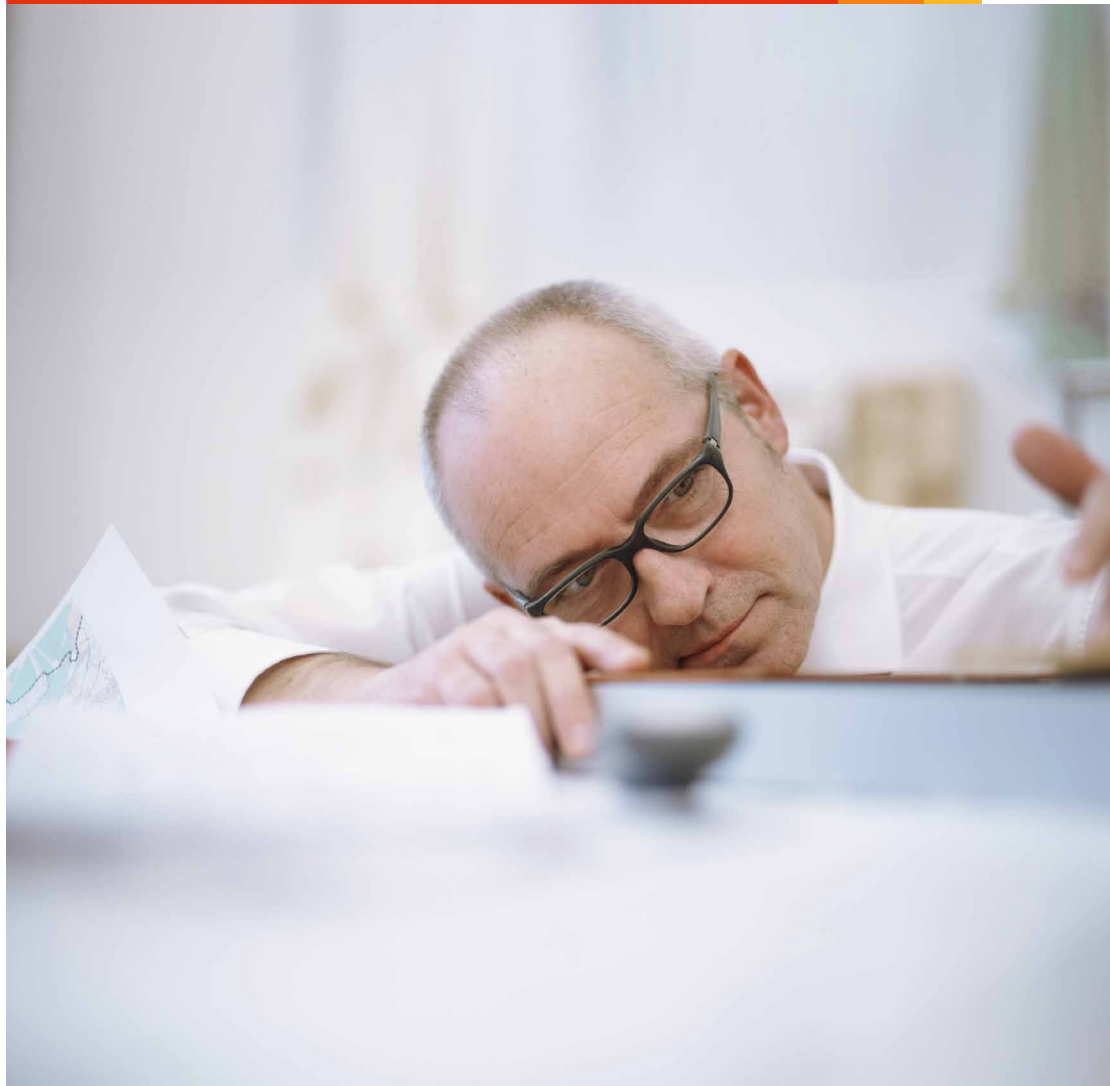


Tax Bulletin

August 2011

The decision of the Ministry of Finance in relation to the annual tax certificate has been published in the Government Gazette (B' 1657/26.07.2011). The key points included in the publication are



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Determination of the implementation of paragraph 5 of Article 82 of the Income Tax Code (Law 2238/1994) concerning the Annual Certificate issued by individual Certified Auditors or audit firms registered in the public Registry of Law 3693/2008 (GG A174).

