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SUBJECT: Transfer Pricing – Statute 3728 / 18.12.2008

A few days ago Statute 3728/2008 and Decision No. A2-8092/31.12.2008 of the Minister of Development (Government Gazette 2709 B'), which was issued in execution of Statute 3728, set out the legal framework for the documentation of prices of inter-group transactions (a procedure that, internationally, is known as Transfer Pricing). The new framework adopts the following rules:

1. Scope

The arm's length principle is introduced to inter-group transactions and dictates that affiliated undertakings, within the meaning of article 42e of Greek Codified Law 2190/1920 on companies limited by shares, must transact with each other under terms that are identical with or similar to those which would otherwise apply to the same or similar transactions between independent

undertakings.

For the monitoring of the above principle, all Greek undertakings, regardless of their type and corporate form, as well as foreign undertakings that are active in Greece, must submit annual statements of inter-group transactions and draw up comprehensive and standardised price documentation file (Documentation) for all of their inter-group transactions. The following cases are excluded from the relative obligation:

- contracts that are concluded with natural persons who do not operate as entrepreneurs;
- Obligated Greek undertakings whose annual inter-group transactions do not exceed 200,000 Euro;
- Obligated Greek undertakings whose annual turnover does not exceed 1,000,000 Euro. The exemption is lifted from the second sequential year

in which the undertaking exceeds the annual turnover threshold of 1,000,000 Euro;

- Inter-group transactions that relate to stocks, shareholdings, shares or ownership and other rights in rem in immovable property; and
- Greek or foreign undertakings that are subject to the provisions laid down in articles 27 et seq. (Chapter F) of Greek Statute 3427/2005 (Government Gazette A' 312/27.12.2005) on the amendment, replacement and completion of the provisions of Compulsory Law 89/1967 on the "Establishment of foreign commercial – industrial undertakings in Greece".

2. Documentation

The documentation file is the means through which an obligated undertaking's compliance with the arm's length principle in inter-group transactions is monitored. There are two types of files, the "Basic Documentation File" for the inter-group transactions of Greek multinational groups and the "Greek Documentation File" for the inter-group transactions of Greek subsidiaries and branches of foreign undertakings. These files are submitted only following the communication of a relative application by the competent authorities of the Greek Ministry of Development to the obligated undertakings which must submit all relevant documentation within thirty (30) days of the communication.

We provide an indicative list of the main information that the files must contain:

- the organisational, legal and operational structure of the group.
- a description of the group's business activities and business strategy, as well as the group's transfer pricing policy.
- a description of the inter-group transactions of the obligated Greek undertaking (nature of the transactions, issue of invoices and value of transactions).
- a description of the operations that are carried out and of the risks that are assumed by each undertaking of the group and of the fixed assets that are used by said undertakings.
- a description of the group's intellectual property and of the royalties (fees) that are paid for the use of said property.
- a list of the so-called Advance Pricing Agreements.
- a description of the method that is used to compute transfer prices.
- a description of the internal and/or external comparative data that the group uses.

3. Methods of computing transfer prices

Among the methods stipulated in the relative guidelines of the Organisation for Economic Co-operation and Development (OECD) (Transfer

Pricing Guidelines), the Greek Ministry of Development gives priority to the “comparable uncontrolled price” method, according to which the prices of transactions with affiliated undertakings are compared to the prices that are applied to comparable transactions between independent undertakings.

However, if this method cannot be used or if this method is ineffective, two other methods stipulated by the Organisation for Economic Co-operation and Development (OECD), namely the “resale price minus” or the “cost plus” method, may be used.

The “resale price minus” method reduces the price at which a good or service, which was acquired by an affiliated undertaking, is resold to a third party by the resale profit margin. The resulting price is considered to be consistent with the arm’s length principle that should dictate a given inter-group transaction.

The “cost plus” method starts from the costs computed by the supplier of the good or the service in a particular transaction. An appropriate profit margin (mark up) is added to this cost so that it may arrive at an appropriate profit on the basis of the operations that were carried out and on the conditions of the market. The supplier’s profit margin (cost plus mark up) in the monitored transaction must be ideally set with a reference to the profit margin (mark up) that the same supplier earns in specific transactions from a particular independent undertaking.

In the case in which the use of the above methods is deemed, with a justified decision that is noted in the documentation file, ineffective, other computing methods, such as the “transactional net margin” method and the “transactional profit split” method, may also be used.

4. Internal – external comparative data

For the establishment of compliance with the arm’s length principle, internal and external comparative data are used. The comparative data, which may concern either prices of transactions or other financial data of comparable undertakings, constitutes an element of the documentation file and must concern similar transactions between independent undertakings. Such transactions are:

- Transactions between third undertakings (external comparative data).
- Transactions between the undertaking and independent third undertakings (internal comparative data).
- Transactions between parties affiliated with the undertaking, on the one hand, and between independent third undertakings, on the other hand.

5. Obligations of the undertakings

Obligated undertakings must submit to the Department of Audits of the Market Supervisory Service of the General Secretariat of Commerce of

the Greek Ministry of Development, within four months and fifteen days of the end of their administrative year, a statement containing information of each of the inter-group transactions that they carried out during the year. This statement must also contain triangular transactions, in other words inter-group deliveries of goods that are invoiced by third parties.

In addition, obligated undertakings must, within thirty (30) days of the day the competent Directorate of the Greek Ministry of Development submits its relative request, submit the file (which must be drawn up, at all times, in Greek) documenting their transfer prices.

6. Penalties

In case of non-compliance with the above obligations concerning the prompt submission of the statements and of the documentation file to the competent authorities, a fine equal to 10% of the value of the transactions that were not declared at all or were not declared within the deadline provided by law shall be imposed.

Moreover, those undertakings that violate the arm's length principle shall be fined, following a decision of the Special Secretary, a monetary fine equal to 5,000 Euro. In addition, representatives of these undertakings will face the criminal penalties provided for in the Greek Market Inspection Code.

We should note that the explanatory circular of the

aforementioned Ministerial decision, which shall clarify many of the key questions on these matters, shall be published in the next few days.

We remain at your disposal for any additional information or clarifications you may have as regards the procedures that are required for the documentation of transfer prices, as well as for the completion of all required documents.

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