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New Tax Law

The new tax law under the title "Combating Tax Evasion, Recruitment for Tax Audit Services and other competencies of the Ministry of Finance", which is incorporated in the general plan of the Ministry of Economy to combat tax evasion and broaden the tax base, was passed by Greek Parliament on 29 March, 2011. We present below the main points of the new tax law:

1. Combating tax evasion

1.1 National Operational Programme for Combating Tax Evasion

Pursuant to article 1 of the tax law, three-year National Operational Programmes for Combating Tax Evasion, which will include specific actions and measurable targets, will be implemented every three years. The Programme will include, among other things, pillars, annual or semi-annual actions, measures and targets for (a) identifying taxable wealth through programmes and preventive and regular tax audit, (b) identifying taxable wealth through various programmes of taxing imputed income and wealth and detecting increases in properties that conceal undeclared income, (c) improving and expediting the collection of due income and overdue debt. The first National Operational Programme for Combating Tax Evasion will be carried out and approved by 31 March 2011.

1.2 The Public Prosecutor for Financial Crimes

Article 2 of the new tax law introduces the Public Prosecutor for Financial Crimes who is appointed together

with his deputy (prosecuting officer with the rank of deputy prosecutor to the court of appeals) from the Office of the Public Prosecutor of the Court of Appeals of Athens. The Public Prosecutor for Financial Crimes is assisted in his work by at least three public prosecutors or deputy prosecutors to the court of first instance, two of whom serve at the Public Prosecutor of the Court of First Instance of Athens and one of whom serves at the Public Prosecutor of the Court of First Instance of Thessaloniki. The Public Prosecutor for Financial Crimes is informed of all charges and information that are filed with and maintained at all public authorities (Financial and Economic Crime Unit, Tax Authorities, tax audit authorities, Local Self-Government Organisations, Port Authorities, Customs Offices, etc.), he/she evaluates and examines such information, as well as any other relative information that comes to his knowledge, in any manner and with any means. In investigating the cases that come under his authority, the Public Prosecutor for Financial Crimes may order a preliminary investigation that will be conducted by general or special investigators. The case file that is formed following the completion of the preliminary investigation is forwarded to the local public prosecutors to the court of first instance for initiating criminal proceedings.

1.3 Measures for repressing tax evasion

Article 3 of the new tax law regulates anew the criminal offence regarding non-payment of confirmed debts toward the State, legal persons of public law and undertakings and organisations of the broader public

sector for a period of time greater than four months, as well as the crimes of tax evasion for omitting to submit income tax statements submitting inaccurate income tax statements, tax evasion for non-payment or inaccurate payment of VAT and withholding taxes, duties or contributions and tax evasion for forged, fictitious and falsified tax records.

Here forth, non-payment of confirmed debts for a period of greater than four months is punishable with imprisonment depending on the total amount of the debt, including interest or surcharges of any type until the date of preparation of the table of debts, as follows:

- (a) 10 days to 1 year, if the total debt exceeds €5,000,
- (b) 6 months to 5 years, if the total debt exceeds €10,000,
- (c) 1 year to 5 years, if the total debt exceeds €50,000 and
- (d) 3 years to 5 years, if the total debt exceeds €150,000.

The crime is deemed to have been committed during the period between four (4) months and the lapse of 1/3 of the Greek State's statute of limitation. Moreover, Article 3 (1) (c) of the new tax law clarifies that as concerns debt that is already due at the time the law enters into force, the aforementioned crimes are deemed to have been committed four (4) months after the new tax law enters into force.

Pursuant to paragraph 2 of the said article, the criminal sentences that are provided for by Greek law (Law 2523/1997) in articles 17, 18 and 19, are increased as follows:

- (a) Any person who, in order to avoid paying income tax, conceals income from any source by omitting to submit an income tax statement or by submitting an inaccurate income tax statement commits income tax evasion. This offence is punishable with a sentence of imprisonment of 5 to 20 years (not 5 to 10 years that was in effect to date) if the tax that has been concealed exceeds in each accounting period the amount of €150,000. Paragraph 2 stipulates that the period during which the income was concealed is taken into consideration when determining the sentence to be imposed.

- (b) Any person who, in order to avoid paying VAT, turnover taxes, withholding and levied taxes, duties or contributions, (i) does not pay or incorrectly pays or sets off such taxes, duties or contributions, (ii) any person who misleads the tax authorities by presenting false facts as true or who unlawfully holds back or conceals true facts and receives a tax refund, and (iii) any person who illegally withholds such taxes, duties or contributions, is sentenced to 5 to 20 years imprisonment (not 5 to 10 years that was in effect to date) if the tax that has not been declared exceeds, in each accounting period, the amount of €75,000. In determining the length of the sentence, the period over which such taxes, duties or contributions were not paid or were incorrectly paid or illegally withheld is taken into consideration.

- (c) A new paragraph 3 is added to article 18 of Law 2523/1997, which stipulates that, if the period over which such taxes, duties or contributions were not paid or were inaccurately paid or were illegally withheld does not exceed one year, the liable person is exempt, if, from the day the obligation for payment was borne, the due taxes, duties or contributions per case, together with the stipulated surcharges, duties and fines thereon, are paid. If the payment is made following the lapse of the period of one year but prior to the conclusion of the hearing proceedings at first instance, a reduced sentence is imposed.

