

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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Ministerial Circular ΔΕΑΦ Β 1155600 ΕΞ 2016 provided clarifications on filing requirements of non-Greek legal persons and entities, Ministerial Circular ΔΕΑΦ 1160724 ΕΞ 2016 clarified the tax treatment of insurance annuities resulting from the expiration of group pension plans, European Parliament resolution of 22 November 2016 adopted a proposal for the amendment of Directive 2011/16/EU as regards access to anti-money laundering information, Law 4438/2016 supplemented the tax incentives' framework in the case of corporate restructurings, Ministerial Circular POL 1163/2016 simplified the procedure for the cessation of business activities, Ministerial Circular POL 1165/2016 provided guidelines on transfer pricing documentation, advance pricing agreements and annual tax certificates.

A. Filing Requirements of Non-Greek Legal Persons and Entities (Ministerial Circular ΔΕΑΦ Β 1155600 ΕΞ 2016)

The Greek Income Tax Code provides that non-Greek legal persons or entities which are not tax resident and do not have a permanent establishment in Greece are subject to withholding tax for passive income (i.e. income from dividends, interest or royalties) generated in Greece, unless they fall under the EU Intra-Group Payments Regime (Council Directives 2011/96 and 2003/49). There are no filing requirements as with Greek income tax payers who are liable to withhold and pay passive income tax to the State.

Therefore when a non-Greek tax resident legal person participates in a Greek legal person, they are under no obligation to complete filing requirements in Greece for Greek sourced dividends. The same rule applies if no dividends were distributed to the non-Greek legal entity or person.

B. Tax Treatment of Insurance Annuities Resulting from the Expiration of Group Pension Plans (Ministerial Circular ΔΕΑΦ ΙΙ60724 ΕΞ 2016)

Insurance annuities resulting from group pension plans are taxed at a rate of:

1. 15% for each periodical payment; or
2. in the case of lump sum payments, 10% for amounts up to €40,000 and 20% for any amounts exceeding this.

These tax rates are increased by 50% if the beneficiary receives payment as a result of an early surrender.

The Ministry of Finance clarified that insurance annuities paid after the expiration of a group pension plan do not constitute an early surrender if the term of the insurance plan covers the minimum statutory period to qualify for a pension (e.g. group pension plans of more than 15 years' duration). On this condition, any insurance compensation paid to the beneficiaries is subject to the standard tax rates of 10% to 20% without a 50% increase. This rule applies irrespective of whether beneficiaries are actually retired by the competent social security fund upon expiration of a group pension plan.

C. European Parliament Legislative Resolution of 22 November 2016 on the Proposal for a Council Directive amending Directive 2011/16/EU as Regards Access to Anti-Money Laundering Information by Tax Authorities

By way of a legislative resolution on 22 November 2016, the European Parliament adopted a proposal for the amendment of Directive 2011/16/EU as regards access to anti-money laundering (AML) information by the tax authorities.

According to the explanatory report of the Directive proposal, AML information should be included where relevant in the automatic exchange between Member States and should be made available on request to the Commission in the context of its power to enforce State Aid rules.

According to Articles 8a and 22 of the Directive proposal, the tax authorities of a Member State shall, within three months of

their collection, automatically exchange documents and information with any other Member State, if:

1. the beneficial owner of a firm;
 2. in the case of a trust, the settlor, one of the trustees, the protector, a beneficiary or any other person exercising genuine control over the trust; or
 3. the holder of an account,
- is a taxpayer in that Member State.

Member States shall provide by law for access by tax authorities to the central registers, mechanisms, procedures, documents and information referred to in the AML Directive 2015/849. Such access shall be the result of a mandatory automatic exchange of information. Member States shall further guarantee access to this information by including it in a centralised public register of companies, trusts and other structures whose nature or purpose is similar or equivalent.

D. Law 4438/2016 Providing Tax Incentives in the Case of Corporate Restructurings

The tax incentives provided by the Income Tax Code in the case of:

1. transfer of assets in exchange for securities;
 2. exchange of securities;
 3. merger or division of undertakings; and
 4. transfer of the registered office of an SE or an SCE,
- are supplemented in order to provide for exemption of:
1. the restructuring agreement;
 2. the contribution and transfer of assets of the restructured undertakings;
 3. any relevant act or agreement regarding the contribution or transfer of assets, liabilities, other rights and obligations or rights in personam or in rem;
 4. the corporate decisions of the restructured companies;
 5. the participation ratio in the new company's capital;
 6. any other agreement or act required for the restructuring or incorporation of the new company;
 7. the publication of any of the above in the business registry (GEMI) and the registration of the relevant acts,

from any tax, stamp duty or other duty in favour of the State and any duty, contribution or right in favour of any third party. The above exemptions do not include the Capital Concentration Tax which may still be due. VAT and income tax are imposed according to the provisions of the VAT Code and the Income Tax Code respectively.

According to the explanatory report of Law 4438/2016, the above tax incentives provide a complete framework for corporate restructurings. However, restructurings initiated after the publication of Law 4438/2016 in the Government Gazette may take advantage of either the incentives provided for by the Income Tax Code, or the incentives provided for by other legislation such as Law 2166/1993 or L.D. 1297/1972.

E. Simplified Procedure Before the Tax Authorities for the Cessation of Business Activities (Ministerial Circular POL 1163/2016)

Taxpayers have the right to declare to the tax authorities the actual time of cessation of business activities instead of the official termination of the liquidation process or the dissolution of the legal entity or person, if:

1. they do not hold any inventory, assets or marketable material;
2. in the case of companies or other legal persons for which a liquidation stage is provided by law, they do not have any receivables or liabilities.

The respective statement must be submitted to the tax authorities within 30 days of the actual time of cessation of activities. Legal persons or entities must also submit a solemn declaration stating that on the date of cessation of activity they did not hold any real property rights.

F. Transfer Pricing Documentation, Advance Pricing Agreements and Annual Tax Certificates (Ministerial Circular POL 1165/2016)

Ministerial Circular POL 1165/2016 provides guidelines with regard to transfer pricing (TP) documentation, advance pricing agreements (APAs) and annual tax certificates.

In particular, the Circular reiterates that the deadline for the preparation of the TP documentation file (master file and Greek file) and the submission of the Summary Information Table is extended up to the deadline for submission of the annual income tax return. This new deadline also applies to TP documentation files referring to tax years commencing from 1 January 2015 onwards.

The deadline for the issuance of a decision by the General Secretary of Public Revenue on APAs is extended to 18 months from the time of submission of the relevant application for an APA. By virtue of a decision issued by the General Secretary, this deadline may be extended up to 36 months from the time of submission of the above application.

Finally, for the tax years starting from 1 January 2016 onwards, the issuance of an annual tax certificate by statutory auditors and audit firms for *societes anonymes*, limited liability companies and Greek branches of foreign companies is optional. However, companies and businesses for which an annual tax certificate is issued are required to assign this issuance to a different statutory auditor or audit firm every 5 years.