

Tax Flash Ministerial Circular 1113/2015

June 2015

Ministerial Circular 1113/2015 provides clarifications as regards the deductibility of expenses based on articles 22, 22A and 23 of L. 4172/2013 incurred as of 1 January 2014; the most important are summarized below.

As a general comment, we mention that said Circular requires particular attention as the interpretation of the provisions seems to be oriented towards the broadening of the scope of non-deductible expenses.

A. DEDUCTIBLE EXPENSES – GENERAL PRINCIPLES

General condition for the deductibility of expenses

- Real expenses made for the benefit of the company are fully deductible, except for expenses explicitly referred to in article 23 as non-deductible expenses as well as expenses relating to tax-exempt intercompany dividends based on article 48.

Although it is explicitly stated that expenses relating to tax-exempt intercompany dividends are not tax deductible, there is no guidance as to the determination of these expenses, which in many cases could be rather complex. Therefore, companies receiving tax-exempt intercompany dividends should carefully take into account this issue.

Expenses incurred for the business purpose

- Clarifications are provided as regards the expenses which are considered to be made for the company's benefit. The main feature of such expenses is that they contribute to the generation of income or relate to the implementation of the corporate social responsibility programs. It is pointed out that the tax administration is not allowed to examine the purpose of said expenses.

Real expenses

- Such expenses should not be fictitious (totally or partially) or unreal. However, it is stated that a "good faith" recipient of a fictitious tax record may deduct the relevant expense.

It is clarified that the loss arising from the valuation of securities, liabilities, etc. does not constitute a "real" expense and thus, is not tax-deductible. The deductibility of any loss will be considered at the time of its realization, e.g. at the time the securities are transferred or the relevant liability is settled.

Expenses supported by the appropriate documentation

- The term "supporting documentation" is wider than the term "tax records" and includes any appropriate supporting documentation. In the case of a loss of the original tax records, certified photocopies of the issuer can be used.

B. SPECIFIC CATEGORIES OF EXPENSES

Research and Development expenses

- It is clarified that the provisions of Circular 12962 (ΠΟΛ) 2029/3.11.1987 will apply, as regards the conditions of characterization of the “Research and Development” expenses, until the issuance of the Presidential Decree.
- It is also noted that in case said expenses are fully or partially explicitly rejected by the competent authority within six months from the filing of the required documentation, the company should file an amended corporate income tax return within one month, without interest, surcharges or penalties.

Deduction of technical reserves of article 7 l.d. 400/1970

- It is explicitly provided that technical reserves formed by insurance companies are tax deductible.

Interest on loans

- It is clarified that the restriction for the deductibility of interest on loans concluded with third parties, except for bank loans, inter-bank loans and corporate bond loans in case the agreed interest exceeds the relevant 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, does not apply to intercompany loans.

Therefore, the deductibility of the interest expense is examined as follows:

At a first stage:

- *the restriction of interest rate of article 23 for loans to third parties other than bank loans, inter-bank and corporate bond loans and*
- *the compliance with the arm's length principle (article 50) for intercompany loans.*

At a second stage, the compliance with the thin capitalization rules (article 49) after the application of articles 23 and 50.

Loss arising from the assignment of claims

- It is clarified that the loss arising from the assignment of claims to a domestic or a foreign company, factoring or not, is not included in the definition of the, potentially non-deductible, interest, and thus it is tax deductible if the conditions of article 22 are met.

Insurance contributions

- In case of a late payment, insurance contributions will be deductible within the tax year in which they were paid and not in the tax year to which they refer to.

Penalties and fines

- The concept of non-tax-deductible penalties is expanded. Indicatively, it is stated that penal clauses, fines and penalties imposed due to breach of contractual obligations as well as overdue interest are not tax-deductible.

The interpretation of the concept “penalty” is expanded considerably – probably going beyond the letter of the law- in order to capture cases usually included in ordinary contractual relationships, such as penal clauses and overdue interest. It is pointed out that under the previous regime, the law had been amended in order to include penal clauses in the list of non-deductible expenses, following a jurisprudence which accepted them as productive tax deductible expenses.

***Taxes and duties
– ENFIA is tax
deductible***

- Only the explicitly enumerated in the law taxes and duties are not tax-deductible (i.e. corporate income tax, entrepreneurship duty, extraordinary contributions, VAT on non-deductible expenses). Therefore, it follows that any other tax and duty not enumerated therein is tax deductible, e.g. ENFIA (Uniform Tax on the Ownership of Real Estate Property) and stamp duty.

We note that the provisions of the previous Income Tax Code, L. 2238/1994, stated that the relevant Real Estate Tax (FAP) was not deductible for income tax purposes.

***Organization of
informative
conferences***

- Only expenses concerning the hospitality (meals and stay) of clients or employees as well as the imposed municipal duties fall within the restriction of said provision (i.e. €300 per participant and the total annual expense does not exceed a percentage of 0.5% of the annual gross income). On the other hand, other expenses such as the conference room, the transportation of passengers, the speakers' fees, etc. do not fall within said provision. Therefore, their deductibility will be examined under the conditions of article 22.

***Private consumer
expenses***

- It is clarified that the taxable benefits in kind are tax deductible as payroll expenses; however, it appears that non-taxable benefits in kind (e.g. 70% of the cost of the company cars, vouchers amount up to €6) will be tax-deductible, if the conditions of article 22 are met.

***Advertisement
expenses***

- Advertisement expenses are tax-deductible on condition that the applicable advertisement duty has been duly paid up to the expiration of the deadline for the filing of the corporate income tax returns.

We note that in contrast to the previous provisions of L. 2238/1994, article 23 of L. 4172/2013 does not stipulate as condition for the deductibility of advertisement expenses the payment of the applicable advertisement duty. However, such interpretation is based on the article 15 of the royal decree 24.9/20.10.1958 (as amended by article 9 of L. 2880/2001) regulating the advertisement duty.

VAT on bad debts

- Any outstanding VAT amount on bad debts, which has not been taken into consideration for the formation of the bad debts' provision of article 26, is tax deductible in the tax year in which the debtor's insolvency is proved, under the condition that said VAT amount is included in the VAT return of the relevant tax period.

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making. For further
details please contact
PwC:
268, Kifissias Avenue
15232 Halandri
tel. +30 210 6874400*



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