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TAX BRIEFING: Monthly Insight

# Changes in the Tax Legislation

*Payments from a Greek Branch to its Head Office, Income from Technical Works, Real Estate Property Values, Directors' Liability for VAT following an Out of the Books Assessment, Duties on Power Production Licenses*

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### **A. Tax Treatment of Amounts Paid by the Greek Branch of a Foreign Company to its Head Office (ΔΕΑΦ Β 1008055 ΕΞ 2016/19.01.2016)**

In accordance with legal precedent, fees for the provision of management, consulting or other similar services, or royalties paid by a Greek branch of a foreign company to its head office do not include a transfer of a benefit in property to another person and therefore are not considered as income of the head office. Therefore the payment of fees and royalties are not subject to withholding tax and any tax withheld should be refunded in accordance with the applicable legislation.

Such payments are deducted from the branch's gross revenues subject to their compliance with transfer pricing rules.

### **B. Tax Treatment of Income from Technical Works Projects (ΔΕΑΦ Α 1007305 ΕΞ 2016/19.01.2016)**

Income from technical works acquired after 1 January 2014 and by:

1. individuals engaged in business activities;
2. partnerships established in Greece or abroad; or
3. joint ventures formed without the participation of: Greek corporations (i.e. societies anonymes, limited liability companies and private capital companies (I.K.E.)), private or public businesses, cooperatives and unions of cooperatives, foreign businesses of any corporate form and foreign organizations,

is calculated on the basis of accounting records and not on a deemed basis, irrespective of the signing date of the relevant technical works agreement.

Any expenses related to the income from technical projects acquired after 1 January 2014 are deductible, even if incurred and recorded in previous years.

### **C. Retrospective Revision of the Objective Real Estate Property Values in Cases of Inheritance and Donations (POL. 1019/03.02.2016)**

Further to Ministerial Decision POL. 1009/18.01.2016 on the retrospective revision and implementation of the objective real estate property values, the Ministry clarified that the new values are applicable to cases where the date of death or gift (for Inheritance and Gift Tax) or the date of the execution of the contract for the transfer of real estate property (for Real Estate Transfer Tax) is from 21 May 2015 onwards. As a result, amended tax returns reflecting the new taxable values where applicable must be filed with the tax authorities.

The new rules also encompass cases of inheritance, donation and transfer tax before 21 May 2015 but for which the tax obligation arises from 21 May 2015 onwards. Examples include cases where the effect of the transaction depends on the occurrence of an uncertain future event or pending litigation. This provision applies irrespective of whether tax returns have been filed, tax assessments have been issued, administrative actions are pending or the respective tax has been paid. In the event that, following the

submission of the amended tax return, the taxpayer is entitled to a refund, the tax authorities should make the refund within a period of 90 days, following set off against any other outstanding tax due by the taxpayer.

### **D. Directors' Liability for VAT following an Out of the Books Assessment of Taxpayer Income (POL. 1020/21.01.2016)**

The Ministry of Finance adopted the judgments included in Opinion No. 137/ 2014 of the Council of State, interpreting the provisions of the Income Tax Law 2238/ 1994, applicable until 31 December 2013. Accordingly, following an out of the books income assessment of a legal person, all the directors of such legal person are held jointly and severally liable with the legal person for the payment of VAT which becomes payable after 1 December 1998 and relates to the period of the legal person's operation, until its payment. This applies to all directors irrespective of: (a) their term of office and (b) whether the assessment of the VAT due is made on the basis of VAT returns or after a tax audit.

### **E. Duties Payable by Companies Holding a Power Production License (No of Prot. 171434/01.02.2016)**

The Ministry of Environment and Energy published the list of companies that are obliged to pay a duty in order to maintain the right to hold a power production license, as well as the amount of such duty for each company. The list is available online and was open for comment or amendment until 18 February 2016.