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Greece

Introduction

Since 1994, provisions under the Greek tax law (Article 39 of L. 2238/1994, the Income Tax Code) have enabled the Greek tax authorities to make adjustments to intercompany transactions that have not been conducted on an arm's-length basis. However, this law has been rarely applied in practice, and, consequently, companies operating in Greece have historically paid little attention to developing formal transfer pricing policies or preparing documentation to support the pricing of their intercompany transactions.

That situation changed in late 2008 when L. 3728/2008, relating to market control and supervision, was issued by the Ministry of Development. Although the purpose of this legislation was ostensibly to implement measures to control consumer prices, the legislation adopted Organisation for Economic Co-operation and Development (OECD) style transfer pricing principles as one of the tools with which to accomplish consumer price controls. Accordingly, Article 26 of L. 3728/2008 confirms the application of the arm's-length principle to intercompany transactions and establishes a formal transfer pricing documentation requirement for all Greek taxpayers. Subsequently, detailed regulations in support of Article 26 of L. 3728/2008 were also promulgated by the Ministry of Development under Decision R. 2709/2008, with further clarifications by Decision A2-2233.

Prompted to action by the Ministry of Development's legislative advance in transfer pricing, the Ministry of Finance enacted its own documentation requirements for tax purposes in mid-2009. These requirements are incorporated into the Greek tax law under Article 1 of L. 3775/2009, which amended the existing Article 39 and added a new Article 39A to L. 2238/1994. Additionally, Article 13 of L. 3842/2010 has incorporated further amendments to the aforementioned Article 39A. These last amendments have differentiated the two transfer pricing regimes in terms of documentation requirements and penalties for non-compliance (which may now rise up to 20% on the non-arm's-length amounts). Accordingly, this chapter addresses the Greek transfer pricing environment from both perspectives.

The provisions of Article 26 of L. 3728/2008 are effective for fiscal years ending after the date of enactment of the law (i.e. 18 December 2008), while the provisions of Articles 39 and 39A (as amended by the abovementioned legislative provisions) are effective for tax returns filed from 1 January 2011 and thereafter (i.e. fiscal year 2010 onward). However, as the Ministry of Development has the power to refer a taxpayer to the Ministry of Finance if it discovers evidence of non-arm's-length pricing in the course of an audit under Article 26 of L. 3728/2008, the practical position is effectively that documentation is also required for tax purposes from fiscal years ending 18 December 2008 onward.

The introduction of two pieces of transfer pricing legislation by two different government bodies within such a short time period is a clear indication that transfer pricing is now a key focus of the Greek government. Moreover, the Greek tax authorities have historically been relatively aggressive in conducting tax audits, with taxpayers rarely avoiding some level of adjustment. Given this history, it is inevitable that audits involving transfer pricing issues are likely to become a regular feature of Greek tax practice in the future.

Statutory rules

Transfer pricing adjustment

The power of the Greek tax authorities to make an adjustment for transfer pricing purposes is contained within Articles 39 and 39A of L. 2238/1994. By virtue of Article 39 of L.2238/1994, when purchase of products or service agreements are entered into between domestic enterprises or between a foreign and a domestic enterprise with financial terms different than those which would have been agreed between unrelated parties, the profits that would have been achieved and were not because of these terms are considered profit of that company without affecting the validity of its accounting books and records.

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Affiliated undertakings

According to Article 39 par. 3 of L. 2238/1994, Articles 39 and 39A of L.2238/1994 shall apply to all companies being associated by way of direct or indirect substantial managerial or financial dependence or control, due to either the participation of a company in the capital or in the management of another, or the participation of the same persons in the capital or the management of both companies.

Moreover, Article 39A par.3 of L. 2238/1994 explicitly stipulates that the transfer pricing documentation requirements also apply to both permanent establishments of foreign companies in Greece and permanent establishments of Greek companies established abroad.

