

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

In This Issue

A. Independent Authority of Public Revenue (AAΔΕ) Introduces Amendments on the Tax Treatment of Clawbacks and Rebates

B. Law 4591/2019 (Government's Gazette A'19/12-02-2019) Introduces Amendments to the VAT Code and Greek Accounting Standards

A. Independent Authority of Public Revenue (AAΔΕ) Introduces Amendments on the Tax Treatment of Clawbacks and Rebates

1. The Independent Authority of Public Revenue (AAΔΕ) issued Decision A. 1035/2019 published in Government's Gazette B' 235/5.2.2019, with regard to rebates provided by Marketing Authorization Holders (MAHs) to Social Security Funds (SSFs), (the **Decision**).
2. The Decision complies with the Supreme Court Decisions 3447, 3448, 3449 and 3450/2015 and holds that clawbacks and rebates are in fact a reduction of the revenues arising from Prescription Only Medicine out-patient sales to SSFs.
3. The Decision amends POL. 1115/2016 which was issued to regulate the deduction of VAT pertaining to clawbacks made pursuant to Law 4052/2012, granted by MAHs of pharmaceutical products to SSFs, by extending the right to VAT deductions in respect of rebates provided for by Law 3918/2011.
4. MAHs must issue credit invoices for clawbacks and rebates, adopting special wording as follows:
 - a. in the case of clawbacks, the wording of the credit invoice should read: "Clawback of Article 11 of Law 4052/2012 for indirect sales to Social Security Funds";
 - b. in the case of rebates, the wording of the credit invoice should read: "Rebate of par. 3 of Article 35 of Law 3918/2011 for indirect sales to Social Security Funds".
5. It appears that the Decision is effective as of 5 February 2019, however further clarifications are expected to be issued in relation to its retrospective effect.

B. Law 4591/2019 (Government's Gazette A'19/12-02-2019) Introduces Amendments to the VAT Code and Greek Accounting Standards

1. Law 4591/2019 (the **New Law**) transposes Article 1 of Council Directive (EU) 2017/2455 (L 348 of 29 December 2017) with regard to VAT into Greek legislation.
2. The New Law amends the provisions of Law 2859/2000 (the **VAT Code**) and of Law 4308/2014 (the **Greek Accounting Standards**) as follows:
 - a. Article 14, par. 13 of the VAT Code on telecommunications, radio and television and electronic services, effective from 1 January 2019, is amended so that the place of supply of these services to a non-taxable person shall be the place where that person is established, has their permanent address or usually resides.
 - b. Where a supplier of a service and a customer communicate via electronic mail, this shall not of itself mean that the service supplied is an electronically supplied service.
3. The above principle does not apply where the following conditions are cumulatively met:
 - a. the supplier is established or, in the absence of an establishment, has their permanent address or usually reside in only one Member State; and
 - b. the services are supplied to non-taxable persons who are established, have their permanent address or usually reside in any Member State other than the Member State referred to in point a. above; and
 - c. the total value, exclusive of VAT, of the supplies referred to in point b. above does not in the current calendar year exceed the amount of €10,000 or equivalent in a national currency, and did not do so in the course of the preceding calendar year.
4. Where the threshold of €10,000 is exceeded during a calendar year, the place of supply of services is the place where the non-taxable person is established.
5. Suppliers established or, in the absence of an establishment, which have their permanent address or usually reside in Greece and meet the criteria of point 3. above, have the right to opt for the place of supply of their services for a

minimum of two calendar years.

6. The New Law amends par. 1(a) and (e) of Article 47b of the VAT Code and provides that, taxable persons who are not established in a Member State, but have been issued with a VAT number in any of the Member States, may request to be included in the MOSS special scheme for telecommunications, radio and television or electronic services.

7. Article 8 of the Greek Accounting Standards has been amended so that the invoicing rules of the Greek Accounting Standards apply also to legal entities registered in one of the MOSS special schemes, under Articles 47b and 47c of the VAT Code (special regime of entities providing telecommunication, radio and television broadcasting and electronically supplied services).

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