- (d) Any person who issues forged or fictitious tax records, as well as any person who accepts fictitious tax records or falsifies such records, regardless of whether or not the said person avoids the payment of the tax, is sentenced to 5 to 20 years imprisonment (not 5 to 10 years that was in effect to date) if the tax that was concealed exceeds, in each accounting period, the amount of €150,000.

As regards the misdemeanours provided for by articles 17, 18 and 19 of Law 2523/1997, article 25 of law 1882/1990 and article 157 (1) (a) and (b) of the Greek National Customs Code, sentences are suspended or converted to money according to the provisions of articles 82 and 99 et seq. of the Greek Criminal Code. Suspension or conversion of sentences is not permitted in the case of repeated crimes. In the event a sentence is converted to money, each day of imprisonment is calcu-

lated between €20 to €100.

Furthermore, article 3 (3) of the new tax law replaces article 157 (1) (c) of the Greek National Customs Code as follows: *“Contraband is punishable (c) by imprisonment of 5 – 20 years, if the duties, taxes and remaining charges not paid to the Greek State or the European Union exceed the amount of €150,000.”*

In addition, article 3 (4) of the new tax law replaces article 235 (2) of the Greek Criminal Code regarding passive bribery as follows: *“2. If the value of the benefits exceeds the amount of €73,000 or if the perpetrator is an employee of the Ministry of Finance the sentence is imprisonment between 5 – 10 years.”* Moreover, in the case of article 235 (2) of the Greek Criminal Code if the perpetrator is an employee of the Ministry of Finance, the employee may be detained if it is justified that he/she will most likely, given the specific particularities of the act, commit more crimes if he/she were released.

Επιπροσθέτως, στην περίπτωση της παραγράφου 2 του άρθρου 235 Π.Κ., εάν ο δράστης έχει την ιδιότητα του υπαλλήλου του Υπουργείου Οικονομικών, αρκεί για την επιβολή προσωρινής κράτησης η αιτιολογημένη κρίση ότι αν αφεθεί ελεύθερος ο κατηγορούμενος είναι πολύ πιθανό, όπως προκύπτει από τα συγκεκριμένα ιδιαίτερα χαρακτηριστικά της πράξης, να διαπράξει και άλλα εγκλήματα.

2. Reorganisation of tax and audit authorities

2.1 Creation of positions of tax auditors for the collection of revenue under the Ministry of Finance

Article 4 of the new tax law creates positions of auditors for the collection of revenue under the Ministry of Finance. These positions will be filled by public servants with a university or technical education of every branch of the Ministry of Finance. These employees will be selected, transferred or seconded by virtue of a decision of the Minister of Finance. The employees selected will be assigned to these positions and will be mandatorily evaluated at the end of the performance contract, with the possibility of being put through an intermediate evaluation.

2.2 Establishment of an Internal Affairs Bureau

Article 5 of the new tax law establishes the Internal Affairs Bureau, the object and scope of which will be to

collect, process, evaluate and use information and data concerning the involvement of employees of the Ministry of Finance and of companies supervised by the Ministry in matters of corruption, illegal activities and other serious disciplinary offences and crimes (misappropriation, extortion, active and passive bribery, cases of mismanagement during the exercise of duties, etc.), as well as to investigate and prosecute these employees and undertakings in cooperation with the Public Prosecutor for Financial Crimes. The Bureau will also be able to audit the income statements evidencing the source of wealth of both the employees of the Ministry of Finance and the undertakings supervised by the Ministry.

2.3 The Financial and Economic Crime Unit

According to article 6 of the law, officers assigned, transferred or seconded to the Financial and Economic Crime Unit are tax and customs officers who have up to 20 years of past service.

2.4 Reinforcing administrative cooperation on an international level in the area of direct taxation

Article 7 of the law creates the “Department for International Administrative Cooperation in the area of direct taxation” under the Directorate of the International Economic Relations of the Ministry of Finance. The object of this department will be (a) the exchange of information and the reinforcement of mutual administrative collaborations within the framework of the implementation of international agreements, (b) undertaking negotiations between Greece and other States with the purpose of concluding or revising international agreements, (c) cooperating with the Greek General Secretariat of Information Systems, the Directorate General of Audits, the Financial and Economic Crime Unit and all competent tax or audit services or authorities with the purpose of promoting and using information that derives from abroad (government sources, credit institutions and other sources).

2.5 Improving the effectiveness of the audit system

Article 8 of the tax law amends relative provisions of the Greek Income Tax Code and the Greek VAT Code in order to facilitate tax audits. In particular, paragraph 1 of the said article adds a new article (i.e. article 67A) to the Greek Income Tax Code pursuant to which tax audits may be conducted from the office of the competent Tax Authority. Pursuant to the proposed provisions, persons subject to taxation may be audited (regular or tem-

porary) from the tax audit office to which they belong for the partial determination of their income.

Paragraph 2 of the same article stipulates that the director of the tax audit conducts the audit at the undertaking's seat, particularly in cases in which:

- (a) it is deemed that, on the basis of the tax audit that was conducted from the office, the conditions apply for determining income based on non-accounting methods,
- (b) audit of the production is necessary for determining the financial results,
- (c) use of special software is deemed necessary in order to verify the validity of the financial data provided to the tax authorities,
- (d) inquiry into the special files is deemed necessary for undertakings that are active in e-commerce activities,
- (e) it is justifiably deemed that the audit is necessary,
- (f) an audit has been conducted from the office for a specific percentage of cases that is determined by a ministerial decision.

