC.

- For the first time, the ITC includes in detail the following definitions: taxpayer, individual, legal entity, other entities, persons liable to withholding, relatives and related entity.

- The definition of "other entities" includes every form of organization, corporate or not, irrespective of legal personality and profit or non-profit making character, that is not an individual or legal entity, such as specifically the association, organization, offshore company, every form of private investment company, every form of trust or any form of similar nature, every form of foundation or association or any form of similar nature, every form of personal company or any entity of personal character, every form of common enterprise, every form of management company of capital or assets or testament or inheritance or bequest or donation, every form of joint venture, every form of civil law company, participating or "shadow" companies, civil law associations.

The meaning of "tax residence" for individuals is amended (article 4).

- More specifically, an individual is considered as being tax resident in Greece if one of the following conditions is met:

  a) the individual maintains a permanent or principal residence or usual abode or center of living interests, namely their personal or financial or social relations, in Greece,

  b) the individual is a consular or diplomatic or public official or public servant having the Greek nationality and serves abroad.

- An individual that is physically present in Greece for a period exceeding 183 days within any twelve month period, either undisturbed or at intervals, is considered as tax resident in Greece.

The meaning of "tax residence" for legal entities is introduced (article 4).

- A legal entity or other entity is considered as tax resident in Greece if one of the following conditions is met:

  a) it has been incorporated or established according to the Greek legislation,

  b) it has its registered seat in Greece,

  c) the place of effective management is located in Greece.

- The determination by the tax authorities that the effective management of a legal entity is exercised in Greece is made on the basis of the actual facts and circumstances of each case and by taking into account mainly the place of exercising the day-to-day management, the place of taking strategic decisions, the place where the annual general meeting of shareholders or partners is held, the place where the books and records are kept, the place where the meeting of the members of the Board of Directors or other executive management board takes place, the residence of the members of the

Board of Directors or other executive management board, whilst the residence of the majority of the shareholders or partners may also be taken into consideration.

- For determining a legal entity as being tax resident in Greece, the exercise of effective management in Greece for any period during the tax year is sufficient.

- Companies that are established and operate according to L.27/1975 "on the taxation of vessels [etc.]" and L.D. 2687/1954 "on the investment and protection of foreign capital" are explicitly excluded from the application of the new provisions on tax residence.

These provisions attempt to update the legal framework that governs the taxation of legal entities by adopting the latter's taxation on the basis of the place of exercise of their effective management, which constitutes a modern approach for subjecting legal entities to income taxation at an international level. In parallel, criteria that have been developed through jurisprudence in other judicial systems are taken into consideration for proving the place of effective management of legal entities and consequently their taxation at such place are integrated into the Greek legislation. However, the lack of experience by the Greek tax administration with regard to such issues and the lack of relevant case-law by the Greek courts may cause legal uncertainty, at least until the issuance of the respective interpretative guidelines. Finally, the non-specification of the period of exercising the effective management of a legal entity in Greece that may render the latter tax resident in Greece, will create an uncertainty to a number of foreign legal entities that operate in Greece for a specific period of time with regard to their subjection to income tax in Greece.

The definition of a permanent establishment of foreign legal entities in Greece, included in article 100 of the currently applicable ITC, is amended in a restrictive manner being replaced by a definition similar to the one included in the OECD Model Convention on the Double Tax Treaties for the Avoidance of Double Taxation (article 6).

- The term "permanent establishment" includes especially:

  a) a place of management,

  b) a branch,

  c) an office,

  d) a factory,

  e) a workshop and

  f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

- Specifically, in order for a construction site in Greece to constitute a permanent establishment, a time period of at least three months is required, instead of the time period of twelve months provided in the OECD Model Convention on the Double Tax Treaties for the Avoidance of Double Taxation.

- Article 6 of the new ITC, compared to the provisions of article 100 of L.2238/1994, limits and specifies the range of cases that are considered as permanent establishments of foreign enterprises in Greece.

- The possibility of ascertaining a permanent establishment in Greece only for foreign enterprises and not foreign organizations is restricted.

- The explicit provision that shops, agencies, annexes and warehouses constitute a permanent establishment ceases to apply.

- Moreover, the provision that explicitly provided that facilities of enterprises carrying out the manufacturing of raw materials or the processing of agricultural products constitute a permanent establishment is abolished.

- The case of creating a permanent establishment through an agent is replaced, by distinguishing between the cases of maintaining a permanent establishment through a dependent agent and not maintaining a permanent establishment when performing activities through an independent agent (e.g. broker, general commission agent).

- The keeping a stock of goods from which orders are executed on behalf of a foreign enterprise does no longer constitute a permanent establishment, and conversely, is included in the cases that do not constitute a permanent establishment.

- The existence of a permanent establishment of a foreign enterprise merely by participating in a partnership or LLC is abolished.

- The different method of calculating the net profit arising in Greece for a permanent establishment of a foreign enterprise, compared to the method adopted for Greek enterprises, with regard to the aggregation of the general management expenses and other organizational and operational expenses that are realized at the registered seat abroad, ceases to exist.

Four categories of income are provided (article 7).

- More specifically, the following categories are provided:

  a) income derived from employment and pensions,

  b) income derived from business activities,

  c) capital income and

  d) capital gains income.

According to the explanatory report, the categorization of income follows the OECD guidelines, whilst any income that does not fall within one of these conceptual categories of income, is not subject to taxation of income on the basis of the ITC, such as for example profits of mutual funds of L.3282/2004 and of L.2778/1999.

The income derived from business activities, agricultural activities and freelancers' income are all treated as income derived from business activities.

The term "tax year" replaces the meanings of "accounting period" and "fiscal year" that were used in the currently applicable ITC (article 8).

- The option of closing the tax year on the 30th June is maintained for legal entities and other entities that maintain double entry accounting books.

- The exceptional case of closing the accounting period, for income tax purposes, at a date other than the 31st December or the 30th June is limited only to Greek legal entities/other entities that are owned, directly or indirectly, at a percentage exceeding 50% by foreign legal entities/ other entities.

- It is specifically provided that the time of receipt of employment income is considered the time at which the beneficiary obtained the right of collection of said income, with the only explicit exception for employment income in case of an overdue receipt of accrued payables for any reason.

A general and broad provision on foreign tax credit is introduced, applicable both to individuals and legal persons/entities, compared to the three different provisions of the currently applicable ITC (article 9).

- More specifically, the credit method applies and it is provided that the income tax payable is reduced by the amount of tax paid abroad for the same income.

- It is specified that the reduction of income tax cannot exceed the corresponding amount of tax for said income in Greece.