Article 26 of L. 3728/2008 gives a narrower definition of affiliated undertakings by providing that the relevant regulations apply to all taxpayers engaging in transactions with companies associated with them – ‘associated’ being defined as under the Greek Corporate Law, namely Article 42e of L. 2190/1920. The latter provision states that companies associated with a taxpayer, known as ‘affiliated undertakings’, exist in the following circumstances:

- In parent/subsidiary arrangements, where:
  - the parent owns the majority of the capital or voting rights in a subsidiary, including securities and rights held by third parties on behalf of the parent
  - the parent controls the majority of voting rights in a subsidiary through an agreement with the other shareholders or partners of the subsidiary
  - the parent participates in the capital of the subsidiary and has the right, directly or through third parties, to appoint or remove the majority of the members of the management of the subsidiary, and
  - the parent has the power to exercise (or actually exercises) dominant influence or control over the subsidiary, or has the power to do so through another subsidiary under the common management of the parent.
- Where a brother/sister relationship exists, defined as the subsidiaries, or subsidiaries of subsidiaries, of the above parent/subsidiary relationships.

- In cases of indirect ownership, defined as the parent/subsidiary and brother/sister relationships above, irrespective of whether direct participation exists.
- Common management without capital participation, as defined in the Greek Corporate Law on consolidation (Article 96(1) of L. 2190/1920).

Documentation
Both legislative acts and specifically, Articles 39 and 39A of L. 2238/1994 and Article 26 of L. 3728/2008 provide that all Greek companies engaging in transactions with affiliated undertakings must conduct those transactions on an arm's-length basis, whether this principle is stated explicitly (for foreign transactions) or implicitly (for domestic transactions). Under Article 39A of L. 2238/1994 and Article 26 of L. 3728/2008, taxpayers are required to demonstrate the arm's-length nature of all intercompany transactions by preparing detailed transfer pricing documentation.

Additionally, under Article 26 of L. 3728/2008, within four and one-half months from the end of the fiscal year a taxpayer is required to submit to the Ministry of Development a list of all transactions with affiliated undertakings. As set out in Article 8 of Ministerial Decision A2-8092/2008, the list must provide the amount and nature of each transaction (e.g. sale of goods, provision of services), information about the counterparty (name, place of registration, tax registration number), and all intercompany deliveries invoiced through third parties (i.e. triangular transactions).

The Ministry of Development has issued specific regulations under Article 26 of L. 3728/2008, which provide further detailed guidance in relation to application of Article 26 of L. 3728/2008 and its documentation requirements (hereafter, Ministry of Development regulations). Although the Ministry of Finance has issued no regulations in relation to transfer pricing at this time, the Ministry of Development regulations are detailed and comprehensive and are based on the principles set out in the OECD Guidelines. Accordingly, the Ministry of Development regulations may be considered a guide as to what is likely to be contained within future regulations issued by the Ministry of Finance. Generally, the concept of the transfer pricing documentation follows the concept of the Master and Local Transfer Pricing File of the EU Transfer Pricing Code of Conduct.

Clarification of affiliated undertakings
The following transactions are explicitly confirmed as being covered by the definition of 'affiliated undertakings':

- Permanent establishments.
- Triangular transactions (i.e. intercompany transactions invoiced through a third party).

Exemptions from transfer pricing documentation requirements
Certain transactions or entities may be exempt from the requirement to prepare transfer pricing documentation according to legislation by both Ministry of Finance and the Ministry of Development and. More specifically, the exemptions provided differ between the two transfer pricing regimes; hence they are presented separately below:

Ministry of Finance regulations
- Transactions between related parties with a value of 100,000 euros (EUR) or less.
- Companies with annual turnover of EUR 1.5 million or less are subject to simpler and limited documentation requirements.

Ministry of Development regulations

- Transactions with an individual not acting as an entrepreneur.
- Transactions between related parties with a value of EUR 200,000 or less.
- Companies with annual turnover of EUR 1 million or less.
- Transactions where the object is the transfer of a company's shares.
- Transactions for the transfer of ownership and other property rights in real estate.
- Special auxiliary and supporting service entities established under the provisions of Greek tax law (Article 27 of L. 3427/2005).

