

January 2009

Amendments and clarifications on the provisions of Law 3697/2008 concerning individual and corporate income taxation

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

Circular 1180/31.12.2008 providing clarifications with respect to articles 14 to 21 of Law 3697/2008 was released. The most important issues addressed in the Circular are:

Gains from the sale of listed shares

- Further to a relevant amendment in a draft law, the taxation at the rate of 10% of profits from the sale of listed shares which have been acquired up to and including 31 March 2009 is postponed. With respect to the sale of listed shares acquired up to the above date, the 1.5‰ transaction tax on the sale price still applies.
- Where shares of the same company are acquired both before and after 1 April 2009, their sale is considered to have taken place in the chronological order of their acquisition. Therefore, until all the shares acquired before 1 April 2009

have been sold, a transaction tax at the rate of 1.5‰ is due, while for the remaining shares which were acquired after the above mentioned date, capital gains tax at the rate of 10% will apply.

- The 10% tax on the profits from the sale of shares is imposed irrespective of the manner of acquisition of the shares (sale, donation, inheritance) which are thereafter sold, while no tax is due in respect of transactions other than sales (e.g. transfer of shares of the same beneficiary from one dealer to another, lending of shares, pledge on shares e.t.c.).
- The 10% capital gains tax applies to listed shares acquired from 1 April 2009 and after and which are transferred without the intervention of a dealer (over the counter).
- Where the shares are transferred without the intervention of a dealer, the beneficiary of the income is obliged to pay the amount of tax due to the Hellenic Exchange SA which will pay it to the State. The calculation of the profit in this case is not referred to in the law, but it is specifically provided in the Circular.
- The sale of listed shares, for the purposes of double tax treaties, is considered as business income and the profit from the sale is exempted from tax when the resident of a relevant state has no permanent establishment in Greece. In such a case a tax residence certificate must be submitted. This procedure has been specifically provided.
- The above exemption applies also to foreign mutual funds and UCITS on the condition that a tax residence certificate of the foreign beneficiary is submitted by the foreign MFMC intermediary.
- Capital gains from the transfer of shares of shipping companies of Law 27/1975, listed in the Stock Exchange are explicitly exempted from withholding tax.
- Where a loss arises from the sale of shares acquired by individuals and businesses which do not maintain

double entry accounting books and is set off against profits which have arisen in the same year, the Hellenic Exchange SA is obliged to provide a relevant certificate. The procedure for obtaining a refund of the withholding tax as well as the relevant details will be specified by a Ministerial Decision to be issued by the Minister of Finance and Economics.

- Clarifications are provided with respect to the use of the special reserve for profits from the sale of listed shares by corporations which maintain double entry accounting books. Gains from the sale of shares which were acquired up to and including 31 March 2009 are posted in the tax free reserve, as per paragraph 1 of article 38 of Income Tax Law, while profits from the sale of listed shares which were acquired after the above date are posted in a separate special reserve account. It is clarified that the real profits, based on the real acquisition cost and not on the average acquisition cost of the shares, earned by the businesses must be posted in this reserve account.
- Losses that may arise from the sale of listed shares which were acquired after 31 March 2009 are set off against the profits of the tax free reserve, as per paragraph 1 of article 38 of Income Tax Law (profits from the sale of listed shares which were acquired up to and including 31 March 2009), while in cases where such a reserve does not exist or it is not adequate, the losses are set off against the profits of the special reserve which will

arise in the future from the sale of listed shares.

- In case of distribution of the above reserve, the distributed profits are taxed according to the general taxing provisions of paragraphs 3, 4 and 5 of article 106 of Income Tax Law with the deduction of the 10% tax which has already been paid upon the sale of shares. We note that the Circular does not foresee the application of paragraph 12 of the above article, regarding the taxation of profits of banks arising from the application of the provision of article 38 par 1, 4 and 5 within nine months from the end of their financial period.

Stock options plan granted to members of the Board of Directors and employees of a societate anonime

- It is clarified that the time of exercise of the stock option is the point where the beneficiary pays the amount required, as decided by the company, for the provision of shares. Alternatively, the company may provide that the beneficiary can pay the above amount in installments and accordingly the time of exercise will be when the beneficiary pays the first installment. The time of granting of the stock option is the occasion of the relevant resolution of the general meeting. It is also clarified that the relevant provisions especially refer to shares listed in the stock exchange and shares of a foreign affiliated company.

- It is made clear that where the beneficiary exercises his stock option in the frame of a stock options plan following an increase of the share capital of the company, no withholding tax on salary is due as the company does not pay any amount to the beneficiaries.

Taxation of dividends

- A 10% withholding tax is imposed on the profits the company distributes to its employees in the form of shares.
- Profits or reserves (with the exemption of the share premium reserve) of previous financial years, the distribution or capitalization of which was decided by the extraordinary general meeting of the shareholders after 24 September 2008, are subject to withholding tax. Tax is withheld on the above amounts upon distribution of the ordinary dividend and the relevant tax is paid with the tax return for the dividend of the financial year 2008. The same applies for any interim dividend distributed within 2008.
- When a company established in another country member of the European Union holds at least a 10% participation in a Greek company for two consecutive years, no tax is withheld. If however the two year period has not been completed, a tax will be withheld at the lower of 10% and the rate provided by the relevant double tax treaty, while after the expiration of the two year period a tax refund may be requested.

- No withholding tax will be imposed on dividends distributed by Greek shipping companies which will be subject to tax and the contribution of Law 27/1975.
- The withholding tax on dividends paid to individual Greek residents by foreign societe anonymes will be withheld by the intermediary bank on the net amount paid from abroad. Where this amount remains abroad, the tax due will be paid by the beneficiary.

1.5 ‰ tax on the sale of shares

- OTC and MTFs transactions as well as the transfer of shares upon the order placed by investors without the intervention of General Dealers are subject to 1.5 ‰ tax on the value of transfer for shares acquired before 1 April 2009. The Circular sets out the method of calculation of this tax which is paid to the Hellenic Exchange SA either by the Dealers or by the underwriter of the relevant corporate transaction the following day.

Other issues

An amendment in a draft law submitted on 15 January 2009 provides the following:

Settlement of open years without a tax audit

- The deadline for opting to settle open tax years without a tax audit is extended to 27 February 2009. Moreover, it is provided that the deadline for any court cases

pending and not discussed is 20 February 2009.

Taxation of interests deriving from Greek Treasury Bills

- According to an amendment in a draft law, interest derived from Greek Treasury Bills by non residents will be exempted from tax. The above exemption applies to Greek Treasury Bills issued from 1 January 2009 and afterwards.

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In view of the above, we recommend that legal entities and individuals consult with their tax advisors regarding developments on the above matters.

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This Newsflash aims to provide the reader with general information on the above mentioned matters. No action should be taken without first obtaining qualified professional advice specifically relating to the factual circumstances of each case.

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