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Trends and Developments

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Introduction

Greece ranks 29th overall on the 2020 International Tax Competitiveness Index. Greece's ranking in the Tax Competitiveness Index (the "Index") underlines the need for Greece to improve its position in the Index in order to become more attractive for investments and creating new jobs. The right-wing party that entered into government in July 2019 has begun implementing a flurry of never seen before tax reforms, both for private individuals as well as businesses, that should be able to move Greece in the short term to the 27th and in the long term to the 22nd position in the Index rankings. Below is a brief summary of the trends and developments in taxation in Greece.

Income Tax and Capital Gains

Greece's corporate income tax rate has been on a bit of a bumpy ride over the last several years. After hitting a low point of 20% in 2011, Greece's rate was hiked in two stages until it reached 29% in 2015. Greece brought the corporate income tax rate down from the 28% to 24%, moving Greece closer to the current OECD average of 23.6%. It is in the government's mid-term plans to lower Greece's corporate income tax rate back to 20%.

In addition, the Greek government lowered the income tax rate for dividends even lower from 10% to 5%, making the tax rate one of the lowest.

As of 1 July 2020, Greek companies are exempt from capital gains tax arising from the disposal of "participations" held in legal entities, provided that they hold at least 10% participation for a period of 24 months and the conditions of Directive 2011/96/EU (Parent-Subsidiary Directive) are met. This income is not subject to tax upon distribution or capitalization, whereas any related expenses are not deductible. This reform is revolutionary for Greek corporate Greek income tax as the exemption applied only to dividends arising from "participations" and not

Foreign companies are as of 1 January 2020 exempt from tax on interest they generate from listed corporate bonds. Moreover, tax exemption for interest and royalty payments between associated enterprises in accordance with the provisions of Directive 2003/49/EU (Interest-Royalties Directive) applies equally to payments paid between Greek companies.

Tax Deductibles

It should be noted that Greece has also passed several tax incentives for companies adopting measures that are in favour of corporate social and environmental responsibility as well as companies that wish to make donations to the Greek State.

Greece has also made it easier to write off bad debts (VAT included) up to EUR300 per debtor without obliging the company to file law suits, provided that bad debts written off do not exceed 5% of the total amount of the receivables of the business per tax year. Moreover, bad debts can also be written off in the context of mutual agreement or judicial settlement.

Expenses related to R&D are deducted at the time of their realisation at their full (100%) actual expense (rather than the previous 30%). Even more importantly, the manner in which R&D expenses are certified has also been changed. Now, the certification procedure is effected through an audit report issued by a certified auditor or audit firm and not (as previously done) by the General Secretariat for Research and Technology, which was a slow and ambiguous process. The above is in effect as of 1 September 2020.

Management Tax Co-liability

Radical changes have also introduced in relation to management's co-liability in the event the companies they manage fail to pay taxes and social security contributions. First, the law sets out explicitly the taxes for which management can be held personally liable and which are specifically income tax, withholding taxes, consumption taxes, VAT and annual real estate tax (excluding all other taxes such as stamp duty, special real estate tax, real estate transfer tax, standalone penalties, etc). Second, in order for joint liability to be established, management must be acting at fault in relation to the non-payment of the above-mentioned taxes, as opposed to the previous regime, where liability was established objectively, merely due to the management capacity as such.

Real Estate

In order to boost sales of real estate in Greece, VAT on sales of new buildings (with a construction permit issued as of 1 January 2006) has been suspended up to 31 December 2022, albeit it is questionable whether the this is compatible with the EU VAT Directive. It should be noted that real estate transfer tax is imposed on the sale, whereas the constructor is obliged to settle the corresponding input VAT.

Additional exemptions from the special real estate tax of 15% has been introduced, applicable for institutional and other international investors engaged in the real estate market, indicatively applicable to: real estate mutual funds, venture capital funds, European long-term investment funds, alternative investment funds, UCITS, European venture capital funds and European social entrepreneurship funds.

The minimum taxation (0.75% imposed on the average net asset value of investments) of Greek REICs (real estate investment companies), real estate mutual funds and portfolio investment companies has been abolished, as is the minimum taxation of UCITS. REICs have to pay an annual tax set a rate set at 10% of the ECB intervention rate increased by one point and is calculated on the average of the investments, plus any available funds, at their current value. On the basis of the above, the current annual tax rate is 0.125% slashed from 0.75%.

Exit Tax

Article 58 of Law 4714/20 incorporated the provisions of Article 5 of Directive (EU) 2016/1164, with the addition of Article 66A to the Greek Income Tax Code. The new provisions provide that if a Greek company or permanent establishment (PE) transfers assets, its business or its tax residence out of Greece as of 1 January 2020 onwards, any capital gain (even if not yet realized at the time of exit) is subject to Greek corporate income tax.