Contents of documentation

For a Greek-headquartered taxpayer, Articles 39 and 39A of L. 2238/1994 and Article 26 of L. 3728/2008 require a 'Master Documentation File' to be prepared. For a Greek subsidiary of a foreign-owned company, both laws require a 'Greek Documentation File' to be prepared. In general, Greek transfer pricing legislation regarding the content of the transfer pricing files has accepted the EU Transfer Pricing Code of Conduct. Specifically, the content of transfer pricing files should include the following:

- Information regarding the group (Part A):
  - Organisational, legal and operational structure (including permanent establishments and partnerships).
  - Group corporate activities and strategy, including changes from the previous fiscal period.
  - Intercompany transfer pricing policy, if available.
  - Identification of intercompany transactions, including nature of transactions (e.g. sale of goods, provision of services), invoice flow, transaction amount and information about the related parties engaged in the transaction (e.g. their objectives, duration of trading activity, annual gross income, number of employees).
  - Functions, risks and assets of the related parties, including changes from the previous fiscal period.
  - Ownership of intangible assets and associated royalty payments to or from third parties.
  - Advance pricing agreements (APAs) between the companies of the group and foreign tax authorities.
- Information regarding the company (Part B):
  - Detailed report of the intercompany transactions covered by the documentation, including nature of transactions (e.g. sale of goods, provision of services), invoice flow and transaction amount.
  - A comparative analysis showing the characteristics of the intercompany transactions, a functional analysis of the relevant related parties, the contractual terms of the transactions, the economic circumstances surrounding the transactions, and any special corporate strategies.
  - Description of the transfer pricing method or methods adopted for the intercompany transactions, including the reasons why that method was considered most appropriate.
  - Information related to internal or external comparables, where available.
  - Other data or circumstances considered vital to the company preparing the documentation.

Given the background behind the introduction of Article 26 of L. 3728/2008 as described at the beginning of this chapter, the Ministry of Development regulations have a strong emphasis on documenting and supporting commercial aspects of the

intercompany transactions, with explicit references to corporate strategy, market changes and impact of competition, changes in product specifications or technological advancements, exclusivity rights, contractual deadlines for completion of transactions, and marketing strategies (market entry, discounting, promotional, etc.). It is not yet clear whether future Ministry of Finance regulations providing detailed guidance on the contents of transfer pricing documentation will have a similar focus.

The Master Documentation File and the Greek Documentation File must both be maintained in the Greek language and retained for the entire period of the statute of limitations (technically five years under Article 84 of L. 2238/1994; however, extensions may apply).

Transfer pricing methodologies

The Ministry of Development regulations outline the acceptable transfer pricing methodologies for Greek taxpayers. Fundamentally, these replicate the provisions of the OECD Guidelines; however, the Ministry of Development regulations place a priority on the comparable uncontrolled price method over other transfer pricing methodologies. In order of the hierarchy established by the Ministry of Development regulations, the following transfer pricing methodologies may be used:

- Comparable uncontrolled price method.
- Other traditional methods (i.e. resale price method and cost plus method) – Available only where the comparable uncontrolled price method cannot be applied.
- Other (non-traditional) methods (i.e. transactional net margin method and profit split method) – Available only if the three traditional methods cannot be used.

To apply a method lower on the hierarchy, the taxpayer must include in the documentation file a clear explanation of the reasons why a higher-placed method cannot be applied.

Note that no similar Ministry of Finance regulations have been issued yet. In this respect, Article 39A states that the content of the documentation files based on the Ministry of Development regulations should be taken under consideration in case of a tax audit.

Calculation of the arm's-length range

Pursuant to the Ministry of Development regulations, when calculating an arm's-length range from comparable company data, the average results of the past three years (as per the law requirements) shall be used. There is no mandated approach for calculating the arm's-length range, and any 'generally accepted calculation or statistical programmes can be used'. In addition, once a range has been established, there is a presumption that intercompany pricing falling within this range of comparable prices is at arm's length (assuming the selection of the comparable companies is considered appropriate).