It is important to note that the new ITC no longer maintains as a condition for foreign tax credit that a Double Tax Treaty exists with the country where the foreign tax has been paid.

C. Tax Scales – Tax Rates

C. Tax Scales –Tax Rates

The notion of total income is abandoned, in the sense that every income category will be taxed at a different tax rate. It is noted that the Scientific Committee of Parliament has voiced a reservation on the compatibility of the different tax treatment of income of the same amount depending on their source of origin with the constitutional principal of taxation on the basis of the ability to pay taxes. On the other hand, the – many times unjustified – fragmented and different taxation, even of similar types of income, constitutes a principal characteristic of the current ITC as well.

Income tax scale applicable to income derived from employment and pensions

Income Bracket	Tax Rate	Tax Bracket	Total	
			Income	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 income derived from business activities

Income Bracket	Tax Rate	Tax Bracket	Total	
			Income	Tax
50,000	26%	13,000	50,000	13,000
or by exception	13% (reduction by 50% of the tax rate of the first bracket)	for annual income up to € 10,000 for new 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.		
Exceeding 50,000	33%			
or by exception the total of profits	13% (without brackets)	for income derived from the sole agricultural business		

Taxation at source exhausting the tax liability

a) Every lump sum severance payment that is provided by any employer and for any reason of terminating the employment relationship or other agreement that connects the employer with the beneficiary of the payment. The tax is calculated according to the following tax scale:

Severance Payment Bracket	Tax Rate
≤ 60,000	0%
60,000.01-100,000	10%
100,000.01-150,000	20%
>150,000	30%

b) The annuity paid in the frame of group pension plans is taxed at source:

Type of annuity	Tax Rate[1]
Every periodically paid benefit	15%
Lump sum benefit up to € 40,000	10%
Lump sum benefit exceeding € 40,000	20%

Income tax scale applicable to income derived from real estate

Income Bracket	Tax Rate	Tax Bracket	Total	
			Income	Tax
12,000	11%	1,320	12,000	1,320
Excess amount	33%			

Income tax scale applicable to General Partnerships, Limited Partnerships and other Private Enterprises and Joint Ventures *(when maintaining single entry accounting books)*

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

Tax rate for income derived from the increase of assets (mainly refers to not declared income, namely assets the acquisition of which cannot be justified by the taxpayer).

Tax Rate
33%

- The new income tax scales and tax rates apply to income received from fiscal year 2015 (accounting period 2014) onwards.

[1] Increased by 50% in case of premature buy-out/redemption

D. Taxation of Individuals

D.1 Definition and determination of employment income (articles 12-14)

- The meaning of an "employment relationship" is defined, according to the principle of autonomy of the tax legislation. The general definition is based on the substantive criterion of a dependent employment relationship, and is extended even to cases of oral agreements.

The intention of the new ITC to strictly set out, but with a broader range of application, the cases in which employment income arises, is clear. All enterprises should carefully reexamine the fees paid to various persons that up until today were not included in the category of employees for tax purposes.

An employment relationship for ITC purposes, in the frame of which income derived from employment and pensions is received, exists amongst others, when an individual provides services:

a) as a director or BoD member of a company or every other legal entity or other entity,
(the taxation at source of BoD member fees is abolished)

b) as a salaried lawyer for the provision of legal services, and

c) on the basis of written agreements for the provision of services or completion of projects, with individuals or legal entities or other entities, which do not exceed 3 or, if exceeding such number, a percentage of 75% of the gross income derived from business activities derives from 1 of those individuals or legal entities or other entities that receive said services and provided that the annual business expenses that would be deducted, according to the new ITC, do not exceed the amount of € 9.250.

- The meaning of gross income received from employment and pensions is extended, to include, amongst others, the lump sum or periodic payment insurance annuities paid in the frame of group pension plans (although the special method of taxation is maintained), as well as any other benefit received in return of a current, past or future employment relationship.

- The benefits in kind are specified in more detail. More specifically, it is provided that:

  - Every benefit in kind is considered as employment income, provided that its market value exceeds the amount of € 300.

  - The method of calculating the market value of company cars provided to employees, partners, shareholders of the legal entity or other entity is amended. Under the previous regime, the value was calculated at a percentage of the manufacturing price of the year of first circulation, whilst under the new regime it will be calculated at a percentage of 30% of the cost of the vehicle that is recorded as an expense in the form of depreciation and other relevant expenses or the average expense or depreciation of the last 3 years, if the expense is zero.

  - The method of valuating benefits in kind taking the form loans provided by an individual or legal entity/other entity to an employee or partner or shareholder is specified for the first time. It is also provided that an advance salary constitutes a loan, only in case such advance exceeds three months.

  - It is provided that the income related to the exercise of stock option rights is considered as employment income, even if exercised after the exit of the beneficiary from the company, in contrast to the previous regime pursuant to which such income was considered as freelancers' income. This category of income in kind explicitly refers only to stock options on listed shares, as under the currently applicable regime.

  - The method of calculating the market value of residence granted to employees, partners or shareholders is provided. The deemed lease is calculated at a percentage of 3% on the objective value.

- On the other hand, explicit exemptions from employment income are provided, such as (indicatively):

  - Meal vouchers up to € 6 per day,

  - travel expenses (stay and meal) incurred exclusively in the frame of the business activity of the employer ,

(*although according to our experience until today, this category may once again constitute a point of controversy with the auditors*)

  - premiums for medical insurance plans, up to € 1,500 annually per employee.

D.2 Determination of income (profits) derived from business activities (articles 21-29)

There is now a different philosophy with regard to the deductibility of expenses. Whilst under the current regime the tax deductible expenses are enumerated, under the new ITC it is only the non-deductible expenses that are restrictively enumerated. It is moreover specified that, as up until today, the profit is determined on the basis of Greek GAAP and the Code of Tax Recording of Transactions, and not according to the profits under IFRS.

D.2.1 General deductibility rules (articles 22-23)

- A general rule on the deductibility of all real and evidenced business expenses is established, with the exception of the restrictively enumerated expenses that are not deductible.

