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TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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A. EU Anti-Tax Avoidance Directive (ATAD I) is Transposed into Domestic Law

1. Law 4607/2019 (the **Law**) transposed part of EU Directive 2016/1164 (**ATAD I**) into domestic law.
2. In an effort to provide an average level of protection against aggressive tax planning in the internal market, ATAD I provides rules against the erosion of tax bases and the shifting of profits out of the internal market.
3. Greece adopted the rules of ATAD I in the following areas in order to achieve this objective: limitations to the deductibility of interest, the Controlled Foreign Company Rules, (**CFC rules**) and General Anti-Avoidance Rules (**GAAR**).
4. Interest deductibility is regulated by Article 49 of Law 4172/2013, the Income Tax Code (**ITC**), and stipulates that exceeding borrowing costs of a standalone legal person or entity are tax deductible only up to 30% of the legal person's or entity's earnings before interest, tax, depreciation and amortization (**EBITDA**).
5. The above threshold does not apply to exceeding borrowing costs up to the amount of €3,000,000. In such cases, the excess amount is carried forward for an indefinite time period.
6. Due to the absence of tax grouping rules in Greece, the interest barrier rule also applies for companies which are not part of a consolidated group.
7. The scope of the above provisions excludes several types of financial undertakings such as insurance companies and credit institutions.

B. CFC Rules - Restated

1. Article 66 ITC on Controlled Foreign Companies (**CFC**) is replaced to fully comply with ATAD I.
2. The Law provides that a foreign entity may be classified as a CFC, if the following cumulative conditions are met:
   a. the Greek taxpayer by itself or together with its

affiliated companies directly or indirectly holds more than 50% rights in the capital of the CFC;

b. the actual corporate tax paid on the CFC's profits is less than 50% of the corporate tax due under Greek tax Law (the concept of actual corporate tax is introduced as opposed to the nominal corporate tax rate);

c. 30% or more of the income before taxes derives from passive income such as:

   i. interest from financial assets;

   ii. royalties collected from the use of intellectual property;

   iii. dividends;

   iv. income from financial leasing and income from financial activities;

   v. income from invoicing between affiliated legal entities, adding no or little economic value; and

   vi. income from disposal of shares.

3. The CFC rules do not apply to companies which reside or have a permanent establishment in EU/EEA Member States and develop actual economic activity. The substance of such companies must be evidenced by the existence of premises, employees, equipment, machinery or other assets.
4. The CFC rules also encompass listed companies (previously exempted from the CFC framework).

C. General Anti-Avoidance Rules (GAAR)

1. The Law restates Article 38 of Law 4174/2013 (**Code of Tax Procedure**) regarding the GAAR.
2. For the purposes of calculating corporate tax liability, the tax authorities must ignore an arrangement or series of arrangements, the main purpose or one of the main purposes of which is to obtain a tax advantage that defeats the object or purpose of the applicable tax law, and is/are not genuine having regard to all relevant facts and circumstances. Such arrangements may comprise more than one part.
3. An arrangement or series of arrangements are regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.
4. The GAAR apply to all taxes included in the Code of Tax Procedures (e.g. income tax, VAT, real estate taxes). The GAAR also apply to domestic as well as cross-border arrangements.

D. Financial Institutions - Law 128/1975 Duty

1. The Law expands the application of the Law 128/1975 Duty to factoring, leasing, electronic money and payment services companies.
2. In the case of foreign financial institutions, such duty will be paid by individuals or legal entities and persons obliged to file income tax returns in Greece.

E. Transposition of EU Directive 2016/1065 Regarding VAT on Voucher Transactions

1. Law 4607/2019 (the **Law**) transposed EU Directive 2016/1065 pertaining to VAT on transactions performed by means of vouchers into National Law and is effective from 1 January 2019.
2. The Law distinguishes vouchers as follows:
   a. **single purpose vouchers**, in cases where the place of delivery of the goods or supply of services as well as the VAT payable are known at the time of the issuance of the voucher; and
   b. **multipurpose vouchers**, in cases where the vouchers do not meet the criteria above.
3. Any transfer of a single purpose voucher is treated as a delivery of goods or supply of services and is therefore subject to VAT. The actual handing over of the goods or the actual provision of the services in return for a single purpose voucher is not regarded as an independent transaction.
4. VAT must be charged on multipurpose vouchers when the goods or services supplied relate to the relevant voucher. Against this background, any prior transfer of a multipurpose voucher is not subject to VAT.

F. 10% Withholding Tax on Dividends Distributed by Foreign Shipping Companies Under Article 25 of Law 27/1975

1. The Law amends Articles 43 of Law 4111/2013 by introducing withholding tax on dividends distributed by branches or offices of foreign shipping companies permanently established in Greece under the provisions of Article 25 of Law 27/1975. These provisions are effective from 1 January 2019.
2. In particular, withholding tax at the rate of 10% is levied on:
   a. dividends distributed to Greek tax residents by

foreign shipping companies falling within the scope of Article 25 of Law 27/1975, which are paid or credited from 1 January 2019;

b. extraordinary fees and bonuses distributed as additional salary to the aforementioned companies' employees; and

c. extraordinary fees and bonuses distributed as an additional salary to the aforementioned companies' members of the Board of Directors, directors, officers and employees.

3. Payment of the above withholding tax exhausts the tax liability of the beneficiary for the income received in the form of dividends, either directly or by holding companies, including the special solidarity contribution of Article 43a ITC.

G. Income Tax on Profits' Distribution by Limited Liability Companies of Law 3190/1955 and Foreign Shipping Companies of Article 25 of Law 27/1975

1. Effective from tax year 2020, the distribution of profits to partners of domestic limited liability companies of Law 3190/1955 and foreign shipping companies, both subject to the provisions of Article 25 of Law 27/1975, will no longer be exempted from income tax.

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