However, although the Ministry of Development regulations provide for the above presumption and also state expressly that when conducting an audit the Ministry of Development must bear in mind that there is no single arm's-length price that should be considered acceptable and that a range of prices may be appropriate. Additionally, if a taxpayer falls outside the interquartile range, the Ministry of Development must confirm the median of that range as the arm's-length price.

On the other hand, as the Ministry of Development does not have the power to make an adjustment to taxable income, use of the median should not be considered binding on the tax examiners during an audit conducted under Articles 39 and 39A of L. 2238/1994 at this time. Although, based on their own analyses, the tax examiners may of course adopt the median as the arm's-length price in specific cases in the future.

Consequently, based on the current legislation and regulations, it is theoretically possible that a taxpayer falling outside the range of comparable prices could find themselves in the unenviable position of being assessed against two different arm's-length prices – subject to an adjustment to the median in the course of an audit by the Ministry of Development, yet adjusted to some other point in the range by the examiners during a tax audit.

Legal cases

Given that no assessments in relation to transfer pricing issues have arisen in Greece as yet, there are no particular legal precedents at this time.

Burden of proof

The burden of demonstrating compliance with the documentation requirements of Articles 39 and 39A of L. 2238/1994 and Article 26 of L. 3728/2008, introducing the obligation to file a transfer pricing file, an arm's-length pricing analysis and any extenuating circumstances justifying a deviation from such arm's-length pricing (such as a market entry business strategy) upon relevant request from the authorities, rests with the Greek taxpayer. However, once a taxpayer has demonstrated such prima facie compliance, the burden of rebutting and proving either (1) lack of compliance, (2) failure to meet the arm's-length standard, or (3) failure to sufficiently demonstrate extenuating circumstances rests with the Greek tax authorities.

Tax audit procedures and tax certificate process

Within the course of an ordinary tax audit the documentation file should be available; the taxpayer has in any case 30 days at his disposal to have the documentation file available to the tax authorities.

However, recent developments have occurred in Greece as regards to the tax audit procedure, the so called Tax Audit Certificate. Specifically, Greek companies with year-end closing after 30 June 2011 are obliged, in the course of their audit by Certified Auditors, to be audited also from a tax perspective. The audit programme of the Tax Certificate includes the fulfilment of the company's obligations with transfer pricing requirements set by the Tax Law – what has happened in essence is that the tax audit has been outsourced from the public domain to certified auditors after the latest developments of the Greek economy.

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 criteria for selection are not set yet. These audits to be carried out by the relevant tax audit authorities should be completed no later than 18 months following the deadline for submission by the Certified Auditors and audit firms of the Tax Compliance Report in the relevant database. Apart from companies audited under the above conditions, the Ministry of Finance may choose to audit additional companies under certain conditions; inter alia violations related to transfer pricing

matters is one of the situations where the Ministry of Finance may choose to audit a company.

So, all regular audits, other than the exceptions mentioned in the paragraph below, are conducted within the aforementioned 18 month period. Exceptionally, regular audits carried out in cases where Articles 39 and 39 A of L. 2238/1994 is violated, the audit may be performed until the expiry of the statute of limitation for that fiscal period, which is five years.

To summarise, the above 18 months period implies that the audit company received an Unqualified Tax Certificate. Within 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.

In the event that transfer pricing violation has been deemed to occur, a mandate will be issued and the audit from the tax authorities may be performed until the expiry of five years statutory limitation, provided by Article 84 of L. 2238/1994.

On the other hand, the Ministry of Development regulation and specifically Article 9 of Ministerial Decision A2-8092/2008, stipulates that an audit of a taxpayer's documentation file by the Ministry of Development begins with a notification letter from the Ministry asking the taxpayer to submit such file within 30 days. Once the Ministry of Development audit has begun, the Market Supervisory Authority which conducts the audit may also request other data for review, such as the taxpayer's general ledger or trial balance, financial statements, an explanation of how the documentation file was prepared etc.