Moreover, paragraph 3 of the same article adds a new article (article 48A) to the Greek VAT Code, pursuant to which if, on the basis of the tax payer's books and records, established violations, information in the tax payer's file, tax audit reports issued by the Financial and Economic Crime Unit or any other services under the Ministry of Finance, as well as any information from the General Secretariat of Information Systems, it is evidenced that the tax payer neglected to declare or inaccurately declared his/her taxes or incorrectly calculated the percentages or the discounts, the director of the tax audit service may make from the office a partial determination of the tax for one or more tax periods or for the entire accounting period even without an audit of the books and records and without a tax audit of other taxes being necessary.

As regards undertakings that operate on a seasonal basis, the taxable value, the percentages and the discounts of the tax are determined on the basis of the information of the immediately previous corresponding period increased by 15%.

2.6 Lifting of the tax confidentiality veil and

publication of the names of debtors and offenders

Article 9 of the tax law provides for the lifting of the tax confidentiality veil and the publication of the names of debtors and offenders. Specifically, article 9 stipulates that when the total outstanding debt towards the Greek State, arising from any cause, exceeds the amount of €150,000 per person and the failure to make such payment is greater than one year from the date it became outstanding, it is obligatory that such information be posted on the website of the Ministry of Finance. Tax payers who have been granted a facility to pay the debt in instalments are excluded from such provisions.

Moreover, violations of the Greek Code of Books and Records in connection with the issue forged tax records, the issue or receipt of tax records pertaining to fictitious transactions, the failure to properly issue tax records, or the issue of inaccurate tax records which result in the hiding of taxes are also published.

2.7 Procedure for distinguishing past due debts towards the State into "recoverable claims" and "un recoverable claims"

With article 10 of the tax law, rules are adopted according to which outstanding debts are classified under the categories of "recoverable claims" and "non-recoverable claims". Outstanding debts towards the State and third persons which have been certified pursuant to the provisions of the Greek Code for Collection of Public Revenue which are deemed as "non-recoverable claims" by the public authority that confirmed the debt, are recorded in special books maintained by the said public authority, following a decision of the Department of the Audit Council established with a decision in Plenary Session.

Paragraph 2 of this article provides that debt for which all efforts in finding sources for payment and mandatory collection are exhausted are characterised as non-recoverable claims.

The proposal is not submitted if there is a possibility that even part of the debt will be collected. The proposal is posted on the internet ("Transparency" Programme) and, following the lapse of a period of 30 days from its posting, the proposal, together with all of the relative documents, is submitted to a committee. The committee evaluates the data, requesting any additional in-

formation it may deem necessary from any service or third person and issues a positive or negative opinion whether the particular debt should be registered in the book of non-recoverable claims.

2.8 Setting-off claims

Article 11 of the tax law replaces article 83 of the Greek Code for the Collection of Public Revenue regarding set-offs. In particular, a debtor's outstanding and settled claim against the State, evidenced by a final court ruling or public document, is set-off against confirmed debts towards the State. The set-off is proposed by the debtor following a statement submitted with the Greek tax authorities that is responsible for the collection of the debt. The set-off may also be carried out ex officio, with an act of the director of the same public authority, provided the debtor's claim is substantiated on the basis of existing information. With the set-off, the mutual claims are written-off as of the date they co-existed and to the degree they are covered.

3 Improving the tax framework and facilitating entrepreneurship

3.1 Tax residence

Article 12 of the new tax law broadens the term of tax resident for world income. Specifically, according to the newly amended article 2 (1) of the Greek Income Tax Code, individuals who have their domicile or their usual place of residence in Greece are subject to taxation in Greece for their world income. Hence, the new provision includes not only the individual who has his/her domicile in Greece, as the term is defined by the Greek Civil Code, but also the individual who has his usual place of residence in Greece. According to the new provisions, usual place of residence means when the period of time of residence in Greece exceeds a total a number of 183 days in the same calendar year. An individual's residence is presumed as usual unless the taxpayer proves otherwise.

Similarly, the individual's family members who burden him/her are also regarded as having their residence in Greece, unless they have their domicile or usual place of residence in a State in which they are subject to taxation for their world wide income and the said State is not included in the list of States of article 51A (4) of the Greek Income Tax Code.

In addition, all individuals, regardless of their domicile

or usual place of residence, are subject to Greek tax for income generated in Greece.

A new paragraph (paragraph 5) is added to article 2 of the Greek Income Tax Code according to which an individual who on the one hand has his usual place of residence in Greece but who on the other hand is subject to taxation for his world wide income in another State that has not signed a Convention for the Avoidance of Double Taxation with Greece but which at the same time is not included in the list of States of article 51A (4) of the Greek Income Tax Code is subject to tax in Greece only for his/her Greek source income, for three consecutive years and only once.