01) Certificate of Tax Audit and Audit Program

The “Annual Tax Certificate” concerns Societe Anonymes and Limited Liability Companies whose annual financial statements are subject to a statutory audit by individual Certified Auditors and audit firms. The Annual Tax Certificate is to be issued upon the completion of a tax audit conducted by individual Certified Auditors and audit firms registered in the public Registry of Law 3693/2008.

The tax audit is conducted on specific tax areas as defined by a special audit program issued by the Ministry of Finance in cooperation with the Committee of Accounting Standardization and Auditing (ELTE). The audit program will be updated annually and is in accordance with the provisions of International Standard on Assurance Engagements 3000.

02) Responsibility for the preparation and the “truthfulness” (sic) of tax records

The management of the Company is responsible for the preparation of the tax records. Income tax adjustments for non tax deductible expenses should be derived from the Company’s tax books.

For the first time companies are required to record in the tax books the income tax adjustments on at least a monthly basis.

03) Content of the Annual Tax Certificate

The “Annual Tax Certificate” consists of two sections: 1) the “Tax Compliance Report” and 2) the “Appendix of detailed data.”

The Tax Compliance Report covers all areas specified by the audit program. When conducting the tax audit, individual Certified Auditors and audit firms must perform all audit tasks included in the audit program.

The Tax Compliance Report mentioned above should be completed and issued to the company after the company files its corporate income tax return and no later than ten (10) days after the date of filing of the corporate income tax return. Certified auditors are also required to submit electronically the Tax Compliance Report to the Ministry of Finance. The submission should be done online in the database maintained by the General Secretariat of Information Systems (GSIS) no later than ten (10) days after the date of approval of the Company’s financial statements by the Shareholders’ General Assembly. Nevertheless, elsewhere in the Ministerial Decision (article 8 paragraph 7b) the deadline for the electronic submission is set to only five (5) days.

Audit issues not covered by this decision and the audit program will be addressed in accordance with the framework prescribed by the International Standard on Assurance Engagements 3000.

The issuance of the Tax Compliance Report 10 days after the filing of the corporate income tax return, may provide the opportunity for audited companies to proceed with the timely payment of any additional tax obligations identified as a result of the tax audit. By doing so, companies, may be able to receive an “unqualified” certificate.

Particular importance is given to the auditors’ professional judgment, who may apply different materiality thresholds for sample selections or perform additional audit verifications.

04) Documentation of the tax audit by the individual Certified Auditors and audit firms

Individual Certified Auditors and audit firms issuing a Tax Compliance Report are required to maintain detailed documentation for each special tax audit performed.

Certified auditors and audit firms are required to retain detailed documentation of the tax audits for at least seven (7) years from the date of issuance of the Tax Compliance Report.

The documentation of these tax audits should be finalized no later than sixty (60) days following the submission of the Tax Compliance Report to the Ministry of Finance.

It remains to be clarified whether the date of issuance of the Tax Compliance Report, from which the seven (7) year period will commence, refers to the date of submission of the Tax Compliance Report to the audited company which is performed within the 10 days period following the filing of the corporate income tax return.

05) Sample based audits by the tax authority

At least 9% of the total number of companies audited by individual Certified Auditors and audit firms for their tax compliance will be selected for an audit by the tax authorities. The sample selection criteria are established by the Ministry of Finance in accordance with the provisions of Article 80 of Law 3842/2010 and are qualitative as well as quantitative.

These audits to be carried out by the relevant tax audit authorities should be completed no later than eighteen (18) months following the deadline for submission by the Certified Auditors and audit firms of the Tax Compliance Report in the GSIS database.

The wording of the relevant provision indicates a strong intention not to provide the possibility of extension to the eighteen (18) month period, by virtue of Ministerial Decision etc, as is the customary approach of the Greek Ministry of Finance, or to allow the audit to remain open with the issuance of an audit mandate.

