

July 2009

## The new Law 3775/2009 regarding Transfer Pricing Documentation Rules and other provisions was published in the Government Gazette

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

Further to our Newsflash of June 2009, we would like to bring to your attention that the Law "Transfer Pricing Documentation Rules, Thin Capitalization Rules, procedure for quick licensing and other provisions" was recently voted by the parliament and published in the Government Gazette, issue (FEK) No A' 122/21.07.2009.

The new law covers all the issues stated in the draft law that we presented in our Newsflash of June 2009 with the following changes specifically with respect to articles 39 and 31 of the Income Tax Code (ITC):

### Special penalty regarding the documentation of the prices of intercompany transactions

Due to changes in the final law to the method of its computation the maximum penalty to be imposed is EUR 8 800 if a tax audit ascertains failure to maintain the documentation information or ascertains insufficient maintenance of the documentation information instead of EUR 2 640 which

resulted based on the formula in the draft law.

### Thin Capitalization Provision

- With respect to the deductibility of accrued interest of loans or credits which are paid or credited to affiliated enterprises (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), affiliated enterprises are considered to be enterprises of paragraph 3 of article 39 of ITC namely, those that are related to each other in a relationship of direct or indirect substantial administrative or financial dependence or control (and not those of paragraph 3 of article 114 of ITC who have a participation of 25% in the share capital of the other company as was provided in the draft law).
- The new provisions above apply to loan agreements or credits that are concluded from and after the publication of the law in the Government Gazette (and not as

was provided in the draft law for fiscal years ending on and after the date of publication of this law in the Government Gazette).

- Leasing Societe Anonymes provided in paragraph 1A (a) of Law 1665/1986 (FEK 183 A) are exempted from the above restriction regarding the deductibility of accrued interest of loans or credits between affiliated companies.

### Observations concerning the new Law

On the basis that the law includes all the provisions regarding the documentation of intercompany transactions as these were included in the draft law except for the above changes, we note that an issue of violation of EU legislation still exists as the obligation to maintain transfer pricing documentation still applies only for multinational groups and not for Greek groups. Our position as above is confirmed by the Report of the Scientific Committee of the Parliament for the new Law.

## **Statute of limitation for the years 2000-2003**

On 16th July 2009 a draft law was submitted to the Parliament concerning "Restructuring of legal framework of private and professional yachts and imposition of a special tax and special contribution, settlement of tax issues, issues of the Legal Council of State and other provisions". The draft law provides for a six month extension (up to 30 June 2010) of the statute of limitation for the notification of tax assessment notes or orders for the imposition of taxes, fees or contributions. According to the above, the statutory limitation for the tax years 2000, 2001, 2002 and 2003 will end on 1 July 2010 and not on 31 December 2009.

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KPMG has extensive knowledge on the above issues and may advise on issues relating to inter company transactions between affiliated companies and help you with the preparation of the files and the submission of information. Specific issues and problems can be addressed at a forthcoming seminar KPMG will organize.

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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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