3.2 Payments to individuals or undertakings situated in non-cooperating States

With article 13 of the new tax law, a new clause has been added to article 51A (5) of the Greek Income Tax Code. In particular, the new clause stipulates that, for 2010, non-cooperating States are considered the States included in decision no. 1108437/2565/ΔΟΣ/15.11.2005 of the Minister of Economy and Finance (Hellenic Government Gazette B' 1590). For 2011, non-cooperating States are considered the States defined as such pursuant to decision no. 1150236/ΔΟΣ/2010 of the Minister of Economy (Hellenic Government Gazette B' 1805).

In addition, article 51A (7) (b) of the Greek Income Tax Code has been amended, which now stipulates that an individual or undertaking is considered to fall under the "preferential tax regime" when he/she/it is subject to tax at a rate **which is equal to or lower than sixty per cent (60%) of the tax rate** that would have been applied pursuant to the provisions of the Greek Tax legislation (and not less than, in terms of percentage, more than half the tax, as it applied to date). For example, a foreign undertaking that is taxed for its income in the State where it has its residence with a rate of 10% may claim that it does not fall under a preferential tax regime, because, if it had its seat in Greece, it would have been subject to a tax rate of 20%, sixty per cent of which exceeds the tax rate of 10%.

The new tax law brings about a significant amendment to article 51B (1) of the Greek Income Tax Code that provides for, as a general rule, the non-recognition of expenditures that are paid to persons who reside in non-cooperating States, allowing for the Greek tax payer (who requests the tax deductibility of such expendi-

tures) to prove that these expenditures concern actual and usual transactions and do not have as a result the transfer of profits or income or capital with the purpose of tax avoidance or tax evasion.

3.3 Taxation of dividends and profits that are distributed by undertakings

As regards taxation on dividends and profits distributed by undertakings, article 14 of the new tax law stipulates the following:

3.3.1 With article 14 (1), a tax at a rate of **25%** is withheld from the profits Greek sociétés anonymes distribute in the form of fees and percentages to the members of their boards of directors and managers, in the form of fees (other than salaries) to their personnel and in the form of dividends or interim dividends to individuals or legal persons, Greek or foreign, regardless of whether these profits are paid in cash or in the form shares. The aforementioned withholding tax extinguishes the beneficiary's tax liability for the above income, with the exception of individuals whose total income is taxed at a rate of less than 25%, in which case, the credit balance is refunded to the individual.

When a Greek société anonyme distributes profits and its income includes income from holdings in another undertaking, the portion of the tax that has already been withheld and that corresponds to the profits that it distributed deriving from its aforementioned holdings is subtracted from the tax that it is required to pay with the relative tax statement.

The above do not apply when dividends are paid to an undertaking of another Member State of the European Union of which the Greek société anonyme paying the dividends is a subsidiary, provided the conditions of article 11 of Law 2578/1998 apply (Parent Subsidiary Directive). The portion of the tax that has been withheld from the société anonyme that corresponds to the dividends that it distributed to an undertaking of another Member State of the European Union is returned to the société anonyme, provided the above conditions apply.

The above also accordingly apply to distributed or capitalised profits of prior years.

3.3.2 The above apply to distributed profits that are approved by general meetings from 1 January 2012 and thereafter. As concerns profits distributed in 2011, a tax at a rate of 21% is withheld, with which (withhold-

ing) the tax liability of the beneficiaries is extinguished, without prejudice to the provisions article 54 (1) (c) of the Greek Income Tax Code regarding beneficiary individuals taxed at a rate of less than 25%.

3.3.3 Pursuant to paragraph 3, a tax of 25% is also imposed on dividends that individual residents of Greece receive from sociétés anonymes whose seat is situated outside Greece. With this withholding, the beneficiary's tax liability is extinguished. The equal tax treatment of this income with dividends distributed by Greek sociétés anonymes was imposed by the European Commission (Case C-406/2007).

3.3.4 Paragraph 4 of the said article stipulates that the aforementioned tax is withheld at the time the income is paid or credited to the beneficiaries and, in any case, within one month of the date the balance sheet is approved by the ordinary general meeting of shareholders.

3.3.5 With paragraph 6, a tax is imposed on profits that cooperatives or Greek limited liability companies distribute to individuals or undertakings (Greek or foreign). This withholding tax extinguishes the beneficiaries' tax liability for the above income, with the exception of individuals who are taxed for their total income at a rate that is lower than the withholding tax rate. This income is taxed pursuant to the general provisions that are in effect and any credit tax balance is refunded. In all other cases, the above provisions concerning sociétés anonymes apply accordingly.

3.3.6 Provisions referring to cooperatives or Greek limited liability companies apply to distributed profits that are approved by the competent bodies from 1 January 2012 onwards. As regards profits distributed in 2011, a tax equal to 21% is withheld, with which (withholding) the beneficiaries' tax liability is exhausted.

3.3.7 According to paragraph 8, a withholding tax of 25% is imposed on profits earned by an individual resident of Greece from a foreign limited liability company. The provisions of paragraph 3.3.3 above apply accordingly. Moreover, paragraph 8 of the said Article stipulates that as concerns in particular profits earned by an individual Greek tax resident from a foreign limited liability company and which remain abroad, the beneficiary must pay the tax him/herself in one lump sum by filing a relative tax declaration in the month following that in which the profit was paid or credited to the beneficiary.