Apart from companies audited under the above conditions, the Ministry of Finance may choose to audit additional companies following recommendation by the Head of the relevant supervisory authority and related approval by a committee comprising of the General Director of Tax Audits, the General Director of Taxation and the Director of the Audit Department based on the following criteria:

- a) Receipt or issuance of false -fictitious tax records, transactions with non-existent companies, violations of Article 39 and 39 A of Law 2238/1994 (transfer pricing), evidence or indications of the violation of the tax legislation through internal or external information or the processing of data, failure of the individual Certified Auditors and audit firms to issue a tax compliance report by the specified deadlines, reporting by the Certified Auditors that they were not provided with the necessary information regarding the tax audit conducted and cases where the audit of companies has revealed the violation of the provisions of Law 3693/2008 by the Certified Auditors and audit firms.
- b) Prosecution of the members of the Board of Directors' in accordance with the provisions of anti-money laundering.
- c) When the same audit firm audits more than seventy percent (70%) of the companies of a certain industry following a decision by the committee and the procedures set out above.

Clarifications are expected, as to whether the 70% cap refers exclusively to the number of audited companies in a certain industry or whether additional criteria will be considered, e.g. company size, gross revenues etc.

- d) Quality control findings.

All regular audits, other than the exceptions mentioned in the paragraph below, are conducted within the aforementioned eighteen (18) month period.

Exceptionally, regular audits that are carried out due to the prosecution of members of the Board of Directors, in accordance with the provisions of anti-money laundering , receipt or issuance of false -fictitious tax records, transactions with non-existent companies and cases where Article 39 and 39 A of Law 2238/1994 (transfer pricing) is violated, may be performed until the expiry of the statute of limitation for that fiscal period.

If the tax adjustments identified by the Certified Auditors regarding only the productivity of expenses are less than 0.5% of gross revenue and upon the recommendation of the Head of the Audit Department and a decision of the Committee indicated above, the productivity of expenses is subject to audit by the tax authorities.

It remains to be clarified whether the audited companies will be required to determine the 0.5% of the non tax deductible expenses due to their non-productive nature and if not performed, whether the Certified Auditor will be required to calculate the respective amount and determine any tax differences.

The percentage of 0.5%, for the non-productive nature of expenses, is applied to the aggregate of company's expenses and not to the individual categories of expenses such as travelling, hospitality expenses etc.

06) Type and validity of the Tax

Compliance Report

Depending on the type of conclusion of the Certified Auditor's Tax Compliance Report, the following cases are distinguished:

a) Unqualified Tax Compliance Report.

In this case, within fifteen (15) days after the submission of the tax compliance report to the Ministry of Finance, a letter is sent to the audited company stating that the audit performed by the Certified Auditor did not reveal any tax violations, that this is in principle accepted by the Ministry of Finance and that the company's tax books and records will be considered final upon the completion of the sample based audits of the Ministry of Finance. Within eighteen (18) months from the issuance of the Unqualified Tax Compliance Report and provided that no tax violations have been identified through the sample based audits by the Ministry of Finance referred to above, the tax audit of this fiscal year is considered finalised. Nevertheless, there is a possibility for an additional audit if there is evidence of a significant violation and more specifically in the case of the prosecution of members of the Board of Directors in accordance with the provisions on anti-money laundering, receipt or issuance of false -fictitious tax records, transactions with non-existent companies and cases where Article 39 and 39 A of Law 2238/1994 (transfer pricing) has been violated.

b) Unqualified Tax Compliance Report with emphasis of matter.

Where issues arise that result in a tax treatment that could be challenged, the responsible tax audit authority will issue a mandate to audit the matters of emphasis. This audit should be completed within eighteen (18) months from the issuance of the Tax Compliance Report. After the assessment of any additional taxes the audit

of the fiscal year is considered as finalised.

It remains to be clarified whether the date of issuance of the Tax Compliance Report, from which the eighteen (18) month period will commence, refers to the date of submission of the Tax Compliance Report to the audited company which is performed within the 10 days period following the filing of the corporate income tax return.

c) Qualified Tax Compliance Report.

In this case the audit authorities of the Ministry of Finance issue a tax audit mandate. If there are differences that can be assessed by the tax authorities only by auditing specific areas, then a tax audit mandate will be issued only for those areas.

