

NEWSLETTER

PHARMACEUTICAL

October 2012

Alternative options in response to the imposition by the Greek State of the 2012 Rebate (9%), Escalated Rebate and Clawback pursuant to Law 4052/2012, joint Ministerial Decision 3(a)oik.GY/150/1-3-2012 and Ministerial Decision F42000/8809/1081.

The first, albeit obvious, option is for the pharmaceutical companies to **either pay the amounts** mentioned in the notices sent out by EOPYY without any further ado **or**, with regards to the 9% Rebate and the Escalated Rebate, **utilize the offset option** provided for in the law against any existing debts of EOPYY towards pharmaceutical companies from the supply of their products to its pharmacies. Should the offset option be chosen (as regards the 9% Rebate and the Escalated Rebate), this may be effected without inserting any kind of reservation upon payment.

Simultaneously, SFEE has already initiated legal proceedings before the Council of State, regarding the annulment of the applicable Ministerial Decisions. Hence, should the outcome of the proceedings be in favor of SFEE and the Council of State upholds the illegality of the applicable Ministerial Decisions, then the affected companies may be able to seek reimbursement of the amounts already paid in or offset.

The alternate option is to **challenge the actual individual notices** concerning both the Rebates and the Clawback addressed to the pharma companies by EOPYY.

Hence, said notices can be contested by way of a Petition for Annulment before the Council of State. This Petition, may be accompanied by a Suspension Application, which however would have slim chances of having a suspensory effect, since the company affected would have to convincingly prove to the Court that, should it paid the imposed amount, it would result to its irreparable financial damage.

Thereafter, and in accordance to the applicable provisions, in case of non-payment, EOPYY has the authority to claim the unpaid amounts through the procedures of the Code on the Collection of Public Revenues (KEDE as per its Greek initials). Thus, the competent Tax Office will then issue new notices (*Atomiki Idopiisi* as per the Greek term) claiming the relevant amounts. Against these latter notices, companies can file a Recourse before the Administrative

Court of First Instance, which can be paired with a Suspension Application. This Suspension Application is likely to be successful on the grounds of the Petition for Annulment still pending and in order to avoid the risks associated to the non-payment of the amounts due. This Recourse must be filled within 30 days starting from the day of receipt of the notice from the Tax Office.

Bearing in mind the above, an important factor to be taken into consideration as well is that should the amounts be referred by EOPYY to the Tax Offices for collection (through KEDE

procedures as per above) thereafter, interest shall be imposed on the amounts due, which is currently set to 18% per year.

Another major risk that the companies may face in case of non-payment, is related to the fact that, should the Suspension not be granted, the Tax Office may proceed with the seizure of the companies' assets and the frizzling of its bank accounts. Additionally, the companies will not be in a position to obtain a Tax Clearance Certificate, which is a prerequisite for the participation in tender procedures and other processes.

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