3.3.8 Paragraph 9 of the said article lowers the corporate income tax rate for Greek societies anonyms, limited liability companies etc. to 20% imposed on the total profits (distributed and undistributed). Pursuant to paragraph 10 of the same article, it is stipulated that this applies to profits that arise from accounting periods that begin from 1 January 2011 onwards. In particular, as regards profits arising from accounting periods beginning from 1 January 2010 to 31 December 2010, the tax rate is set at 24%. The tax rate of 24% also applies to profits that arise from extended accounting years (years beyond twelve months) that ended on 31 December 2010.

3.3.9 Profits repatriated or credited to its head office by a Greek permanent establishment or to any other permanent establishment located abroad are subject to Greek withholding tax at a rate of 25%.

3.3.10 Pursuant to paragraph 12 of this article, when untaxed reserves or discounts that have been formed or that are formed pursuant to any development law are distributed or capitalised, they are added to the profits of the undertaking and are taxed in the accounting period in which the corresponding amount of the untaxed reserve was distributed or withdrawn.

3.3.11 Paragraph 13 stipulates that profits Greek sociétés anonymes or limited liability companies receive from companies whose seat is in another Member State of the European Union, in which they have a holding within the meaning of the provisions of article 11 of Greek Law 2578/1998 (Parent Subsidiary Directive), are exempt from taxation under the condition that they are recorded in a tax free reserve. If this reserve is distributed or capitalised in whole or in part, the provisions of article 54 (1) or article 55 (1) (d) respectively apply and not the provisions of article 106 (4).

3.3.12 For undertakings that maintain Third Category books of the Greek Code of Books and Records, time at which income is deemed to have been acquired is considered the date on which the accounting period ended. As concerns profits distributed by limited liability companies in particular, time of acquisition is considered the time when the assembly of the partners approved the distribution of profits. As regards profits from holdings in a foreign limited liability company, time of acquisition is considered the time of their receipt, regardless of whether these profits are transferred to Greece or remain abroad. When profits derive from a foreign partnership, the time of acquisition is considered the

date the accounting period of the foreign legal person ended.

3.4 Taxation of the sale of listed shares

Taxation of the sale of shares listed on the Athens Stock Exchange or on a foreign stock exchange or on any other internationally recognised stock market is set out in article 16 (1) of the tax law which provides for the extension of the application of the provisions of Laws no. 2579/1998 and no. 2703/1999 imposing a tax on the value of the sale of shares that are acquired until and including 31 December 2011, regardless of the time of their sale. Listed shares acquired from 1 January 2012 onwards will be subject to capital gains tax, as this is set out article 38 (3) (4) of the Greek Income Tax Code. Specifically:

3.4.1 Taxation of the sale of listed shares effected until and including 31 December 2011

With the new provisions, article 9 (2) of Law no. 2579/1998 has been amended, which, in conjunction with article 27 (2) of Law no. 2703/1999, impose a tax on the sale of shares that are listed on the Athens Stock Exchange or on a foreign stock exchange or on other internationally recognised stock market at the following rates:

- (a) 1.5%, if the sale is effected until 31 March 2011, and
- (b) 2%, if the sale is effected from 1 April 2011 until and including 31 December 2011.

Furthermore, in view of the changes that were made to the institutional and regulatory framework of the capital market, the procedure for the withholding of this tax has been amended. Specifically, with the new provisions, the transactions are settled by the "Hellenic Exchanges S.A." and not by the "Securities Depository".

3.4.2 Taxation of the sale of shares listed on the Athens Stock Exchange that were acquired from 1 January 2012

Sales of shares listed on the Athens Stock Exchange that are acquired from 1 January 2012 and thereafter come under the provisions of paragraphs 3 and 4 of article 38 of the Hellenic Code of Income Taxation, as these will be in effect following the new amendments of the tax law. Specifically, the new provisions make a differentiation between paragraphs 3 and 4 of article 38 of the

Hellenic Code of Income Taxation as regards to whether the shares are sold by a natural person or undertaking that keeps B' category books or undertaking that keeps C' category books. Specifically:

(a) *Sale of shares by individuals or undertakings maintaining B' category accounting books*

Pursuant to article 38 (3) of the Greek Income Tax Code, profits earned by individuals or undertakings maintaining B' category accounting books from the sale of shares listed on the Athens Stock Exchange at a price higher than the price at which they were acquired are taxed pursuant to the general provisions that are in effect when these shares are acquired in any manner from 1 January 2012 onwards.

The three basic differences between the new paragraph (paragraph 3) and the provision that was previously in effect are the following:

- The new provision extends to undertakings that maintain B' category accounting books and does not apply only to individuals.
- Profits are taxed at the rates pursuant to the general provisions of the Greek Income Tax Code and not with the fixed tax rates of 10% or 20%, respectively, depending on the time the profits were earned (12 and 3 months).
- The provisions that were previously in effect provided for (in contrast to the new provisions that do not have similar provisions) the same tax treatment of profits earned from the sale of shares that were acquired by foreign undertakings that operated under the direct control or on behalf of a natural person resident of Greece. In addition, the provisions that were previously in effect also applied to foreign citizens, without prejudice to applicable Conventions for the Avoidance of Double Taxation. The above provisions have been excluded from the provisions of the new paragraph (paragraph 3).