In particular, exit taxation is imposed on the following cases:

- transfer of assets from a Greek to a foreign affiliate or PE, subject to Greece not being able to tax the transferred asset;
- transfer of tax residence of a Greek company or PE out of Greece, except for those assets that remain connected with a PE in Greece; and
- transfer of the business carried on by a PE from Greece to a foreign country, subject to Greece not being able to tax the transferred assets due to the transfer.

The tax basis for calculating the capital gain is the difference between the market value at the time of the exit and the value the particular asset or business had for tax purposes.

The exit tax is paid though in one lump sum, exhausting any further income tax liability. Alternatively, the exit tax can be paid in five equal interest-free installments, in the event the assets or the business have been transferred to an EU member state or to a third country that is party to the EEA Agreement.

It should be noted that transfers of assets in particular circumstances may not be subject to exit tax, if the said assets will return to Greece within 12 months.

Hybrid Mismatch

Article 59 of Law 4714/20 incorporated the provisions of Article 9 of Directive (EU) 2016/1164, with the addition of Article 66B to the Greek Income Tax Code, establishing rules for hybrid mismatches ("mismatches"). In particular, mismatches effectively arise when two countries characterise payments differently, often leading to the double deduction of the same payment (as an expense or a loss) or the deduction of a payment in one country without the same payment being taxed in the other country.

It should be noted that the commentaries and examples of the OECD BEPS Action 2 Report can be used in Greece for construction purposes. However, it should be noted that, if the provisions of another Directive resolve any mismatches, these rules do not apply.

Mismatches are applicable only between related companies and PEs within the same group or through a structured arrangement and they do not apply to individuals. In order for the company or a PE to be considered "related" a participation rate of 50% or more is required.

Tax Incentives to Angel Investors

According to the new Article 70A of the Greek Income Tax Code, individuals (not companies) who contribute capital to Greek start-up companies duly registered with the National Registrar of Start Up Companies of the General Secretariat for Research and Innovation of the Ministry of Development and Investments can deduct from their taxable income, an amount equal to 50% of the amount of their contribution, in the tax year in which the contribution was made. This incentive applies to capital contributions via a bank deposit of up to EUR300,000 per tax year, which are invested in up to three start-ups with a maximum investment of EUR100,000 per start-up.

Share Option Plans

The Greek Income Tax Code has introduced, as of 1 January 2020, an exemption from income tax in connection with the receipt of shares received by an employee or a shareholder from a legal person or legal entity within the framework of a share option plan, in which the achievement of specific goals or the occurrence of a specific event, is set as prerequisite in order for the shares to be awarded. The capital gain arising for an employee or shareholder constitutes taxable income if the shares are sold 24 months after acquiring the share options.

Moreover, the capital gain on shares of a company that is a non-listed small enterprise or a very small enterprise is subject to 5% capital gains tax (and not at the standard 15% capital gains tax rate), provided that the following conditions are cumulatively met:

- the above rights are acquired within five years after the establishment of the company;
- the company has not been incorporated through a merger; and
- the shares are transferred after the completion of 36 months from the acquisition of the share option.

Retroactive Effect of Advance Pricing Agreements (APAs)

Under the previous law, APAs were issued only for future cross-border transactions between related parties for a pre-determined period of no more than four years. L.4714/2020 introduced, for the first time in Greece, the possibility of retroactive effect of APAs subject to the fulfillment of the following conditions:

- the facts and circumstances of the previous years are the same as the ones of the year of the application;
- there is no statute of limitation for the Greek State to carry out a tax audit; and
- the applicant has not been notified of a tax audit.

In the case an APA is issued, pursuant to which the Greek company has to submit an amending income tax return, the Company will not pay interest and late payment fines.

E-books and E-invoicing

Law 4701/20 that was passed on 30 June 2020 introduced a new provision in the Greek Income Tax Code (70 f), pursuant to which companies opting for e-invoicing through licensed providers, are granted the following tax incentives:

- reduction of the statute of limitation by two years;
- the cost of the equipment and software purchased for the respective e-invoicing as well as the costs for producing, transmitting, and filing of e-invoices for the first year are deducted in the year of purchase, the deductible cost being increased by 100%; and
- the tax refund timeline is reduced to 45 days (from 90 days).

Out-of-Court Settlement of Disputes

With the aim of quickly resolving pending tax disputes before the tax courts, an Out-of-Court Tax Dispute Resolution Committee has been established for resolving specific issues, which are the following:

- statute of limitation of the State's right to impose taxes or penalties;
- wrong charging of tax or penalty due to an obvious lack of a tax obligation or calculating error;
- retroactive effect of more favorable tax sanctions; and
- reduction of additional taxes, interest, surcharges and penalties.

