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Tax Bill regarding Transfer Pricing Documentation Rules and other Provisions

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

A draft law on "Transfer Pricing Documentation Rules, Thin Capitalization Rules, procedure for quick licensing and other provisions" was submitted to the Parliament, whose points are the following:

Adjustment of profits in case of invoice divergences

The main amendments of article 39 of the Income Tax Code (Law 2238/1994) are the following:

Sales of goods and provision of services taking place between Greek enterprises

When domestic affiliated enterprises, as these are described below, are involved in transactions for the sale of goods or provision of services and the price or the fee is unjustifiably higher or lower than that which would have been agreed in transactions carried out with another enterprise under the market circumstances prevailing at the time the transaction took place, the difference which arises is assumed to be business profit if it results in avoidance of direct or indirect taxation. This difference

increases the net business profits of the enterprise without jeopardizing the validity of its books and records.

Sales of goods and provision of services taking place between Greek and foreign enterprises

- When the sale of goods or provision of services takes place between domestic and foreign affiliated enterprises, as these are described below, under financial terms different from those which would have been agreed between unrelated enterprises, profits which would have been earned by the Greek enterprise, if such terms did not apply, but which Greek enterprise did not realize because of the said terms, are considered to be business profit. This profit increases the net business profits of the enterprise without jeopardizing the validity of its books and records.
- With respect to intercompany transactions carried out between foreign and Greek enterprises, the latter are obliged to maintain the transfer pricing data as reported below and if differences are noted by the audit, the case is referred by the competent audit authority to the

specific Committee of paragraph 4c of article 66 of the Income Tax Code.

Definition of affiliated enterprises

The new provision applies to enterprises related to each other in a relationship of direct or indirect substantial administrative or financial dependence or control.

Fines

In case enterprises do not abide by the provisions of article 39 of the Income Tax Code a fine of 10% is imposed on the additional net profits arising irrespective of the imposition of additional taxes, if any, surcharges and other penalties which are provided by the current provisions. This fine is paid in one lump sum within the month following the month in which the notification was made.

Royalties or management fees

The new provision as well as the transfer pricing obligation also apply to royalties or management fees paid between local and foreign enterprises which qualify as affiliated as determined above for the use of technical assistance, patents, trademarks, plans, musical industrial methods and models,

intellectual property and other related royalties, as well as for administrative support, organization and reorganization expenses.

Entry into force

The new regime applies to income or expenses arising during financial years for which the obligation to file an income tax return arises as of 1 January 2011 and onwards.

Cross Border Transfer Pricing Documentation

Provision of data and information

- According to the new article 39A which is added to the Income Tax Code, all domestic enterprises operating under any legal form in Greece (including permanent establishments) and qualifying as an enterprise affiliated to a foreign enterprise is obliged to provide data and information required for the documentation of transactions between them.
- Domestic enterprises, which are members of multinational groups can fulfill their transfer pricing documentation obligation through the maintenance of a "documentation file" consisting of:

- (a) The "basic documentation file" which is common for all the enterprises of the group and contains common uniform information for all the affiliated companies and branches of the Group. The "basic file" includes the data in the basic file of the Ministry of Development, as well as certain additional data such as, general

description of the affiliated companies of the group which participate in the transactions being audited, and of the transactions themselves and not only of the transactions which relate to the Greek companies of the Group, list of cost allocation agreements and of court decisions which concern the members of the Group, related to the determination of the transactions' prices as well as written declaration of each enterprise-member of the Group for the provision of supplementary information.

- (b) the "Greek documentation file" which supplements the "basic file" and contains additional information related to the Greek enterprises of the Group (this information seems to also be included in the Greek File of the Ministry of Development). By virtue of a decision of the Minister of Finance, the particular issues which are necessary for the application of the above, will be determined as well as the language in which the above information, methods, manners and procedures for the determination of the prices for such transactions, whereas the content of the file provided for in article 26 of Law 3728/2008 will be taken into account in the course of the issuance of the above decision.

Exemptions

- Enterprises whose annual gross income does not exceed EUR 1.5 million are exempted from the above obligation. These enterprises however are obliged to maintain simpler and limited documentation which will be determined by virtue

of a decision of the Minister of Finance.

- Further, transactions between the same enterprises which concern the same subject matter and do not exceed EUR 200 000 annually are also exempted.

Filing deadline

The documentation maintained by domestic enterprises must be delivered to the competent tax authority in the course of an audit, upon the auditor's request within a reasonable time period which cannot be less than sixty days.

Special penalty

If failure to maintain the documentation information or insufficient maintenance of the documentation information is ascertained during a tax audit, monetary penalties are imposed depending on the category of accounting books maintained by the enterprise ranging from EUR 858 to EUR 2 640. If there is a settlement, penalties are reduced to 1/3.

