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## Special contribution by large corporations and on real estate

### This is part of our continuous effort to keep you updated on current tax developments.

Further to our Newsflash of 6 November 2009, we would like to inform you of the final version of the draft law on "Reinforcement of Social Solidarity, Special Contribution of Social Responsibility by large corporations and on real estate and further provisions of the Ministry of Economy and Finance, the Ministry of Labor and Social Insurance and the Ministry of Health and Social Solidarity", as such draft law was submitted to parliament on 20 November 2009.

### Special contribution by corporations

A special contribution is imposed on the total net income for the fiscal year 2009 (i.e. for financial years ended from 1 August 2008 to 31 July 2009) of the legal entities referred to in article 2, par 4 and article 101 par. 1 of Law 2238/1994 (e.g. Societe Anonymes, Limited Liability Companies, Limited Partnerships, General Partnerships, subsidiaries of foreign companies, etc. except for individual businesses and non profit organizations). The total net income is calculated

according to the provisions of article 31, par. 19 and article 105, par. 7 of Law 2238/1994 (i.e. in the same way that taxable profits are calculated according to the provisions of income tax law, and more specifically with deduction of all tax deductible expenses but without offsetting any tax losses brought forward from previous years) or, where Financial Statements have been published in International Accounting Standards (IAS) on the higher between the net income computed as above and the profit before taxes under IAS.

The special contribution is imposed on companies whose total net income (or profit before tax under IAS) exceeds EUR 5 000 000. The amount of the contribution is calculated in accordance with the following rates:

Companies' Special Contribution	
Profit (EUR million)	Rate
0 up to 10	5%
10 up to 25	7%
In excess of 25	10%

It should be noted that the amount of the special contribution is always limited so that the total net income or profit before tax (under IAS) that will remain after application of the special contribution would not fall below EUR 5 000 000.

It is clarified that the amount of total net income or net profits, on which the special contribution is imposed, can not exceed two times the average of the total net income or net profits (under IAS) of the two previous fiscal years, 2007 and 2008. If Financial Statements were not published under IAS for one of the above years, then only the net profits of the fiscal year where the publication took place are taken into consideration for the purposes of the aforementioned comparison.

If differences on the net income or net profit (under IAS) arise during the course of a future tax audit, then no difference in the amount of special contribution is either imposed or refunded.

The assessed special contribution is paid in 12 equal monthly installments, while the amount of each installment can not be less than EUR 20 000. If the payment

of the total amount of the special contribution takes place within the deadline for the payment of the first installment, a discount of 3% applies, with the exception of cases where the total amount of special contribution has to be paid in just one installment.

The special contribution paid by companies is not deductible from their income for the purposes of calculating their taxable income.

Where it is evident that the special contribution is calculated on an amount of net income or net profits which constitute the basis for the calculation of the special contribution of another company, then this portion of the special contribution is refunded.

## **Comments on the special contribution of companies**

The use of a different base for the calculation of the special contribution when publishing Financial Statements under IAS, whereby the contribution may be calculated on a greater amount compared to the amount arising from the application of the provisions of Law 2238/94 might give rise to legal disputes as to the validity of the special contribution.

Furthermore, issues may also arise from the fact that the special contribution is not imposed on the profits reported on companies' income tax returns, but on their net

income as previously mentioned (i.e. it appears that the tax losses brought forward from previous years will not be taken into consideration).

As regards the exemption of the special contribution, it will apply to a limited number of cases. For example the amount of profits which was received as dividends by a company from its subsidiary during the financial year 2008, may actually derive from profits of the subsidiary which had arisen during the financial year 2007 and consequently have not been subject to the special contribution.

Further discussions arise on the basis of decision 1912/2009 issued by the Greek State Council which ruled that the imposition of income tax on tax exempt income constitutes a retrospective burdensome change of the tax regime. In the case of the imposition of the special contribution, the burdensome change may be due to the additional imposition of tax on profits which were already taxed and distributed.

Furthermore, the imposition of the special contribution on Greek companies which are subsidiaries of companies established in the E.U, should be examined for compliance with E.U. legislation and bilateral conventions, given that it constitutes an additional

burden on profits already distributed to the parent company, and that it might not be possible to charge the respective contribution back to the parent companies following completion of the distribution.

## **Special Contribution on real estate owned by individuals and increase in the Flat Real Estate Duty (ETAK) for non profit legal entities**

A one-off special contribution is imposed on real estate owned by individuals, with the assessment of ETAK for 2009, which will be calculated on the basis of progressive tax rates, ranging up to 9‰ depending on the value of the real estate that is subject to the respective duty.

Furthermore, the ETAK rate of 6‰, continues to apply on real estate owned by legal entities, while the respective tax rate has been increased from 1‰ to 3‰ for ETAK that is imposed on real estate owned by certain categories of Greek and non Greek non for profit organizations (e.g. known religions, museums etc.), and for public legal entities.

The new draft law incorporates into the provisions of Law 3634/2008 (ETAK) existing provisions for favorable taxation of self used real estate owned by hotel companies (of any legal form) by application of a rate of 0.33‰ for the years 2009 and 2010.

## Special provisions of the Ministry of Finance

Passenger vessels used for commercial purposes are exempt from the special contribution stipulated by article 3, of Law 3790/2009, in order to avoid negative effects on tourism.

The application of 10% capital gains tax on the sale of listed shares has been postponed. More specifically, the aforesaid withholding tax will apply on sales of shares acquired from 1 July 2010 onwards.

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