Audits conducted by officers of the Market Supervisory Authority may result in penalties for failure to comply with arm's-length pricing or for failure to prepare documentation, as stipulated in L. 3728/2008. However, these officers do not have the power to make an adjustment to taxable income if a transaction is considered to have been conducted other than at arm's length. In such cases, the Market Supervisory Authority refers the documentation files and other records to the Ministry of Finance so the tax authorities can review and make an assessment if considered appropriate.

The statute of limitation for these audits is equalised to the statute of limitation under the tax legislation (i.e. technically five years, although this may be extended as noted above).

Revised assessments and the appeals procedure

Under the Ministry of Development's transfer pricing legislation, a taxpayer must file a request to commence litigation within five working days from the date of notification of an assessment if it wishes to contest that decision. The Ministry has ten working days to respond to that request. If the request is rejected, the case is referred to the Administrative Court. The taxpayer must pay 20% of the fines or penalties assessed during the audit to the Administrative Court in advance. If the taxpayer's request for litigation is rejected by the Market Supervisory Authority or the tax examiners, the taxpayer can challenge this rejection by submitting a request for review to the Administrative Court within 60 days of the date of rejection.

Similar provisions are also included in the Ministry of Finance's transfer pricing regulations. A taxpayer has the possibility to contest the assessment of the Greek tax authorities and commence litigation within the deadline for submission of the relevant request to the competent Administrative Courts. In case a penalty exceeding EUR 50,000 is imposed, the taxpayer may engage the special Commission of Article 70A of L.2238/1994 competent for the administrative settlement of tax disputes.

If the request is rejected, legal proceedings may be commenced in the Administrative Court; however, the taxpayer must pay 50% of the fines or penalties assessed during the audit to the Administrative Court in advance. Although this 50% is refundable if the court rules in the taxpayer's favour, in case of appeals the Administrative Court will not accept the taxpayer's appeal if the 50% has not first been deposited.

To be noted that by virtue of the newly introduced provisions of L. 4079/2012, as from 20.9.2012 onwards, the deadline for the submission of recourses for tax issues before the Administrative Courts is reduced to 30 days upon notification of the relevant deeds.

Failure to comply with documentation requirements

In the case of the Ministry of Finance, failure to present or improper maintenance of the transfer pricing documentation instructed by Articles 39 and 39A of L. 2238/1994 entails a penalty of 20% on the total of intercompany transactions. Said penalty is different than the one imposed in case of non-compliance with the arm's-length principle (*please refer below*).

Failure to comply with the Ministry of Development transfer pricing documentation requirements (i.e. the list of intercompany transactions and transfer pricing documentation) results in a penalty equal to 10% of the intercompany transactions that were not documented or the documentation was not submitted on time.

Moreover, in case of not in due time submission of the list filing a fine equal to EUR 10,000 is imposed plus EUR 1,000 for any additional day of delay which is capped at EUR 100,000 (Article 26 par. 6 of L. 3728/2008, as amended by L. 4038/2012).

It is not yet clear whether a taxpayer could be penalised twice – by the Ministry of Development and the Ministry of Finance – for the same failure to provide transfer pricing documentation within the required time limits.

Failure to comply with the arm's-length principle

Under Articles 39 and 39A of L. 2338/1994, if the tax auditors conclude that a transaction is not being conducted at arm's length, they will make an adjustment to the taxpayer's taxable income. In this case, a penalty equal to 20% of the additional tax paid is also applicable.

Moreover, in the event that the Market Supervisory Authority concludes a particular transaction was not conducted on an arm's-length basis under the transfer pricing legislation and regulations of the Ministry of Development, a penalty of EUR 5,000 is imposed and the file shall be referred to the tax authorities (with the consequent potential for an adjustment to taxable income and penalties, as noted above).

More importantly, however, in the latter case the criminal sanctions of the Market Code also apply – namely a fine (no limit prescribed) and/or imprisonment of up to five years. Again, it is not yet clear whether the Ministry of Development will be

this aggressive in pursuing transfer pricing issues, and it is hoped that a measure of reasonableness will apply. However, taxpayers should certainly be aware that the possibility of criminal sanctions for transfer pricing failures does exist.