- The non deductible expenses include:

  a) Some cases of loan interest, outlined in detail below,

  b) every kind of expense concerning the acquisition of goods or receipt of services of a value exceeding € 500, provided that the partial or total payment was not made through a means of bank payment,

It is worth noting that under the new provisions a requirement to follow means of bank payment is mentioned, even though this is not required by the Code of Tax Recording of Transactions (whilst this can be particularly restrictive in case of set offs)

  c) the unpaid insurance contributions,

  d) bad debt provisions, with the exception of those governed by the ITC (see below),

  e) penalties and fines, including additional payments,

(Penal clauses that constituted an inexplicable restriction until today are no longer included)

  f) the provision or receipt of services in cash or in kind that constitute a criminal offence,

  g) the income tax, the freelancers' duty and extraordinary contributions, as well as the VAT corresponding to non deductible expenses provided that it is not deducible as input VAT,

  h) the deemed income in case of self-use of property, to the extent that the latter exceeds a percentage of 3% of the objective value of the property,

  i) the expenses for the organization and conducting of informative conferences and meetings concerning the hospitality (meals and stay) of clients or employees if exceeding the amount of €300 per participant and to the extent that the total annual expense exceed a percentage of 0,5% of the annual gross income of the enterprise,

  j) the entertainment expenses, with the exception of such expenses realized by taxpayers having as a main object the provision of entertainment services,

  k) private consumer expenses and

  l) the total of expenses that are paid to tax residents in non-cooperative states or states with a preferential tax regime, unless the taxpayer proves that these expenses refer to real and usual transactions that do not have as their object the transfer of profits or income or capital with the purpose of tax avoidance or evasion,

(a provision that substantially applies also today)

  m) expenses relating to tax-exempt dividends (see below comments for art. 48)

It is interesting that the deductibility of expenses is disconnected from the compliance with obligations imposed by other laws, such as for example social security legislation. Therefore, for example, the deductibility of payroll expenses no longer depends on the payment of the social security contributions or advertisement expenses on the payment of the municipality advertisement duty.

- It is explicitly specified that the provision on the non-deductibility of the expenses paid to tax residents of a preferential tax regime is not applicable in cases where the beneficiary of such amounts is tax resident in an EU or EEA Member State, to the extent that an agreement for the exchange of information between Greece and such State exists.

  By this exception the provision on the non-deductibility of expenses paid to states with a preferential tax regime is harmonized with the jurisprudence of the European Court of Justice on the compatibility with the EU law of the provisions that have as their object the treatment of tax avoidance.

- The provisions on the deductibility of business expenses will apply to tax periods closing from the 30th June 2014 onwards.

D.2.2 Interest deductibility – thin capitalization rules (article 23 and article 49)

Important restrictions on the deductibility of interest expenses on loans undertaken by third parties, depending on the loan interest rate, are adopted.

- The non deductible expenses include the interest expenses on loans undertaken by the enterprise from third parties, except for bank loans, to the extent that they exceed the interest that would arise if the interest rate was equal to the interest rate of loans open deposit/withdrawal accounts provided to non-financial enterprises, as indicated in a Statistical Bulletin of the Central Bank of Greece at the prior time period closest to the date such loan was undertaken. On the basis of the most recent Bulletin, such percentage is **7.4%.**

The adoption of such serious restrictions in the deductibility of interest loan expenses, especially in the present financial circumstances, creates an inexplicable potential tax burden to enterprises. The exception from the quantitative restriction for bank loan interest rates is a reasonable caveat, but the reason of not including other methods of lending, e.g. bond loans, in the exception is not clear.

New thin capitalization rules are established, according to which the restriction of the deductibility of interest expenses is not based on a deb to equity ratio (3:1 up to date), but on the application of a 25% of EBITDA interest capping rule.

- More specifically:
  - The meaning of thin capitalization is determined in connection to the taxable profits before interest, tax and depreciations (EBITDA). It is provided that interest expenses are not deductible to the extent that the surplus of interest expenses compared to interest income exceeds a percentage of 25% of EBITDA.
  - An exception from the restriction of deducting interest expenses is provided in case the enterprise <u>is not part of a group</u> and the amount of net interest expenses recorded in its accounting books does not exceed the amount of € 1m per year.
  - The restriction of deducting interest expenses does not apply to credit institutions.
  - The carry forward of non deductible interest for 5 years is provided.

As an initial remark, the law does not seem to limit the application of the provision to intra-group lending.

The option of carrying forward for the next five years the non deductible loan interest expenses limits the tax consequences for the enterprises. In any case, the said restrictions and specifically in a period of crisis and depression, may lead to an increase of the tax burden of many enterprises.

D.2.3 Depreciation (article 24)

- The rates of depreciation are determined on the basis of the following table:

Category of Assets of the Enterprise	Rate of Depreciation (% per tax year)
Buildings, installations, facilities, industrial and special installations, non building facilities, warehouses and stations, including their annexes (and special loading and unloading vehicles)	4
Plots of land used for mining and quarries, unless used for ancillary mining activities	5
Public means of transportation, including airplanes, trains, vessels and ships	5
Machinery, equipment aside from PCs and software	10
Means of transportation of individuals	16
Means of transportation of goods ("internal transports of goods")	12
Intangible assets and royalties and expenses of multiannual depreciation	10
PC equipment, principal and ancillary and software	20
Other fixed assets of the enterprise	10

- Specifically for intangible assets and royalties, the rate may be adapted on the basis of the lifetime of the right.

- Moreover, the explicit option of performing depreciations by the lessee is provided in case of financial leasing agreements. A financial leasing agreement is defined as any oral or written agreement by which the lessor (owner) is obliged, in return of a rent, to provide to the lessee (user) the use of an asset, provided that one or more of the following criteria are met:

  a) the ownership of the asset is passed on to the lessee following the end of the lease agreement,

  b) the lease agreement includes a term of preferential offer for the purchase of the equipment at a price below market value,

  c) the period of the lease covers at least a percentage of 90% of the financial life of the assets, even in case that the ownership title is not transferred after the end of the lease agreement,

  d) at the time of concluding the lease agreement, the present value of the rents amounts to 90% of the market value of the asset that is leased,

  e) the assets that are leased are of such special nature that only the lessee may use them without proceeding to important modifications.

D.2.4 Valuation of stock reserves (article 25)

- Even though no method of valuation is provided for stock (which is evaluated according to the current accounting principles), the use of a different evaluation method is prohibited for the 4 years following the tax year in which the evaluation method that the company used was firstly implemented.

D.2.5 Bad debt (article 26)

- The conditions for the formation of bad debt provisions for the depreciation of bad debt and their write off are amended.

- More specifically, it is specified that the amounts of bad debt provisions and the write off thereof are deductible, as follows:

  a) For uncollected due debt up to the amount of € 1,000 for a time period exceeding 12 months, the taxpayer may form a provision at a percentage of 100% of the said claim.

  b) For uncollected due debt exceeding the amount of € 1,000 for a time period exceeding 12 months, the taxpayer may form a provision according to the following table:

Duration of late payment (in months)	Provisions (in percentages %)
>12	50
>18	75
>24	100

- The condition for the deduction of the provision for the aforementioned 2 cases is that all appropriate actions have been taken to ensure the right of collecting the said claim.

