

NEWSLETTER

☐ TAX

May 2012

Our previous newsletter, published in November 2011, presented the tax changes introduced by law **4024/2011** which was enacted for the application of the Medium-term Framework for Fiscal Strategy for years 2012-2015. In the meantime, significant tax measures have been voted in by the Greek Parliament (included in the laws **4038/2012**, **4046/2012**, **4050/2012**, **4051/2012**, **4055/2012**, **4072/2012** and in **Ministerial Circular 1090/2012**) which are briefly outlined below.

- Law **4038/2012** titled on “Imperative measures for the enforcement of the medium-term fiscal strategy for years 2012-2015» (Government Gazette FEK A' 14/02.02.2012), introduces the following tax provisions:
 - The tax treatment of profits and dividends distributed by Greek SA and LTD companies is partially revisited to the extent that the 25% withholding tax exhausts the tax liability of individual Greek tax residents.
 - A 0, 2% tax is levied on over the counter stock lendings and is imposed on the value of the shares listed on the Athens Stock Exchange. The tax is due by the lender (individual or legal entity) irrespective of the nationality and place of residence or any other exemption. The respective agreement and any relevant deed shall be exempt from stamp duty.
 - SA's and LTD's (mandatorily audited by certified auditors) which have not been provided with an annual tax certificate shall be subject to a priority tax audit by the competent authorities. The penalty imposed, ranges from €10.000 to €100.000 depending on the company's gross income of the audited accounting period.
 - Indirect methods are introduced for the determination of the gross income, the outputs, the taxable profits and the VAT due by the entrepreneur in the course of the tax audit. The implementation of such indirect audit methods (i.e. the principle of analogy, analysis of the liquidity and the equity of the taxpayer, the correlation of the selling price and the total turnover, the amount of bank deposits and expenditure in cash) shall be further clarified by virtue of the issuance of a Ministerial Decision.

- A tax good standing certificate shall be granted to debtors provided that the total amount of the certified and cleared debts towards the Greek State is lower than the total amount of the certified and cleared claims against the Greek State and provided further that the set off conditions are met.
- The penalty imposed for the late filing of the intragroup transactions lists according to the transfer pricing law 3728/2008 is set at €10.000 along with the payment of €1.000 for each additional calendar day of delay. The said penalty should not exceed €100.000. The fine imposed for the non-filing of the lists remains 10% on the value of the transactions.
- Employees receiving overdue salaries for 2011 may declare the respective income in the annual income tax return of the year the wages will be actually received. The said amounts should be distinctively reported in the annual salary certificate of the above mentioned accounting period granted to the employee.
- The laws **4046/2012** (Government Gazette FEK A' 28/14.02.2012), **4050/2012** (Government Gazette FEK A' 36/23.02.2012) and **4051/2012** (ΦΕΚ Α' 40/29.02.2012) which provide for the legal framework of the Greek debt restructuring program ("PSI"), include also the following tax provisions:
 - The exchange of bonds from their initial holder with other securities within the framework of the PSI program is considered as holding until the maturity of the initial bonds, in order for the related interest to be exempt from income tax.
 - Interest arising from the bonds issued by the EFSF in the context of the PSI program has the same tax treatment with the interest arising from bonds issued by the Greek State.
 - The GDP-linked financial instruments, issued by the Greek State in the framework of the PSI program are classified as derivatives. In the case that the beneficiary of the income arising from such products is a foreign tax resident (i.e. individual or a legal entity) such income is considered as deriving from securities.
 - The debit balance arising from the exchange of Greek State or corporate bonds for legal entities shall be deducted from the gross profits in equal annual installments corresponding to the tax periods until the maturity of the exchanged bonds, starting from the year of the exchange, regardless of the time held to maturity.
 - The credit balance arising from the income tax returns of banks from the financial year 2011 onwards, regardless of the legal form under which they operate in Greece, is offset with the income tax due for the five (5) consecutive financial years following the year when the credit balance incurred, to the extent that it derives from the tax withheld from interest on the Greek State bonds and treasury bills or interest of corporate bonds, guaranteed by the Greek State.
 - When Greek State or corporate bondholders acquire new bonds issued by the European Financial Stability Facility (EFSF), the withholding tax due further to the prepayment of interest with new bonds for the unpaid amount of interest accrued which corresponds to the exchange of the initial bonds, shall be effected upon maturity of the new bonds by the intermediary bank.

- Capital gains deriving from the exchange of Greek State or corporate bonds, guaranteed by the Greek State with other instruments are tax exempt.
- Capital gains arising from the transfer of Greek State bonds, or corporate bonds are taxable as securities income.
- Transfer pricing legislation does not apply to intragroup transactions involving intragroup transfers of Greek State bonds in the context of the PSI program.
- Laws **4051 and 4055/2012** enact provisions amending the Code of Administrative Procedure by introducing additional conditions of admissibility in relation to the submission of a suspension's application in tax and custom's disputes. Moreover, the provisions regarding the Administrative Court's competence for tax and customs' disputes were amended for the acceleration of the judicial procedure. In particular, the single judge Administrative Court of first Instance shall be competent for disputes which do not exceed the amount of 150.000 Euros. The Administrative Court of Appeals shall be competent in first and last instance for disputes exceeding the former amount.