Resources available to the tax authorities

Ministries of Development and Finance continue to provide training in transfer pricing matters to its existing pool of tax auditors, and transfer pricing issues are therefore likely to be raised in future corporate tax audits. However, as with any country introducing transfer pricing legislation, a 'ramp-up' period during which the tax auditors gain experience in the area of transfer pricing is anticipated.

Furthermore, in May 2010, the Ministry of Development sent a large number of letters to many Greek taxpayers notifying them to file their transfer pricing documentation in order to be audited. Up to now, two of these audits have resulted in the imposition of onerous fines to subsidiaries of foreign MNEs.

Use and availability of comparable information

As the comparable uncontrolled price method has the highest status in the Ministries of Development and Finance legislations, evidence of internal and external comparable data should be included in the documentation file, if available. To demonstrate the comparability of such transactions with the intercompany transaction, the taxpayer must provide sufficient internal data, such as sales volume and units sold, for such an analysis to be made.

When reviewing comparable data provided by a taxpayer (including internal and external comparables, as well as comparables taken from databases), a detailed comparability analysis of the characteristics of the transaction being tested and the parties to the transaction should be provided. The factors considered important in this analysis are largely consistent with the comparability factors identified in paragraphs 1.19 to 1.35 of the OECD Guidelines.

The transfer pricing regulations permit the use of commercial databases to collect comparable data. In such cases, the Greek taxpayer must provide an accurate description of the database, the criteria and steps used to select the comparable companies, and a list of all the companies which were eliminated from the search (and the reasons for their elimination). It is understood that the Greek authorities of Ministries of Development and Finance have also licensed commercial databases themselves for the purposes of conducting comparable searches.

Risk transactions or industries

Based on our experience gained from the companies that have already received a notification letter from the Ministry of Development in May 2010 (please refer above), the targeted transactions or industries consisted of a wide range of activities (e.g. consumer goods, services).

Limitation of double taxation and competent authority proceedings

Greece has an extensive treaty network, including treaties with almost all its major trading partners. These treaties contain provisions to relieve double taxation through the use of mutual agreement proceedings (MAP); however, to date, it is not known whether Greece has conducted any such negotiations.

Technically, there are no restrictions on the commencement of an application for MAP following an audit assessment. Consequently, it is not necessary for the taxpayer to have exhausted its rights through the domestic appeals process of the Administrative Court in order to have the right to apply for MAP.

Advance pricing agreements (APAs)

Greece has no APA regulations at this time. However, as bilateral APA negotiations are theoretically covered by the MAP provisions of Greece's tax treaty network, it should be possible to apply for a bilateral APA between the Greek tax authorities and the tax authorities of a treaty partner. Nevertheless, along with the MAP mentioned above, it is not known if the Greek tax authorities have yet concluded an APA.

Anticipated developments in law and practice

The Ministry of Finance is expected to issue further regulations in the future.

Moreover, as Greek transfer pricing audit experience develops in the coming years, practical application of the new legislations is also likely to become clearer.

A recent draft bill, which is still subject to discussion and subsequent ratification by the Greek Parliament, provides for the taxpayers the ability to file an APA request.

Liaison with customs authorities

With the lack of transfer pricing focus in Greece in the past, there has historically been no liaison between the tax authorities and the customs authorities in this area. However, there is no administrative requirement that government bodies maintain taxpayer confidentiality between themselves, and as a result, it is possible that such liaison may develop in the future.

OECD issues

Greece is a member of the OECD, and the provisions of Articles 39 and 39A of L. 2238/1994, Article 26 of L. 3728/2008 and the Ministry of Development regulations are all largely consistent with the OECD Guidelines.

Joint investigations

No joint investigations have taken place between the Greek tax authorities and any other tax authorities to date. However, no law or regulation prevents Greece from conducting such a joint investigation in the future.

Thin capitalisation

The transfer pricing regulations apply to interest on intercompany loans. There are however specific thin capitalisation rules providing with a debt-to-equity ratio of 3:1.