(B) *Sale of shares by undertakings that maintain C' category accounting books*

As regards the sale of shares listed on the Athens Stock Exchange by undertakings that maintain C' category accounting books, the new provisions stipulate that the profits earned from the sale of such shares (when

such shares are acquired in any manner from 1 January 2012 and thereafter) at a price higher than the price at which they were acquired are taxed pursuant to the general provisions. For the calculation of the profit, the provisions of article 38 (3) of the Greek income Tax Code regarding the method of calculating the profit apply accordingly.

In calculating the taxable profit, the loss that arises within the same year from the same cause is taken into consideration. If a loss arises from the set-off, the loss is carried forward for five years as per article 4 (3) of the Greek income Tax Code.

3.5 Business Expenses

Article 17 of the tax law regarding tax deductible expenses stipulates the following:

- Amounts paid by undertakings through donations to sports clubs are not recognised as tax deductible expenses.
- Leasing companies, factoring companies, special purpose vehicles of Laws no. 3156/2003 and no. 3601/2007, credit companies of Law no. 2937/2001, investment services sociétés anonymes and credit institutions operating in Greece are exempt from the provisions regarding thin capitalisation.
- The tax right off of the additional 50% of the research and development expenses that were realised within the year is extended for four more years, in other words until 31 December 2014.

3.6 Non-payment of advance tax upon conversion of undertakings

According to the provisions of article 19 of the tax law, undertakings converted or merged pursuant to the provisions of Greek laws no. 1297/1972, no. 2166/1993, no. 2190/1920 and no. 3190/1995 or on the basis of other special provisions will not be subject to pay advance tax, since the pre-existing legal entity ceases to exist. In this manner, the procedure for the merger of undertakings are simplified and the undertaking that will be subject to conversion will not have to submit an application with the Director of the tax authority for the write-off of the non-outstanding instalments of last year's advance tax

and they will not submit income tax statements in the following financial year for the refund of the advance tax already paid.

3.7 Submission of income tax statements and prepaid income tax

With the provisions of article 20 (1) (2) of the new tax law, article 59 (2) of the Greek Income Tax Code was amended, providing now that taxes withheld during each month be paid by the 20th day of the following month for (a) companies who employed on average more than 50 persons during the previous year and (b) insurance funds for the payment of pensions.

The proposed provisions of paragraphs 4 and 5 provide for the submission of income tax statements with the use of modern electronic methods and network infrastructures by all legal persons of article 101 of the Greek Income Tax Code.

3.8 Income tax issues

3.8.1 Pursuant to article 21 (3) of the new tax law, a new paragraph [paragraph (h)] has been added to article 18 of the Greek Income Tax Code, according to which, individuals who do not have their fiscal residence (domicile or usual residence) in Greece are exempt from the annual imputed income arising from acquisition or maintenance of wealth.

3.8.2 Paragraph 4 provides for the possibility now for persons of paragraphs article 2 (3) (4) of the Greek Income Tax Code (general partnerships, limited partnerships, etc.) who earn income from immoveable property, as well as individual entrepreneurs who earn income from own-use of immovable property to deduct expenses related to the maintenance and repair of such property pursuant to the general provisions regarding tax deductibility of expenditures (as these are defined in article 31 of the Greek Income Tax Code).

3.8.3 Paragraph 8 provides for the possibility of paying taxes, duties and contributions in instalments confirmed by the tax authorities on the basis of a temporary tax audit settlement note issued following a temporary audit in instalments, which will be paid with the following procedure: 1/5 of the amount will be paid following the signing of the minutes and the remaining amount will be paid in six equal monthly instalments, on condition that each instalment, other than the last instalment,

will not be less than €300. The only exception to the above is in respect to taxes that arise from article 54 of the Greek Income Tax Code and are confirmed on the basis of a tax audit sheet that was finalised because an appeal was not filed or untimely filed, in which case the amount is paid in one lump sum.

3.8.4 Pursuant to paragraph 9, the obligation for electronic submission to the Ministry of Finance of economic and financial data and information is also extended to UCITS, chambers, notaries and registrars and directors of cadastral offices in order to facilitate the verification of any data and information necessary for tax purposes.

3.8.5 Article 12 of Law no. 3842/2010 abolished income tax exemptions that were provided for by general or special provisions, with the exception of specific exemptions that were provided for by said article. With the provisions of article 21 (12) of the tax law, a new clause has been added maintaining in effect the income tax exemptions provided for by articles 25 and 26 of Law no. 27/1975 regarding the shipping sector.

3.8.6 With the provisions of paragraph 14, when units of a limited liability company are transferred from a seller who is related to the buyer by the first or second line of descent set out in article 29 (1) of Law no. 2961/2001, the capital gain will be taxed at a rate of 5% and 10% respectively. In other words, the same applies as in the case of transfer of units of a partnerships.

3.9 Repatriation of capital

Paragraph 19 of Article 21 extends the provisions of article 18 of Law no. 3842/2010 on the repatriation of capital to 30 September 2011. This extension is deemed necessary for the completion of the procedure for the repatriation of capital with the payment of a tax on the value of the capital with a tax rate of 8%. In addition, the meaning of capital is broadened so that it also includes capital that is not only deposited in a bank account abroad but also invested in various financial and non-financial products, such as shares, units, bonds, life investment-linked insurance policies, etc. In addition, the provisions set the tax rate that is imposed on capital that is transferred to Greece equal to the tax rate that is imposed on capital that remains deposited in banks abroad.

