

NEWSLETTER

■ TAX

April 2011

The recently voted new tax law **3943/2011 (Government's Gazette A' 66/31.03.2011)** introduces significant changes in the existing legal framework. The most important provisions are presented below according to the structure of the new law:

Institutional Measures for Tax evasion

- A 3-year **Operational Program** for combating tax evasion is introduced through the establishment of a special **Committee** in the Tax Audits Directorate. The institution of a **Financial Crimes Prosecutor** is also introduced.
- **Penal sanctions:** various criminal penalties become more rigid with respect to the cases of non-payment of debts owed to the State for a period exceeding 4 months, evasion of income tax, non-payment of VAT, withholding taxes and duties, issuance or receipt of fictitious tax records. The duration of the said offences is taken into account for the punishment computation. It is possible to be discharged under specific conditions in case the debtor remits the amounts due.

Restructuring of Audit and Tax Departments

- Establishment of positions for **Auditors** responsible for **tax assessment and forced collection** of the State's revenues.
- Establishment of an **"Internal Affairs Bureau"** in the Ministry of Finance.
- **Renewal** of the **Financial Crime Prosecution Unit's personnel** (namely "S.D.O.E.").
- Establishment of a special **"Department for the International Administrative Cooperation in direct taxation"** in the International Economic Relations Directorate of the Ministry of Finance. The new Department's role shall be mainly the enhancement of information exchange and mutual administrative assistance in the implementation of international conventions.
- **Tax audits** will be conducted basically **in the competent tax authority's offices**. The tax audits will be carried out in the

taxpayers premises based on specific criteria and conditions.

- **Release of information concerning debts due towards the State:** Tax Administration is bound to disclose details of the total amounts owed to the State over € 150.000 and in case there is evidence of delay in payment for a period exceeding one year.

- The taxpayer's debts are divided in two categories depending on the capability to be recovered.
- **Setoff:** the legal provision on the possibility of the taxpayers to offset their claims towards the State with claims the State has towards them is redrafted.

IMPROVEMENT OF EXISING TAX SYSTEM'S EFFICIENCY

Individual and corporate taxation

- **Tax residence:** Establishment of specific criteria in order for an individual to qualify as a Greek tax resident. It is explicitly provided that an individual residing or habitually staying for a period exceeding 183 days per calendar year within the Greek territory is taxed for the worldwide income. Greek-sourced income is taxed in Greece irrespective of the individual's nationality.
- **Territorial taxation** is applied in case the individual is taxed for his/her worldwide income in a country which has not signed a Double Tax Treaty with Greece and which is not an un-cooperative haven for 3 consecutive years (taxation is imposed once).
- **Unilateral foreign tax credit is abolished.** Foreign tax credit is granted to tax payments in countries with which Greece has entered in a Double tax Treaty.
- **Funds Repatriation:** A new deadline **until 30/09/2011** is granted for the transfer or declaration of funds not declared or taxed in the past. The tax rate is 8%. The term "funds" is broadened and includes also investment accounts managed by financial institutions or insurance companies.
- **Transfer of LTD's parts from first tier relatives** (parents and children) will suffer a **5% capital gains tax** instead of previous 20%.
- **Corporate income tax rate** is reduced to **20%** for profits earned during **FY 2012** whereas profits earned during **FY 2011** are taxed at a **24%** rate.
- **A 25% withholding tax is imposed on profits distributed** from **01.01.2012** onwards whereas profits distributed in **2011** will suffer a **21%** withholding tax. This withholding exhausts any further tax liability for resident individuals. Especially for individuals taxed at a rate lower than 25% the difference is recovered. Double Tax Treaties and the provisions of Parent-Subsidiary Directive come into play. The withholding tax provisions apply equally to profits distributed by a foreign entity's Greek permanent establishment to its registered seat or to another permanent establishment both located abroad as well as on dividends received by Greek resident individuals from SA's and LTD's established abroad.
- **Transaction tax** of 1, 5‰ is **increased to 2‰** for **gains from the sale of listed shares** materialized from **01.04.2011 until 31.12.2011**. Gains from shares acquired and sold after 01.01.2012 will be taxed under the general provisions.
- **Deductibility of R&D expenses** under certain conditions **for another 50%** is extended until **31/12/2014**. Donations to sports clubs are no longer tax deductible. **Thin capitalization rules** do not apply to leasing and factoring companies, special

purpose companies of laws 3156/2003 and 3601/2007 registered in Greece, financial institutions, stock brokers, and asset management companies.