Other regulations

Tax regime of L.3427/2005

L. 3427/2005 provides a specific advantageous tax regime for companies offering services to their parent companies established abroad.

Specifically, according to Article 30 L. 3427/2005 Greek companies or branches of foreign companies may be subject to this Regime provided that they offer exclusively the following services to their foreign parent company or affiliates:

- Consultancy services.
- Central accounting services.
- Production, product, process or services quality control.
- Drafting of studies, designs and contracts.
- Advertising and marketing services.
- Data processing.
- Collection and provision of information research and development.

Companies operating under the Regime of L.3427/2005 merely recharge all of their costs adding a predetermined mark-up and are taxed on their profits under the regular CIT rate. All costs recharged are considered as tax deductible. The mark-up on cost is preapproved by the competent department of the Ministry of Development, which examines a benchmarking study prepared by the Company for that purpose. The relevant decision is valid for 5 years. Companies operating under the said regime are excluded from the obligation to document compliance with the arm's-length principle.

Non cooperative States and States with preferential tax regime

By virtue of Article 78 of L.3842/2010 (applicable as of 1.1.2010), important limitations have been introduced on the tax deductibility of expenses paid to companies established in countries considered as 'non cooperating states' or 'states with preferential tax regime'.

Special attention should be paid as to the location of the company contracting with the Greek entity, since according to Greek tax legislation, payments of any kind, including payments for purchase of products and receipt of services, made by a company established in Greece to a company established in a non-cooperative state or a state with a preferential tax regime are, in principle, not recognised as tax deductible items, unless the tax payer proves that such payments relate to real and common transactions and do not result in the transfer of profits, income or capital for tax evasion purposes.

More specifically, according to the provisions of Article 51A par. 4 (as amended by L. 3943/2011), non-cooperating States are considered the States that are not EU Member States and which have not concluded agreements of administrative assistance in the tax sector with Greece or with twelve other States at least. Such States are enumerated in a Ministerial Decision published annually.

Moreover, par. 7 of the same Article stipulates that "a legal entity, irrespective of its legal from, is considered as being subject to a preferential tax regime in a country outside Greece, even if its residence, its registered or actual seat or establishment is in an EU Member State, in case:

- it is not subject to taxation in this state or is de facto not subject to taxation, or
- it is subject to tax on profits, income or capital, which is equal or lower than 60% of the tax rate that would have been due, in accordance with Greek tax legislation, should that legal entity were resident or had its registered seat or maintained a permanent establishment in Greece, in accordance with art.100 of the present Code".

Further, Ministerial Circular POL 1225/26.10.2011 has clarified that the comparison should be made between the statutory applicable Greek tax rates and the tax rates provided by the foreign tax legislation, without taking into account the effective tax rate of the recipient company.

However, the company established in Greece has the possibility to counter proof that the transactions under consideration are real and in the normal course of the company's business and also do not aim to tax avoidance or tax evasion. In such case the respective expenses should qualify as tax deductible items. Special attention should be paid in the documentation available in order to support that the respective transactions have been actually realised.

Triangular transactions

- By virtue of Article 30 par. 5 of L.2238/1994, in case goods sold by a Greek company to an individual or legal entity or representative or subcontractor of them having established their business in a non-cooperative State without the products having been delivered outside Greece and are subsequently sold to another Greek company at a price higher than the first sale, then the difference is considered as gross profit of the Greek selling company. Also, if a Greek company sells goods to an individual or legal entity or representative or subcontractor of them having established their business in a non-cooperative State or in a State with preferential tax regime at a lower price than the price it sells the same products to a domestic or foreign company, that lower price is not recognised and the difference is added back to the Greek company's gross profit.
- By virtue of Article 31 par 1c of L.2238/1994 the value of raw and ancillary materials and other goods (plus processing thereon) which is paid to an individual or legal entity, the role whereof consists exclusively of the invoicing of the transactions, while the delivery of goods or provision of services is conducted by a third party, are not deducted from the gross profits of companies. The practical consequence of this provision requires particular attention, in cases for example of multinational groups where invoicing is centralised.