- The formation of provisions of bad debt is prohibited in the following cases:

  - For due debt of shareholders or partners of the enterprise with a minimum participation percentage of 10% and the subsidiary companies of the enterprise with a minimum participation percentage of 10%, unless the claim of such debt is pending before court or court of arbitration, or if the debtor has filed an application for bankruptcy or for a procedure of rationalization or an enforcement procedure has commenced against the debtor.

  - For due debt that are covered by an insurance or any guarantee or other contractual or in rem security or for debts of the State or local authorities or for those that have been provided by a guarantee of those bodies.

- It is provided that a claim may be written off, provided that the following conditions are cumulatively met:

  a) an amount corresponding to the debt has been previously recorded as income,

  b) it has been previously written off from the books of the taxpayer and

  c) all legal actions for the collection of the debt have been exhausted.

  This provision will apply for provisions formed in the tax years commencing from the 1st January 2014 onwards.

- Banks may deduct provisions of bad debt at a percentage of 1% on the amount of the annual average of real grants, as indicated by their monthly accounting statements. Such grants constitute capital claims and claims of recorded interest, not including default and non collectible interest of due debt or non-productive claims, which banks are entitled not to indicate or record in their accounting books, being obliged to prove that they concern such interest, as well as the coverage, in total or in part, of bond loans of private enterprises or the acquisition of shares during the establishment of a societe anonyme or its increase of capital, for a time period in which the bonds or shares are kept at the portfolio of the bank. These grants do not include loans provided in general to the State and legal entities of public law, loans in general for which a guarantee has been provided by the State and deposits in other banks.

- Aside from the aforementioned deductibility percentage, banks may deduct from their income additional special in each case provisions regarding their clients, for which the settlement of interest has ceased.

- Moreover, specific provisions on leasing and factoring companies are included.

D.2.6 Set-off of losses (article 27)

- The rule whereby losses from foreign sources may not be set off against profits generated in Greece is preserved, whilst an exception is introduced which permits the set off with profits arising in other EU or EEA Member States, provided that they are not exempt on the basis of the double tax treaty concluded and applied by Greece.

A rewording of the provision is required in order to clarify whether the set off of losses arising abroad with profits of the taxpayers abroad are permitted in every case. One would have expected the rule on EU/EEA Member States to refer to losses and not income.

- A new rule on the abuse of provisions on the transfer and setoff of losses is introduced in case that during a tax year the ownership or voting rights of an enterprise are changed at a percentage exceeding 30%. The limitation however does not apply if the taxpayer can prove that the change in ownership occurred for commercial or business purposes.

The way to substantiate the existence of commercial or business reasons that apply in case of a change of ownership may cause practical problems. We consider that if the provision is correctly applied by the tax authorities, the cases in which the limitation will apply will be minimal, if not zero, since the transfer of shares with the sole purpose of transferring losses is not commonly followed or easily achieved. It would therefore be legislatively prudent to reverse the burden of proof, taking into account that it concerns an extraordinary case.

D.2.7 Determination of profits with the use of indirect audit methods (article 28)

- The method of determining, by indirect audit methods according to the new Code of Tax Procedures (L.4174/2013), the income of individuals and of legal entities and other entities that exercise or seem to exercise a business activity, in case that the required books are not kept or single entry books instead of double entry books are kept, rendering the audit confirmations impossible or the books and other documents are not stored or provided for audit upon two requests.

- A more detailed description of the indirect audit methods is included in the Code of Tax Procedures (L.4174/2013).

- This provision will apply for tax years closing on the 1st January 2014 onwards.

D.2.8 Increase of assets (article 29)

- It is specified that the income received from an increase of assets deriving from unknown or non-recurring sources will be taxed at a rate of 33%. This concerns the case of article 48, par.3 of the currently applicable L.2238/1994, taxing as freelancers' income assets the existence of wealth which cannot be justified.

According to the Scientific Committee of Parliament the taxation of increase of assets is not possible in case the prescription period for the State's right to impose taxes has lapsed.

D.3 Alternative method for determining minimum taxation (imputed income – articles 30-34)

- The provisions on imputed income (deemed expenses and source of income) remain in force, the difference being that the difference between the imputed and declared income will be taxed as business income, unless the taxpayer only generates employment income, in which case the said tax will be imposed at the tax rate of employment income.

- The non deductibility or carry forward for set off in the next tax years of the loss of the same tax year or previous tax years is provided in case of a difference between the imputed and total income.

- Penalties and fines apply, according to the provisions of the Code of Tax Procedures (L.4174/2013) for the non-declaration or incorrect declaration on the income tax return of data in relation to the acquisition expenses of assets (purchase or construction of real estate property) and the determination of the total imputed income.

- The provision that had been abolished in 2002 on the imputed income of monetary amounts that are paid for the purchase or establishment or increase of the capital of every form of enterprise (private or company) or the purchase of parts and securities in general (therefore also shares) is restored and broadened in scope.

- Certain exceptions from imputed income are abolished.

D.4 Capital Income (article 35)

The introduction of the meaning of capital income replaces and updates the "securities income" currently provided by the applicable ITC. The application of different tax rates for interest, dividends, royalties and real estate property, however, remains.

D.4.1 Definitions (articles 35-38)

The new ITC provides a general definition, following the general principal guidelines of the OECD, of:

- "Dividends" (10% tax), with the purpose of including distributions of profits from any type of company (article 36).

- "Interest" (15% tax), which is defined as income derived from claims of every kind, either secured by mortgage or not, whether providing a right to participate in the profits of the debtor or not, and specifically income from deposits, State securities, titles and bonds, with or without security, and every kind of loan relation, including premiums, repos/reverse repos and rewards deriving from bonds or securities (article 37).

- The exemptions also applicable today with regard to interest of bond loans and treasury bills of the Greek State that are received by individuals, as well as interest arising from bonds issued by the European Financial Stability Facility (E.F.S.F.) in application of the program for the restructuring of the Greek debt, are maintained.

It is not clear, however, if the exemptions of L.3156/2003 on bond loans, as well as the current exemption from withholding tax for bondholders – non Greek residents, are fully maintained.

- "Royalties" (20% tax), the definition of which is broader than the respective definition of the OECD, since (according to the explanatory report to the law) the reservation of Greece on the interpretation of par.2 of article 12 of the OECD Model Convention in relation to software and the provision of consultancy work through networks is taken into consideration (article 38).

- It is provided that the withholding tax on dividends, interest and royalties only exhausts the tax liability of individuals and foreign legal entities not maintaining a permanent establishment in Greece.