Period of maintenance of documentation, update and confidentiality

- The documentation is maintained by the enterprises for a period of five years and for as long as the relevant case is pending before the competent Administrative Courts.
- There is an obligation to update the documentation to ensure that it always reflects the current prices prevailing from time to time between the enterprises under this obligation.

- All persons who will have knowledge of the documentation data required by this article (39A) are obliged to uphold and maintain their confidentiality.

Entry into force

The above shall apply to transactions effected in fiscal years for which the obligation to file an income tax return arises from 1st January 2011 onwards.

Thin Capitalisation Provision

Pursuant to the new draft law it is stipulated that the accrued interest of loans or credits which are paid or credited to related enterprises are deducted, on the condition that the relation of these loans or credits to the net assets of the enterprise does not exceed the ratio of 3:1 on an average per fiscal year. Accrued interest on loans and credits exceeding this ratio are not deductible. This rule applies for the fiscal years ending at the time of publication of this law in the Official Government Gazette and onwards.

Tax Secrecy

Tax Secrecy also applies to third parties who undertake the collection of data for specific categories of taxpayers.

Settlement of Pending Tax Cases

As regards cases undergoing settlement procedures pursuant to tax amnesty laws or cases already settled under tax amnesty laws, the settlement is not valid, unless at least two consecutive or non-consecutive installments of the relevant taxes or other charges assessed pursuant to the

provisions on settlement under tax amnesty laws are paid on time.

Scientific and Technological Research Expenses

The conditions for the deduction of expenses relating to scientific and technological research, as specified in paragraph 1 (ia) of article 31 of the Income Code are extended for expenses which were incurred from 1 January 2009 to 31 December 2010.

Special tax on high cc cars and motorcycles of private use

- As of 2010 a yearly special tax is imposed on cars and motorcycles of over 1 929 c.c. ranging between EUR 150 and 650 based on the engine's cc.
- Exemption is provided for cars of private use which are immobilized (whose plates have been deposited with the tax authorities) as well as for cars owned by individuals or legal entities exempted from transportation duties.

Cellular phone duty, card phone duty and consumption tax

- A new Cellular phone duty ranging between 12% and 20% is imposed on every monthly bill of each subscriber depending on the level of the bill.
- A 12% card phone duty is imposed on the value of the air time of card phones.
- The above apply ten days after the law is published in the Government Gazette.

- The special consumption duty on gasoline is increased to EUR 410 per 1 000 liters as of 26 June 2009

Taxation on lottery gains, TV awards etc

- A 10% tax is imposed on the gains from lottery, games and betting of any type whether or not the games are predetermined. Also a tax of 20% is imposed on any kind of allowances or benefits given to or won by participants of radio, TV and similar contests.
- The above apply ten days after the publication of the law in the Government Gazette.

Observations concerning the new draft law

- The provisions of the new draft law concerning the rules on transfer pricing documentation relate only to the sale of goods and the provision of services as well as to royalty payments, management fees and expenses of administrative support, reorganization etc, and not to transactions in general, thus resulting in an uncertainty as to the obligation to document other transactions such as loans, sales of shares etc.
- The issue under examination for Greek groups of companies is the price of sale of goods or the fee for the provision of services, while for multinational groups the financial terms on the basis of which the above transactions are effected, namely the latter case covers a wider scope, e.g. the existence or non-existence of penalty clauses,

the imposition or non-imposition of default interest.

- The obligation to maintain transfer pricing documentation applies only to multinational groups and not to Greek groups and this is contrary to European Union law. The same applies for the payment as well as for the obligations to have transfer pricing documentation of royalties, management fees and expenses of administrative support and reorganization which apply to multinational groups and not to Greek groups.
- When disputes arise during the tax audit of multinational groups, the case is referred to the Committee of article 66, while the same does not apply to Greek groups.
- Pursuant to the provisions of the new draft law, disputes in connection with the payment of royalties, management fees and expenses of administrative support and reorganization which shall arise from January 1, 2011 onwards are referred to the Committee of article 66 of the Code of Income Taxation. It is noted that the competency of the Committee of article 66 of the Income Code expired in 2008, thus there is no stipulated regulation for the years 2009 and 2010.
- The meaning of affiliated enterprises as defined in the tax bill does not follow the provisions of article 42e of Law 2190/1920 to which the Law 3728/2008 of the Ministry of Development regarding the Transfer Pricing Documentation and this may result in

interpretational issues for the enterprises.

- Enterprises with gross revenues not exceeding the amount of EUR 1.5 million annually must maintain simpler and limited documentation, while this obligation does not exist according to the Ministry of Development for enterprises with gross revenues not exceeding the amount of EUR 1 million annually.

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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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