- Countries with **favorable tax regimes** are considered the countries with income tax rate equal or less than 60% than the respective Greek tax.
- **For companies merged or converted no advance income tax** payment is calculated.
- **Enterprises employing more than 50 employees** (instead of 500) are obliged to file **monthly PAYE returns from 01.05.2011** onwards. A 15% advance payment is imposed on lawyer's fees under conditions.
- **50% of the disputable tax** amount is paid before a taxpayer refers a tax case to Administrative Courts.
- Upon **amicable settlement** of a tax dispute the taxpayer is obliged to **pay 1/5** of taxes, duties and contributions assessed. The **remainder** amount shall be paid in **6 equal instalments**.
- Filing of a recourse does not suspend the provisional tax assessment.
- Certified auditors are obliged to carry out tax audits in parallel to the statutory audits and issue a **tax certificate**. In case no violation is reported the said accounting period will be considered as tax audited. Sample tax audits may follow based on a "risk analysis" factor.
- **Special contribution** imposed by law 3845/2010 **is refunded** for the part corresponding to income or profit of another company for which a special contribution has already been paid further to the provisions of laws 3845/2010 or 3808/2009.
- **Tonnage tax rates** are annually **increased** by 4% from 2011 until 2015.

- **Tax penalties:** The late filing penalties cannot exceed 60% of the tax due; penalties for inaccurate returns or no filings cannot exceed 120% of the tax due. A fine varying from €1.000 to €50.000 is imposed in case any individual or legal entity requested by a tax office in the course of a regular tax audit fails to provide specific information, whereas the fine may be increased to €100.000 for public officials or banks violating standard disclosure obligations.
- The new law introduces the use of the **electronic card for receipts** and the **electronic issuance of a tax clearance certificate** of the taxpayer.

VAT

- **VAT** debit balances incurred through monthly VAT returns with filing deadline from 01.07.2011 **can be paid in instalments**, upon payment of 40% of the VAT due on the filing day whereas the remaining amount can be paid in 2 equal instalments subject to a 2% surcharge.
- The provisions of the Greek VAT Code are amended so as to include the regulation of the place of taxation for the supply of gas and electric energy. Equal application for the delivery of heating and cooling provided through networks.
- Transfer of licenses for gas emissions in Greece is subject to the reverse charge mechanism.
- Logistics centers are granted the option to be subject to VAT.
- VAT corresponding to capital goods is deductible according to the ratio of use between the taxable activities and other activities not connected to the business activities as such.

Real estate taxation

- **Real property leased by shipping companies** of law **89/1967** or law **27/1975** are exempt from Special Real Property Tax (“Offshore Tax”) from 01/01/2010. There is no further declaration required for certain categories of investors participating in companies owing real property in Greece. Such categories include banks, social security funds, mutual funds, e.t.c.
- **1-year suspension** of the Real Estate Property Tax Certificate necessary for the real estate property transfers.

Inheritance tax

The new law provides for the exemption from inheritance tax of foreign movable property possessed by a Greek citizen who has been residing abroad for at least 10 continuous years (said exemption was abolished by the previous tax law).

Tax arbitration procedure

- Establishment of a **special Body of Tax Arbitrators** as an independent administrative authority registered in Athens responsible for the resolution of tax disputes above €150.000.
- The tax arbitration procedure before the Body of Tax Arbitrators commences further to the filing of an **application** by the taxpayer and upon the **acceptance** of the arbitration by the **Ministry of Finance**. This application suspends the amicable settlement deadline.

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