D.4.2 Income derived from real estate property (article 39)

- The "income received from real estate property" is defined as income derived from leasing, self-use or free concession of use of land and property.

- The deemed determination of the leasing value of the property is abolished.

- A deemed income in case of self-use or free concession of use is provided and equals to 3% of the objective value of the property. The said deemed income is exempt from tax in case of a free concession of residences up to 200 sq.m., to be used as the principal residence by relatives in ascending or descending line.

However, the reference to a deemed income in case of self-use is not clear, since the wording "the income is deemed to consists" could create the impression that there might be the option of providing counter-proof.

The option of questioning the deemed calculation of income in case of self-use of property, as applicable under the current regime, is no longer applicable. However, the filing of a petition before courts on the basis of the case-law of the administrative courts on the compatibility of deemed income in case these are rebuttable could, however, be supported.

- The tax deductible expenses are limited to a great extent in comparison to article 23 of the previously applicable ITC.

- The tax rate for income derived from real estate is determined at 11% for amounts up to € 12,000 and at 33% for amounts exceeding € 12,000.

- The supplementary tax on gross income derived from real estate property is abolished.

D.5 Capital gains due to the transfer of capital (articles 41-43)

An important change that the new ITC introduces is the establishment of a new general rule on the taxation of capital gains, replacing a series of special provisions concerning until today listed and non-listed shares, capital gains from the transfer of bonds etc. The only exception from the general provision is the establishment of specific regulations on capital gains derived from the transfer of real estate. The common characteristics of the new framework include:

- ***The taxation at source for individuals (the new provisions do not apply to legal entities, where every capital gain is simply considered as business income)***
- ***A common tax rate of 15%***
- ***The ability to carry forward losses to be set off against future capital gains***
- ***No WHT obligation applies, with the exception of capital gains derived from real estate property, where the respective tax is withheld by the notary.***

D.5.1 Capital gains derived from the transfer of real estate property (article 41)

- Individuals' income tax is imposed on the capital gains arising from the transfer of real estate property that does not constitute a business activity.

- Capital gains are defined as the difference between the acquisition and sale price, taken into consideration further to an inflation adjustment. The acquisition price is considered as the value that is indicated on the transfer agreement or that has been paid and, in case no value is indicated, the value on which the real estate transfer tax was determined at the time of acquisition. If the value cannot be determined, it will be zero. The sale price is always the price indicated on the transfer agreement at the time of transfer.

To be noted that the acquisition price according to the previously applicable ITC was determined on the basis of the objective value and secondarily on the basis on the transfer values of similar assets. The acquisition price was only taken into consideration if exceeding the acquisition value as determined by the aforementioned criteria.

- The option of carrying forward the loss (from the sale of real estate) indefinitely and the option of setting off such loss only with future capital gains are provided.

- Capital gain is reduced based on coefficients depending on the years of ownership, which are increased in relation to the previously applicable provision, and which amount to 0,61 for real estate held over 25 years.

- An exemption from capital gains is provided, if the adjusted capital gain does not exceed the amount of € 25,000, provided that the taxpayer held the property for at least 5 years and no other transfer of real estate property took place during the holding period.

- The meaning of transfer is specified in a quite broad manner (e.g. includes the expropriation of real estate, cases of establishment of usufructs in return of a consideration etc.).

- Finally, it is provided that the income received from capital gains of transferring participations that derive their value, directly or indirectly, through real estate property at a percentage exceeding 50% are also included in the capital gains tax scope.

The purpose of this reference is not clear, since the rationale of this article on the transfer of real estate is based on the transfer of real estate and not of participations, whilst in any case, the capital gains derived from the transfer of shares are covered by article 42 on the transfer of securities. If no guidelines are provided, interpretative difficulties will surely arise.

D.5.2 Capital gains derived from the transfer of securities (article 42)

- Individuals' income taxation is imposed at a rate of 15% on the capital gains derived from the transfer of certain securities, as well as the transfer of a business as a whole, provided that this does not constitute a business activity, and more specifically in cases of:

  a) shares in a company listed or not listed in a stock exchange,

  b) partnership interests,

  c) state bonds and treasury bills or corporate bonds,

  d) derivative products (which are specified more broadly compared to the currently applicable law).

- The article includes various provisions on the determination of the acquisition price and purchase price, the difference of which gives rise to the capital gain. Special attention is required with regard to the provision that the purchase price and acquisition price of non listed securities *(we assume that this includes shares and not e.g. bonds)* may be determined on the basis of the value of net equity of the company issuing the securities to be transferred and not the purchase price indicated on the transfer agreement. This may occur when the net equity is higher than the agreed purchase price at the time of sale or lower than the purchase price at the time of acquisition. Moreover, it is provided that in case the acquisition price cannot be determined, it is considered as zero.

The provision is quite strict and does not seem to allow any counter-proof, which may lead to taxing capital gains that are not really incurred. Moreover, it is anticipated that difficulties of determining the acquisition price will occur in special cases of acquisition, such as e.g. restructurings, stock options etc., with the risk of the tax authorities considering the acquisition price in such cases as zero.

- The law includes the ability to carry forward losses indefinitely and to set off such losses with future capital gains.

- Details on the manner of filing tax returns and payment of tax have yet to be determined.

Moreover, it is not clear from the wording of the provision, if foreign individuals are subject to tax, while it derives that the provision does not refer to Greek or foreign legal entities.

Special attention is required in relation to the fact that according to article 21, par.3 of the new ITC, a business transaction is considered as "every stand-alone or incidental act which realizes a transaction or also the systematic performance of actions in the financial market with the purpose of making a profit. Every three similar transactions taking place within a six month period are considered as a systematic performance of actions, while for real estate said period is two years". The broad formulation of this provision may result in serious controversies if certain transfers of securities (e.g. 3 sales of listed shares in a six month period) are not subject to 15% capital gains tax, but constitute a business activity, require the keeping of books etc. and are taxed at the higher tax rate of such activity.

Finally, following the issuance of document number Δ12Β1118717ΕΞ2013 of the Ministry of Finance dated 25.7.2013, it is not clear whether the capital gains tax will apply to every transfer of shares performed from 1.1.2014 onwards, or only to those shares that have been acquired from that date onwards.

E. Corporate Income Taxation

E.1 Taxable basis and entity subject to tax (articles 44-47)

The category of taxpayers liable to corporate income taxation is broadened.

- Private companies, civil companies and joint ventures and in general every legal form that is not an individual or legal entity (other entities) are subject to corporate income taxation.

