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Proposed amendment to the law on taxation of tax-free reserves.

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

In compliance with the Decision of 18 July 2007 of the European Commission, the Greek Government has submitted a bill to the Parliament for including a provision on the recovery of the tax on the reserves that were formed on the basis of Law 3220/2004 in fiscal years 2004 and 2005.

The reserves are subject to income tax at the rate applicable in the year in which they were set up. Exemption from tax is provided in the following cases:

- Enterprises which formed an annual reserve up to EUR 100 000 for each of the fiscal years 2004 and 2005 and (investments of small or medium enterprises).
- Enterprises which formed an annual reserve in excess of EUR 100 000 for each of the fiscal years 2004 and 2005 provided that the investments funded by the tax-free reserve qualify under Incentive Laws 2601/1998 and 3299/2004, as well as under the regime of permissible state subsidies as

described in the Decision of 18 July 2007 of the European Commission and included in the proposed law (i.e. expenses in relation to research and development, environmental protection, etc.).

The amount to be recovered bears interest for the period between the deadline for the filing of the relevant corporate income tax return and 14 December 2007 based on the compounding interest method provided for by chapter V of regulation 794/2004 of the Commission (the reference interest rate set each calendar year by the European Committee for Greece is published in the official EU Government Gazette).

The tax and the interest are payable in four monthly installments following the filing of a special supplementary corporate income tax return, which must be filed by 14 December 2007. The first installment is paid upon filing of the return, while the remaining three are paid by the last working day of January, February and March of 2008.

According to a decision of a Chamber of the Council of State (the case has been referred to the Plenary Session), an

issue of constitutionality arises in the case of retroactive imposition of taxes relating to more than one year in the past.

To this effect, the critical issue is whether the proposed amendment abides by article 78, par. 2 of the Greek Constitution and, if not, whether the provisions of the European Union Law imposing the recovery of the alleged illegal state subsidy prevail over the Greek Constitution.

Based on the above, it is advisable for enterprises that formed reserves based on the provisions of Law 3220/2004 to examine whether the investments funded from the reserves fall under one of the exemptions mentioned in the proposed law. If the relevant investments do not fall under those exemptions, the enterprises should consult with their tax/legal advisers to consider appropriate action as a result of the above constitutional issue before filing the supplementary corporate income tax return.

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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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