The application may only apply to pending cases that have not been discussed by 30 October 2020. The Committee verifies the allegations based on the case law and the regular practice of the Tax Administration and may propose the acceptance or rejection of the request in whole or in part, submitting a specific proposal to the applicant in each case. In the event the applications is rejected, a report of the out-of-court settlement is drawn up.

Shared Services Centers

Greek L.89/67 provides for a special tax regime for the establishment of Shared Services Centers in Greece in order to provide specific back office support shared services (advisory services, central accounting support, quality control of production, product process and services, design of studies, projects and contracts, advertising and marketing services, data processing, supply of information, research and development) to related companies.

The main benefits of the regime are that:

- the taxable profits are determined based on the cost-plus method;
- the applicable mark-up is pre-approved by the above-mentioned decision and is reviewed every five years;
- all expenses on which the mark-up applies are tax deductible for corporate income tax purposes (without any conditions); and
- transfer pricing obligations are fulfilled by the receipt of the relevant Ministerial Decision.

Under the new law the range of shared services has been expanded to include the following:

- T software development;
- computer programming and IT support;
- storage and management of records and data;
- management of suppliers, customers and supply chain, excluding transportation by own means;
- HR management and training of employees; and
- computer-based call center and telephone information services.

Moreover, companies that opt for the regime of L.89/1967 may also receive financial support in the form of grants, covering part of the eligible expenses.

The supply of the above shared services does not constitute a place of effective management in Greece by the foreign company established in Greece.

The preconditions set are that the companies develop a new activity, either regarding the nature of the services rendered or the companies to which those services are rendered, which must not have been performed in Greece for the last two years until the date on which the application to receive the grant is submitted, and a minimum number of new jobs is created by the new activity, which are maintained for a minimum specified period.

Greek Stamp Duty on Loans

One of the biggest financing problems faced by companies in Greece the past decades has been the imposition of stamp duty of 2.4% on the capital and interest of non-banking loans and credits issued to or by Greek companies.

However, the above regime came to a halt following Greece's Supreme Administrative Court's (SAC) landmark decisions No 2163-4/2020 and No 2323-5/2020, which ruled that the granting of non-banking loans in exchange for interest by VAT able persons falls within the scope of VAT. Thus, according to Article 63 of the Greek VAT Code such loans and credits are exempt from Greek stamp duty. In particular, the imposition of stamp duty on interest-bearing loans by VATable persons has been abolished since 1987 when VAT was first introduced which explicitly defined that as of the introduction of VAT Law, the stamp duty provisions on cases provided for in the Greek VAT Code (even of exempt) are abolished.

On the basis of the above, the SAC, held that the granting of interest-bearing loans by a VATable person acting in that capacity, constitutes a supply of services in exchange for consideration (ie, interest) and such activity should be subject to VAT (and not stamp duty) thus falling within the general concept of granting of credits.

Conclusion

The trends and developments in the area of tax will be conducive on economic growth and are heading in the right direction to help Greece improve its tax competitiveness, moving down from the 29th position in the Tax Competitiveness Index, aspiring to reach as low as the 22nd position.

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Machas & Partners Law Firm is an independent, full-service corporate and commercial law firm with a strong presence in Greece, consisting of five partners and ten associates. The firm has extensive activity in Greek and international corporate tax advisory services, M&A, private client tax and wealth advisory services, and tax diagnostic reviews, audits and litigation. Tax-related areas include research and consultation on the direct and indirect tax treatment of proposed transactions, investments and businesses both in Greece and abroad; interpretation of tax legislation and advising on obligations and tax issues arising therefrom, including assessing tax exposure and risk; cross-border taxation of profits, dividends, royalties and interest, and international tax and customs implications in cross-border transactions; general anti-abuse and anti-avoidance legislation; remuneration policies for executives and employees; and ad hoc corporate and private tax advice.

Author

Tom Kyriakopoulos is a partner and head of the firm's tax practice. With 25 years of experience, Tom provides clients with comprehensive tax advisory and compliance services on all aspects of Greek tax law. He has a thorough understanding of both Greek and foreign tax issues with respect to structuring and executing complex commercial/ financing transactions, implementing tax-efficient investment plans, pragmatically structuring cross-border transactions, interpreting and implementing double tax treaties and assisting in the development of real estate projects in Greece. Tom successfully won an arbitration case before the London Court of International Arbitration, representing the Greek State against Hochtief with respect to a considerable tax difference in one of Greece's most well-known tax litigation cases.

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