- It is specified that all income received by the entities subject to corporate income taxation will be considered as income derived from business activities.

This is a significant simplification in relation to the currently applicable regime, mainly with regard to cases of share transfers where distortions, such as the payment of 5% tax on loss making transactions, non recognition of losses from the transfer of shares etc., occurred.

- It is specified that the legal persons/entities subject to tax, with the exception of capital companies and of legal entities of a non-profit making character, when keeping single entry accounting books, will be taxed for their business profits at a rate of 26% for the first € 50,000 and at a rate of 33% for amounts exceeding € 50,000.

E.2 Intra-group Dividends (article 48)

A broadened exemption from corporate income tax is provided for intra-group dividends (participation exemption).

- A broader provision on the tax exemption, subject to conditions, of intra-group dividends received by Greek tax resident legal entities or permanent establishments of foreign legal entities in Greece is introduced.

- The exemption applies, provided that the following conditions are met:

    a) the recipient taxpayer must hold at least a minimum participation of 10% of the value or the quantity of the share or principal capital or voting rights of the distributing legal entity,

    b) the minimum participation percentage should be held for at least 24 months (although the exemption may be provided prior to the completion of 24 months secured by a guarantee), and

    c) the legal entity proceeding to the distribution of profits, which are subject to tax, should not have its registered seat in a state characterized as a non-cooperating state.

- It is clarified that in cases of tax exempt dividend income arising from the above participations, the recipient taxpayer will not be entitled to deduct the expenses connected to such participations.

By this provision, the ITC amends the currently applicable regime, pursuant to which the non-deductible expenses are determined in through a specific formula, and introduces, in line with its philosophy, a general provision, which may, however, lead to serious controversies with tax authorities if no guidelines are issued.

E.3. Related party transactions – cross-border business restructurings (articles 50-56)

A new general provision on transfer pricing is introduced, making a direct reference to the general principles and OECD guidelines on intra-group transactions and transfer pricing.

- The law requires the drafting of a transfer pricing documentation file and the submission of the summarized table of transfer pricing information until the 16th August 2013 for the accounting period that ended on the 31-12-2012 independent of its time of commencement.

It is noted that much more detailed provisions on TP documentation requirements are included in the new Code of Tax Procedures (L. 4174/2013).

According to a press announcement of the Ministry of Finance the deadline for drafting the transfer pricing documentation file and for filing the summarized table of transfer pricing Information has been extended until the 20/09/2013.

Application of the arm's length principle to Greek and cross-border business restructurings (transfer of business).

- It is explicitly provided that every business reorganization/restructuring that consists of a transfer of operations, assets, risks or business opportunities and is realized by or involves related entities should be made according to the arm's length principle.

- It is provided that the transfer or the granting of a right to use goodwill or intangible assets that result from business restructurings should be made in return for a consideration, according to the arm's length principle and taking into consideration the total value of the transfer package deal.

- The imposition of adjustments is provided in case of inability of the taxpayer to document the non transfer or grant of right to use of material intangible assets or assets or the payment of an arm's length consideration.

This provision significantly broadens the frame of application of tax rules in case of intra-group restructurings that until today were covered quite insufficiently by the provisions on the transfer of business. However, the broadness of the framework may entail risks of legal uncertainty, mainly in view of the practical application by the Greek tax authorities.

The provisions of articles 1-8 of L.2578/1998 (incorporating into Greek law the Merger Directive, as in force) are integrated into the new ITC, covering also Greek restructurings.

- The new ITC includes provisions on corporate restructurings, and more specifically the contribution of asset in return of shares, the exchange of shares, mergers and divisions, as well as the transfer of registered seat of a Societas Europaea.

  More specifically:

  - It is explicitly provided that the transformation of a branch into a subsidiary company is considered as a contribution of assets.

  - It is clarified that in case of a contribution of assets or merger or spin-offs, the recipient company will perform the depreciation of assets according with the rules that would be applicable for the contributing company, had the contribution of assets or merger or spin off not taken place.

- The tax treatment of the loss of the contributing company related to the contributed sector is provided and more specifically providing the option to the receiving company to transfer such losses on the same conditions applicable if the transfer had not taken place.

- It is explicitly specified that in case of a contribution of assets, the contributing company evaluates the titles received by the recipient company at their market value at the time of the transfer, even though the respective capital gains are not taxed at the time of the contribution.

The law, however, does not specify the time of taxing said capital gain.

- It is clarified that the provisions of L.2578/1998 concerning the contribution of assets, mergers, spin offs etc. of companies incorporated in the EU, are only applicable provided that the contributing company or companies and the recipient company or companies are tax resident in Greece and/or another EU Member State.

- It is clarified that the liquidation proceeds are considered as a distribution of profits during the tax year in which the liquidation of the legal person/entity was completed, to the extent that said proceeds exceed the paid in capital.

- It is determined that the new provisions apply to restructurings that are realized from the 1st January 2014.

The relation between the new provisions and the provisions of L.2166/1993 and L.D. 1297/1972 (i.e. the two alternative tax regimes for domestic corporate restructurings), still in force, remains to be clarified. In general, we consider that certain aspects of the new framework that constitute a simple transfer of foreign provisions should be integrated into the existing accounting and legal practice on restructurings. For example:

- *Provisions on the "partial de-merger" are included in the law, when such action is not included in the corporate legislation.*
- *The transfer of tax losses of a sector is not in line with the until today applicable tax and accounting treatment of spin offs etc.*

F. Withholding Tax

F.1 Liable parties – payments subject to withholding tax (articles 61-62)

- The provisions on parties liable to withholdings and payments subject to withholding tax are rephrased and more systematically included as a separate section in the new ITC.

- The capital gain received by individuals from the transfer of real estate property is also subject to withholding tax. In such case, the person liable to effecting the withholding is the notary.

- In case of foreign legal entities providing services in Greece, the new ITC seems to provide to the foreign taxpayers the option to be taxed based on the actual profit from the transaction, with a credit of the tax withheld *(i.e. effectively at 26% on the profit compared to 20% on the gross revenue from the service in question)*.

F.2 Withholding tax exemptions (article 63)

The exemption from the obligation of withholding taxes for payments of dividends, interest and royalties by a Greek subsidiary to its parent company is significantly broadened, since it now seems to include payments of dividends, interest and royalties to Greek parent companies.