Moreover, law 4051/2012 provides that the dispute resolution before the Special Committee established in the Ministry of Finance is mandatory prior to filing a judicial recourse regarding tax disputes exceeding the amount of €300.000.
- The recently voted law **4072/2012** (Government Gazette, FEK A' 86/11.04.2011), provides for the following tax measures:
 - The citizens of the European Economic Area (i.e. the citizens of Iceland, Norway and Liechtenstein in addition to the citizens of EU Member States) are also entitled to an exemption from the payment of real estate transfer tax when purchasing real estate in Greece as their first abode.
 - The Directive 2010/24/EU, concerning mutual assistance between the member states of the E.U. for the collection of claims relating to taxes, duties and other measures, is transposed into the domestic legislation.
 - Further to an amendment of Article 187 of the Penal Code, persons forming a group with the purpose of committing offenses relating to the avoidance of payment of taxes, custom duties or any other charges due upon purchase, sale, receipt, delivery or transport of merchandise or product imitation, counterfeit or piracy, are convicted to imprisonment which may reach 10 years.
 - Real estate tax returns (namely E9) shall be submitted by each individual taxpayer separately from 2012 onwards. Subsequently, the annual real estate tax (Foros Akinitis Periousias) due shall be calculated by the Ministry of Finance for each individual taxpayer who is liable to real estate taxation on the basis of the real estate tax returns (E9) already submitted.
 - The following taxes, duties and contributions are not accepted for deduction from the gross revenues of enterprises:
 - Capital gains tax incurred further to real estate revaluation according to the provisions of Art. 24 § 3 of the law 2065/1992;
 - Real estate tax;
 - Unified real estate tax ("ETAK");
 - The entrepreneurial duty;
 - The extraordinary special real estate duty (i.e. for electrified surfaces);
 - The extraordinary income tax contribution imposed by laws 3845/2010 and 3808/2009; and
 - The extraordinary real estate contribution of law 3808/2009.

- By virtue of the issuance of Joint Decisions of the Ministry of Finance and the Ministry of Labor the collection of PAYE taxes shall be unified with the collection of social security contributions further to the modification of the type and content of the provisional PAYE tax return which may also include the said contributions.
- Individuals with an annual deemed income of €5.000, are exempt from the obligation to file an annual income tax return. The same exemption is granted to individuals receiving annual income exclusively from salaried services of the abovementioned amount.
- Private agreements of urban real property lease shall be submitted electronically by either the tenant or the landlord. The same obligation applies for the lease of rural plots where the monthly rent exceeds €100.
- In real estate transfers, the new owner of the property is jointly and severally liable with the former landlord for the payment of taxes due for the last three (3) years prior to the transfer, which corresponds to the income generated by the real estate transferred.
- Private administrative rulings issued by the Tax Directorates of the Ministry of Finance shall be uploaded in the Ministry's website further to the deletion of the personal data of the applicants of the respective queries.
- Tax Incentive Law's 1297/1972 force is extended indefinitely and may be also applicable to enterprises operating in the real estate business.
- Tax losses of the absorbing company participating in a merger (absorption) covered by the tax incentive law 2166/1993 may be carried forward under the general tax provisions (i.e. within a 5 year period).
- In transformations of SA's and LTD's into partnerships, a 25% tax is imposed to the profits already taxed at the time of the transformation and to the tax-free reserves formed due to productive investments realised by virtue of incentive laws and due to non-taxable or special taxed profits. Profits realised by LTD's until December 31 2010 are exempt from the abovementioned tax.
- Capital gains deriving from the sale of listed shares acquired from January 1 2013 onwards shall be taxed according to the general tax provisions (i.e. marginal rates up to 45%), whereas a 0,2% transaction tax shall continue to apply on the value of the listed shares sold until the abovementioned date.
- It should be also mentioned that law 4072/2012 also regulates significant legal issues, such as the following:
 - The introduction of a new corporate legal form, that of a "Private Capitalized Company";
 - The codification of the legal provisions for Partnerships (namely O.E., E.E.);
 - The amendment of the provisions of the General Electronic Commercial Registry (Geniko Emporiko Mitroo-G.E.M.I.) and One Stop Shops; and
 - The reformation of the legal framework regarding Trademarks.
- Finally, the Ministry of Finance issued Ministerial Decision [1090/2.04.2012](#) which provides for the amended process of V.A.T. refund.
 - In particular, the process is initialized through the filing of an electronic application to the Ministry of Finance which is examined within 15 days from the filing day. In cases where a provisional audit is required, it must be carried out within two months and in case of an ordinary one (if deemed required), it should be terminated within five months. Applications are reviewed on the basis of their submission date. The amount of VAT refund is offset with the outstanding debts of the beneficiary towards the State otherwise the latter should be accordingly notified.
 - However, the payment of the VAT refunds that are still pending until the final

application of the procedure provided by the abovementioned Ministerial Decision shall be defined in regards to the Medium-term

Program of the Fiscal Strategy for years 2012-2016.

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