

Tax Flash

“Substantial Changes to the Transfer Pricing Regime”

July 2013

A law on “the transposition of the Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation and the abolition of Directive 77/799/EEC” was voted by the Greek Parliament on 2.7.2013. Among others, such law includes important tax provisions mainly with respect to several mechanisms of information exchange among tax administrations of the member states, transfer pricing regime etc.

In particular, the main amendments of the transfer pricing provisions introduced by the new law are as follows:

- The concept of affiliated companies is specialized. According to the addition to the current definition, companies are considered as affiliated in case:
 - a) they are associated due to the participation of a company in another company by owning directly or indirectly equity, shares or participation in capital of at least 33% based on either value or number, or rights to profits or voting rights,
 - b) they are associated to any other company owning directly or indirectly equity, shares, voting rights or participation in capital of at least 33% based on either value or number, or rights to profits or voting rights in one of the affiliated companies,
 - c) they are associated to any other person (individual or legal entity) with which there is a relationship of direct or indirect substantial administrative or economic dependence or control or the person (individual or legal entity) exercises dominant influence or has the power to exercise dominant influence on the decision making of the company or in case the two entities have a relationship of direct or indirect substantial administrative or economic dependence or control or the power of dominant influence from a third person (individual or legal entity).
- A new deadline is determined for the preparation of the transfer pricing file and the submission of the summarized table of transfer pricing information for fiscal years commencing on 1-1-2012 and ending on 30-5-2013, which expires on 31-7-2013.

The legal definition of the concept of affiliated entities due to the participation of at least 33% of one company in the capital of another company significantly expands the range of companies that can be characterized as affiliated, even in case where, from the factual background of the subject case, it is clear that it does not exercise control or management over the other company.

While the addition of the adjective “dominant” to the concept of power of influence that a company exercises or has the power to exercise over another company does not seem to resolve any

interpretational issue, it will make the judgment regarding the exercise or non-exercise of influence even more difficult, which constitutes the criterion, according to which two enterprises could be considered as affiliated.

Special attention should be paid, since the broadened of the definition of affiliated enterprises applies for fiscal year 2012.

It is doubtful whether the new deadline for the submission of the summarized table of transfer pricing information but, mainly, for the preparation of the transfer pricing file could be met in practice, due to the lack of any interpretational guidelines concerning not only the content of the summarized table of transfer pricing information and the transfer pricing file but also mostly the relevant application in the General Secretariat of Informational Systems (“GSIS”) which will accompany it, as well as due to the short period remaining until its completion. Especially with respect to the enterprises with fiscal year end on 31-5-2013, it is almost unfeasible to meet the legal deadline expiring on 20-7-2013.

Audit of royalties or remunerations and expenses paid abroad

- A decision of the General Secretary of Public Revenues was also issued as concerns the incorporation and appointment of members of the Committees at the Interregional Audit Centers (“DEK”) and the Audit Center for Large Enterprises (“KEMEP”) regarding the audit of royalties or remunerations and expenses paid abroad.
- Such Committees are competent for the recognition (or not) of expenses paid abroad as tax deductible. For this purpose, the prior decision of these Committees is required, which is binding for the authority conducting the statutory audit of the company.
- These Committees are also competent for the cases already audited and for which partial tax audit assessment sheets have been issued.
- The supporting documents required for the deductibility of the expenses of these categories incurred from 1-1-2009 onwards are determined by the Ministerial Decision of the Minister of Finance ΠΟΛ. 1051/2005, as amended and currently in force.

Regardless of any reservations as per the expediency and functionality of the new Committees for the audit and recognition of expenses paid abroad as tax deductible, it should be clarified whether the Ministerial Decisions ΠΟΛ. 1113 and 1126/2005 still continue to apply with respect to the submission of the supporting documents for the deductibility of the relevant expenses and mainly the statement of the foreign company receiving the royalties ratified by an audit firm.

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This information is intended only as a general update for interested persons and should not be used as a basis for decision making. For further details please contact PwC:

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