3.10 Readjustment of tax rates and contribution rates of ships

Article 22 (1) (2) of the tax law increases the tax rates of

article 6 (1) of Law no. 27/1975 and the contribution rates of article 10 (2) of Law no. 27/1975 for A' category ships that sail under Greek flag by 4% annually for 2011 until and including 2015, which (increase) is provided for by the provisions of article 6 (4) and article 10 (3) of Law no. 27/1975 respectively.

In addition, the provisions of this article provide for the readjustment, by 4%, of the rates of the contribution of paragraph article 4 (1) of Law no. 29/1975 of ships under Greek interest that sail under the flag of a foreign State that are contracted with the Mariners' Retirement Fund.

3.11 Taxation of inheritances, donations and parental grants

Article 23 (1) (b) of the tax law reinstates, beginning from the date when it was abolished, Article 25 (2) (e) of the Greek Estate and Donations Tax Code, which stipulated that transferable property located abroad belonging to a Greek national who is established abroad for at least 10 consecutive years is exempt from inheritance tax. This exemption does not apply to property belonging to civil servants, military personnel and personnel of undertakings whose seat is located in Greece, provided these persons were established abroad due to their aforesaid capacity.

3.12 Pre-payment of tax in the case of an appeal

From the enactment of the tax law and its publication, if the tax dispute (income, capital, VAT, etc.) is not resolved and the tax payer files a timely appeal, 50% (from 25% that was in effect to this day) of the disputed main taxes, penalties and additional taxes is immediately confirmed.

3.13 Property tax

3.13.1 Article 24 (7) of the new tax law provides that undertakings that lease their immovable property to shipping companies that have fallen under the regime of Law no. 89/1967, as in force, are excluded from the obligation to pay special property tax. This exclusion applies under the condition that these immovable properties are used exclusively as offices or storage facilities for the shipping companies.

3.13.2 With the provision of paragraph 8, a new paragraph (i.e. paragraph g) is added to article 15 (2) of Law no. 3091/2010, pursuant to which insurance funds, so-

cial security organisations and undertakings for collective investments in immovable property are excluded from paying the special property tax, under the condition that the aforementioned are duly monitored by the home State authority and that their seat is not located in a non-cooperating State according to the provisions of 51A (5) of the Greek income Tax Code.

3.14 Penalties

3.14.1 Article 26 (1) (2) of the new tax law limits the ceiling for imposing additional taxes, which are here forth reduced from 100% to 60% for late submission of statements and from 200% to 120% for the submission of inaccurate statements or non-submission of statements. The new rates apply to statements that are not submitted in due time after the publication of the new law and for tax audit settlement notes and taxes imposed after the publication of the law.

3.14.2 Article 26 (3) adds new paragraphs to article 4 of Law no. 2523/1997. These paragraphs introduce administrative fines to anyone who does not provide information requested by the Ministry of Finance during a tax audit or who does not submit the requested information or statements to the Ministry of Finance. Depending on the gravity of the violation and possible recurrence of the violation, a fine of €1,000 to €50,000 may be imposed. Persons who violate the obligation to provide data or information or who provide inaccurate information incur a fine of €5,000 to €100,000.

3.14.3 Article 26 (4) adds a new clause to article 5 (8) (b) of Law no. 2523/1997, since, with the existing provisions of this sub-paragraph, the issue of each uncertified tax record is considered an independent violation. In other words, a fine is imposed for every issue of an uncertified tax record with a maximum limit (ceiling) per year. Specifically, if, due to an oversight, uncertified tax records have been issued and these have been recorded in the books prior to any audit, this issue is considered a general violation. With the addition of this new clause, the issue of tax records that are considered uncertified and provided they have been promptly recorded in books is considered a general violation with a level 3 gravity.

3.15 Value Added Tax

3.15.1 Newly-constructed Immovable property

With the provision of article 27 (1) of the new tax law,

newly-constructed immovable property is treated here forth as follows: Pursuant to the existing provisions, an immovable ceases to be considered newly-constructed and, thus, subject to VAT at the time of its transfer, with the completion of 5 years from the issue of the construction permit. At this point, immovable property that has not been transferred or used and that remain in the possession of the construction company for sale is regarded as having been used and, thus, the construction companies have the obligation to pay the VAT corresponding to the cost of the immovable at that point in time (self-delivery). With the new amendment, the immovable property is now considered newly-constructed until the completion of 3 years from the building's construction. In the event that the immovable property has not been transferred or used within a period of 3 years of the building's construction, the non-disposed ownerships are regarded as having been used and, thus, VAT is paid on the total cost thereof (constructed buildings). With the new provisions, the above applies only to the completed properties or segments thereof and not to those that are semi-finished.

3.15.2 *Malls/Commercial Centres*

Article 27 (2) of the new tax law grants companies operating malls and commercial centres a tax option. In order to exercise this option, the company must file a relative application with the competent tax authority. With the tax option, companies have the right to deduct the VAT paid for the construction and maintenance of the malls and commercial centres. In addition, article 27 (3) replaced the 2nd clause of article 33 (2) of the Greek VAT Code, pursuant to which if the taxation of the utilisation of malls and commercial centres is chosen, the payment of input tax of these immovables is settled over a period of 10 years, beginning from the year the immovable property began to be used.