- For the exemption the following conditions apply:

  a) the receiving legal entity should own shares, parts or a participation of at least 10%, on the basis of the value or number, in the share capital or capital or right to profits, voting rights of the distributing taxpayer,

  b) the minimum holding percentage of shares or parts or participations should be held for at least 24 months (again subject to providing a – bank- guarantee, in which case the exemption may apply prior to completing the 24 month holding period), and

  c) the receiving legal entity should be:

  - included in the forms enumerated in Annex I Part A of Directive 2011/96/EU, as in force/ in Annex I Part A of Directive 2009/133/EC, as in force, and

  - be tax resident in an EU Member State, according to the legislation of such state and is not considered as tax resident in a third country aside from the EU, in application of the terms of the double tax treaty concluded with such third state, and

  - be subject, without the option or exemption, to one of the taxes mentioned in Annex I Part B of Directive 2011/96/EU/ in Annex I Part B of Directive 2009/133/EC or to any other tax that may in the future replace one of those taxes.

F.3 Withholding tax rates (article 64)

- The withholding tax rates are amended as follows:

Type of income	Withholding Tax Rate (%)
Dividends	10%
Interest	15%
Royalties and other payments	20%
Services	20%
By exception, fees received by contractors of every kind of technical projects and lessors of public, municipal, association or port proceeds	3% on the value of the project under construction or lease payment

- The following remains in force:
  - The special withholding tax on severance payments, group pension plans, contractors' fees and the sale of goods and provision of services to the State.
  - General government bodies, during the provision of every kind of goods or services by legal entities, are obliged, at the time of payment or issuance of the respective payment order, to withhold income tax, which is calculated on the net amount of the value of the goods or services.
- The manner and time of payment of the withholding tax will be determined by a decision of the Minister of Finance.

G. Provisions on the combating of tax avoidance & tax evasion

G.1 Non-cooperative states and states with a preferential tax regime (article 65)

The definition of states with a "preferential tax regime" is amended and the issuance of an annual list including the states with a preferential tax regime is introduced.

- A state with a preferential tax regime is defined as a state in which the tax on profits or income or capital is equal to or lower than a percentage of 50% of the corporate income tax rate that would be due according to the provision of the Greek tax legislation, if the beneficiary of said income was tax resident or maintained a permanent establishment in Greece.

- The issuance of a list of states with a "preferential tax regime" by a decision of the Minister of Finance which will be published in the Government Gazette in January of each year is provided.

By issuing a list of the states with a preferential tax regime at the beginning of each year, the uncertainty with regard to the states that may be characterized as such by the tax authorities and particularly following the completion of the relevant transactions, especially taking into account that the definition remains particularly vague, is somehow mitigated.

G.2 Controlled Foreign Companies (article 66)

For the first time provisions on Controlled Foreign Companies (CFC) are introduced into the Greek tax legislation, with the purpose of combating artificial arrangement concluded for the avoidance of tax. Similar provisions have been introduced in other EU Member States, such as Germany, France, Sweden, Denmark etc.

- It is specified that the taxable income of an individual includes the non-distributed income of legal entities/other entities tax resident in another state, provided that the following conditions are **cumulatively** met:

  a) the taxpayer, on his/her own or jointly with related persons, holds, directly or indirectly, shares, parts, participations, voting rights or participations in the capital at a percentage exceeding 50% or is entitled to receive a percentage exceeding 50% of the profits of the said legal entity or other entity,

  b) the above legal entity or other entity is subject to taxation in a non-cooperative state or state with a preferential tax regime, namely to a special regime allowing for a substantially lower level of taxation than the general regime,

  c) a percentage exceeding 30% of the net income before taxes realized by the legal entity or other entity falls in one or more of the following categories:

     1. Interest or any other income generated from financial assets,
     2. royalties or any other income generated from intellectual property,
     3. income derived from dividends and the transfer of shares,
     4. income derived from movable assets,
     5. income derived from real estate property, unless the Member State of the taxpayer legal entity or other entity would not be entitled to tax such income according to an agreement concluded with a third country,
     6. income derived from insurance, bank and other financial activities.

  d) it is not a company with a principal category of shares that are traded on an organized market.

- This income is taxed at the tax rate applicable to profits derived from business activities of individuals and legal entities/other entities.

- An exemption is provided in case the CFC is tax resident in an EU or EEA Member State and an agreement for the exchange of information, as provided by Directive 2011/16/EU exists, unless the establishment or financial activity of the legal entity or other entity constitutes an artificial arrangement that was created for the substantial reason of tax avoidance.

As mentioned in the introductory report of the law, the CFC rules are in general suitable for achieving the combating of tax avoidance of Greek companies through profit shifting to subsidiary companies established in countries with low taxation. However, as deemed by the European Court of Justice, in order for such rules to be compatible with the EU law, the CFC taxation should be excluded in case that irrespective of tax reasons, the CFC reflects the economic reality.

The Greek provision initially seems to comply with the conditions set by the European Court of Justice jurisprudence on the compatibility of CFC rules with EU law and more specifically the establishment of exception from such special tax regime in cases that the CFC has economic substance and therefore exercises a real business activity. In that sense, the Greek provision exempts from the frame of application the legal entities that are resident in an EU or EEA Member State, unless their establishment constitutes an artificial arrangement with the purpose of tax avoidance. Therefore, the intention of avoiding the condition on the application of the CFC rules is, according to the jurisprudence of the European Court of Justice, not sufficient, but also requires the proof of the CFC not pursuing a real economic activity.

G.3 Special provision against tax evasion in the frame of corporate restructurings (article 55)

- It is provided that the benefits connected to the contribution of assets in return of shares, exchange of shares, mergers and transfer of registered seat of a European company are repealed in case that those actions are not realized for economically acceptable reasons (i.e. the restructuring or rational operation of those companies), but conversely have the tax evasion or avoidance as their main objective.

It is noted that the Code of Tax Procedures (L.4174/2013) also includes a general anti avoidance provision.

H. Other provisions

H.1 Tax-free reserves (article 72)

Taxation at source is imposed on tax-free reserves.

- Tax is imposed at a rate of 15% in case of a distribution or capitalization until 31.12.2013 of non-distributed or capitalized reserves of legal entities (as defined in the new ITC), as these were indicated in the last balance sheet closing prior to 1.1.2014 and which derive from profits that were not taxed at the time they arose due to their exemption in application of the ITC in force or Ministerial Circulars or decisions that have been issued in this respect. Payment of the respective tax exhausts the tax liability of the liable legal entity and of its shareholders or partners.

This provision seems to imply an exemption from dividend tax.

- From the 1st January 2014 onwards, the mandatory set off of not distributed or capitalized reserves at the end of each tax year with losses incurred by any reason during the last 5 years until exhaustion is provided, unless the reserves are distributed or capitalized, in which case they are taxed at source at a tax rate of 19% and by exhausting the tax liability of the legal entity and the shareholders or partners thereof.