It has not been clarified if the audit authorities of the Ministry of Finance will have to complete their audit within 18 months or another period.

d) Tax Compliance Report with adverse or disclaimer conclusion.

In this case a tax audit mandate is issued by the responsible audit authorities of the Ministry of Finance.

Again, it has not been clarified if the audit authorities of the Ministry of Finance will have to complete their audit within 18 months or another period.

It should be noted that for the violations

identified by the audit of individual Certified Auditors and audit firms, the views of management and tax accountant who sign the tax forms should be included in the Appendix for detailed information. The tax accountant should also justify why she or he did not identify the violation.

Based on the templates included in Appendix

I there are six types of conclusions of a Tax

Compliance Report (unqualified, qualified

and/or with emphasis of matter, adverse or

disclaimer conclusion).

It derives that even in the case of an

Unqualified Tax Compliance Report it is

possible to have a re-audit in cases of serious

violations in accordance with paragraph 4 of

article 5 of the decision.

o8) Organizational framework, implementation procedures and monitoring controls

The General Secretariat of Information Systems of the Ministry of Finance is responsible for the accumulation of information, communication between parties involved, and data processing relating to the tax audits of companies for which a tax certificate is issued by Certified Auditors and audit firms.

The General Directorate of Tax Audits of the Ministry of Finance is responsible for supervising the audits conducted by the audit authorities of the Ministry of Finance and addressing the issues encountered in their execution, starting from the audit assignment and finishing with the issuance of the "Assessment sheets" and other assessments.

o7) Quality review of the work of individual Certified Auditors and audit firms

Tax compliance audits conducted by individual Certified Auditors and audit firms are subject to quality review, which is independent of the audit conducted by the tax authority.

The quality review for the tax certificate is carried out by members of ELTE in cooperation with the Ministry of Finance. The quality review process is subject to the provisions prescribed by Law 3693/2008.

09) Content of Audit Reports

The specific tax areas which will be audited by the individual Certified Auditors and audit firms, if applicable to the audited company, are determined in the audit program. The audit program includes the following chapters:

- A. Conditions - Limitations of audit
- B. Information of the audited company
- C. Corporate Income Tax Audit
- D. Value Added Tax (VAT) Audit
- E. Code of Books and Records (KBS) Audit
- F. Real Estate Taxes Audit
- F1. Real Estate Tax (F.A.P.) Audit
- F2. Real Estate Declaration (E9) Audit
- F3. Real Estate Revaluation Tax (Law 2065/1992) Audit.
- G. Stamp duty Audit
- H. Withholding taxes
- I. Business Transformations
- I. Transfer pricing
- K. E-Commerce

10) Other matters

The fees charged by the individual Certified Auditors and audit firms for tax compliance audits should be clearly identified on the invoice issued to the audited company. Such fees will be freely negotiated based on market conditions and are tax deductible.

If in a subsequent audit the tax authorities identify additional taxes in areas included in the audit program, then, the Certified Auditor is subject to a fine ranging from € 10.000 to €100.000 in accordance with the provisions of Article 4 of Law 2523/1997 paragraph 4, as introduced by Article 26 paragraph 3 of Law 3943/2011. The Certified Auditors are liable for the fine irrespective of whether the additional taxes will be paid by the audited company.

The above fine is also imposed on the individual Certified Auditor's audit firm. The fine is imposed by the relevant authority of the Ministry of Finance to which the audit firm belongs to.

Further to the above mentioned sanctions it follows that the Certified Auditors are subject to administrative and penal sanctions if they do not perform their duties with the appropriate due care. By virtue of the relevant Ministerial Decision, as currently enacted, tax accountants who sign financial statements are also subject to fines if they fail to identify any violations of the applicable tax legislation prior to the audit.

11) Transitional arrangements for 2011

The provisions of this decision apply to all Societe Anonymes and Limited Liability Companies whose annual financial statements are subject to a statutory audit and become effective for all fiscal periods ending on or after 30.06.2011.

This decision will be in force after the publication of the regulatory act of ELTE that will define auditing standard 3000 as the standard to be applied in the tax audit of companies subject to a statutory audit.

Please contact either our Tax Partners directly or your regular PwC contact who will put you in contact with the relevant Tax Partner.

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