This provision provides for an indirect retroactive taxation of reserves, which may be deemed as unconstitutional.

- From 1st January 2015, the ability to maintain an account of tax-free reserves is abolished.

The meaning of this provision is not clear.

H.2 Payment of taxes and penalties (article 74, par.8)

Amendments in the manner of paying taxes and penalties are provided.

- More specifically, the tax assessed by a final tax audit clearance sheet, due to the non filing of a petition or out-of-court settlement of the difference (the amount remaining after the payment of the 1/5), due to the issuance of a decision by an administrative court, as well as the 50% due to the exercise of an appeal, are no longer paid in installments, but in a lump sum payment.

- The new rules for the lump sum payment apply for acts issued after the 1.8.2013.

- Similarly, the amounts of penalties of L.2523/1997 that remain after the advance payment of a percentage of 20% or 30% due to the administrative or judicial settlement shall be paid in a lump sum. The new rules apply to penalty imposition acts issued after the 23.7.2013 (publication of L.4172/2013).

H.3 V.A.T. (article 74, par.14)

The provisions on the reduced VAT rate for food services were re-established.

- It is provided that the exploitation of cafes, patisseries, restaurants and other similar enterprises are subject to the reduced VAT rate, except of the exploitation of entertainment clubs and the provision of alcoholic beverages which are subject to the ordinary VAT rate. This is a temporary measure (cessation of application of article 34, par.1, case e' of L.3986/2011 from 1.8.2013 to 31.12.2013).

As noted by the Ministry of Finance, the measure of suspending the application of the ordinary VAT rate to food services and the application of the reduced VAT rate until the 31.12.2013 will be assessed with regard to its effects on the stimulation of the market and the treatment of tax evasion, in order to decide on its further application.

I. Issues of Labour and Social Security Law

L.4172/2013 includes, amongst others, important provisions on labor and social security issues.

I.1. Center for the Collection of Social Security Charges (article 101)

- A special Center for the Collection of Social Security Charges is established at the National Social Security Fund (IKA–ETAM).

- The purpose of the Center for the Collection of Social Security Charges is the following:

  1. The collection of overdue social security claims of any Social Security Funds which are subject to the supervision of the Ministry of Labor, Social Security and Welfare,

  2. the establishment of an electronic database, which will record all debtors of the Social Security Organizations (debtors registry), specifying the amount due, the grounds of the debts, as well as time period to which the respective debt refers,

  3. the study, processing and submission of proposals for legislative regulations, as well as

  4. the design and enforcement of actions for achieving the scope of the Center for the Collection of Social Security Charges.

- The Center for the Collection of Social Security Charges is supervised by the Administrator of the National Social Security Fund (IKA–ETAM), or by the Deputy Administrator in case of assigning such competencies to the latter.

- It is clarified that from 1.7.2013 onwards, the overdue claims of the National Social Security Fund (IKA–ETAM) and of the Social Security Organization for Freelancers (OAEE) exceeding € 5,000 (per total debt), as well as any debts which have become due because of failure to comply with past arrangements for payment by installments, are attributed to the Center for the Collection of Social Security Charges, whilst from 1.1.2013 any overdue claims of the Agricultural Insurance Organization (ΟΓΑ) and the Unified Insurance Fund of Independently Employed (ETAA) are also transferred to the Center for the Collection of Social Security Charges.

I.2. Minimum salary provisions (article 103)

- The realization of a consultation between social partners and the Government for determining the legislated minimum salary and daily wage is provided.

- For determining the legislated minimum salary and daily wage according to the Law, the situation of the Greek economy, the prospects of the Greek economy for growth, as well as other factors, such as the unemployment rate and the competitiveness in general, will be taken into consideration.

- The social partners involved in the procedure for determining the lawful minimum salary and daily wage are, on behalf of the employees, mainly the General Confederation of Labor (Γ.Σ.Ε.Ε.) and, on behalf of the employers, the Federation of Greek Industries (Σ.Ε.Β.), the Hellenic Confederation of Professionals, Craftsmen & Merchants (Γ.Σ.Ε.Β.Ε.Ε.), the National Confederation of Hellenic Commerce (Ε.Σ.Ε.Ε.) and other organizations.

- The consultation will be directed by a three-member Committee, with the purpose of sending a written invitation within the last ten days of February of every year to specialized scientific, research and other institutions (e.g. the Bank of Greece, the National Statistical Authority etc.), in order to draft a report to be submitted until the 31st March of each year, so as to evaluate the currently legislated minimum salary and daily wage, by providing respective outlooks for their potential adjustment.

- The three-member Coordinating Committee is responsible for creating a file which will include the reports of the specialized institutions, sending at the same time the said file to the representatives of the social partners, in order for the latter to express their opinion, by a memorandum regarding the adjustment of the lawful minimum salary and daily wage.

- The Coordinating Committee of the Law is obliged to transmit all memorandums and documentation of all consultation parties participating in the process, as well as the report of the specialized scientific and research bodies, the latest until the 30th April of each year, to the Centre of Planning and Economic Research (ΚΕΠΕ), in order for the Centre of Planning and Economic Research to draft a Report of results of consultation, the content of which may differ from the reports submitted by other parties involved.

- The Report of results of consultation should be completed by the 31st May of each year, and should be submitted to the Minister of Finance and the Minister of Labor, Social Security and Welfare, as well as published on the website of the Ministry of Labor, Social Security and Welfare.

- A recommendation of the Minister of Finance, Social Security and Welfare to the Council of Ministers within the last fifteen days of June of every year for determining the lawful minimum salary and daily wage is provided.

- The determination of the lawful minimum salary and daily wage by a decision of the Minister of Labor, Social Security and Welfare, following the consent of the Council of Ministers, is provided.

I.3. Amendment of the provisions of the Code of Civil Procedure (article 105)

The provisions on interim measures and the lawsuit for employment termination disputes are amended.

- The cases of granting an interim decision are limited. More specifically, it is provided that in case of acceptance of the application for the issuance of an interim decision, the respective application for conservative measures (injunction) shall be set for hearing within 30 days, whilst in a difference case a second interim measure is not granted. Therefore, an extension of the application of an interim measures may only be granted by a decision of the judge of conservative measure (injunction) until the issuance of a decision on the latter.

- The postponement of the hearing of a lawsuit pertaining to disputes which concern the null and void dismissal of a an employee with an employment contract or any change in his employment status, whose real employment has been ordered as an interim measure, is accepted only once, and only in case of force majeure, whilst any postponement should be made in a hearing within 40 days, otherwise the interim measure that has been ordered should be automatically revoked.

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