3.15.3 **Periodic and Annual VAT returns with instalment payment facilities**

According to Article 27 (6) of the new tax law, periodic VAT returns and Annual VAT settlement returns may now be submitted with the payment of at least 40% of the total amount due and the payment of the remaining amount in two monthly instalments increased by 2%, provided the returns have been timely submitted.

With the provisions of Article 27 (15), article 54 of the Greek VAT Code has been replaced so that the manner of payment of the tax on the basis of the submitted periodic returns is clearly defined. The tax can now be paid

either in one lump sum or in instalments with the payment of at least 40% of the due tax with the submission of the return and the payment of the remaining amount, increased by 2%, in two monthly instalments, each of which cannot be less than €300.

The provisions of paragraphs 3.15.1 and 3.15.2 enter into effect on 1 January 2011, whereas the provisions of paragraph 3.15.3 apply for VAT returns whose filing deadlines expire after 1 July 2011.

3.16 **Tax Receipts Card**

According to Article 29 (1) of the new tax law, information regarding expense receipts of the Greek Code of Books and Records used to cover tax free brackets may be recorded, alternatively and not necessarily, through the internet or with the use of a magnetic card.

3.17 **Tax Clearance Certificate**

New paragraphs (paragraphs 8 and 9) have been added to article 26 of Greek Law no. 1882/1990, thus resolving a shortcoming of certain tax provisions that worked against both the collection of public revenue and the public. With the new provision, instead of receiving a tax clearance certificate, a certificate may be issued by the public authority to whom the debt is owed. This certificate is filed with the to the service or organisation for payment. On the basis of this certificate, the amount to be collected and up to the amount of the debt is paid to the State. Any balance that may arise is paid to the beneficiary with the presentation of a clearance notice, if such a notice is required. This statement may also be issued ex officio by the service where the debt is confirmed in the event its issue is not requested by the debtor. Moreover, if a clearance notice is requested for the transfer of an immovable property and the conditions for its issue are not fulfilled due to the outstanding debts, the aforementioned certificate may be issued under the condition that the notary public withholds the entire amount of the total debt and said amount is paid to the State within 3 days.

4 **Office of Tax Arbitrators**

The provisions of articles 31 to 35 of the new tax law introduce, as a measure for decongesting the administrative courts and expediting the resolution of tax disputes, the resolution of such disputes through the use

of arbitration. To this end, a special Office of Tax Arbitrators has been established as an independent authority, which is comprised of arbitrators who enjoy personal and organisational independence.

The Office of Tax Arbitrators is called upon to act following an application filed by the tax payer, which is submitted to the Office within the deadline set for filing an appeal with the administrative courts. A copy of this application is communicated to the tax or customs authority that issued the contested act within 15 days of the day the application was submitted. The tax or customs authority, within 20 days of the date it received the application, must forward the application, together with a copy of the contested act and relative audit report, to the Minister of Finance, who must inform the Office whether the State agrees to arbitration of the dispute within 2 months of the date the application is communicated to the competent tax or customs authority. If a positive statement is submitted, the applicant is called, with a document of the Office that is served to the applicant, to pay the stipulated fee within 20 days of the date of service, otherwise the case is closed and filed in the Office's records.

The application for arbitration for the resolution of the dispute may also be submitted after the application for administrative resolution is submitted or an appeal is filed. If the application for arbitration is filed before the filing of the application for administrative resolution or of the appeal, the deadline for filing the application for administrative resolution or of the appeal begins from the date a notification is served by the Office rejecting the arbitration resolution of the dispute.

The dispute is resolved by three arbitrators. The date for the resolution of the dispute cannot exceed 2 months from the date when the State notified that it accepts the arbitration. The views of the administrative authority are submitted to the Office within 1 month of the date of submission of the positive statement. The arbitration decision is issued within three months of the case's hearing. If this deadline lapses without effect, the authority of the arbitrators to resolve the dispute ceases ipso jure and the deadline for the submission of the application for administrative resolution and filing of an appeal is re-instated, unless the parties agree in writing to the extension of the deadline for a specific period of time. If the application for arbitration is accepted in whole or in part, the Office forwards the case to the administrative court so that it may proceed to cancelling or amend-

ing the contested act.

An appeal may be filed against the arbitration decision.

5. Administrative resolution of tax disputes at the Directorate General for Tax Audits

With the provision of article 36 of the new tax law, a new article (i.e. article 70A) is added to the Greek income Tax Code, pursuant to which a five-member Committee is established under the Directorate General for Tax Audits of the Ministry of Finance for the administrative resolution of disputes. The task of this Committee is to resolve tax disputes of amounts greater than €50,000, following an application of the interested party. The application is filed with the competent tax authority, which forwards the application, together with the relative file, to the afore-mentioned Committee within 10 days of the date it was filed.

6. Integration of European Directives into Hellenic Law

6.1 Mutual assistance for the collection of claims

This article, in essence, expedites the unification of the provisions of Council Directive 76/308/EEC and Council Directive 2001/44/EC, as these have been codified with Council Directive 2008/55/EC. These describe the procedure that is followed for the collection of claims provided for by this Directive that arose in Greece or in another Member State of the European Union and that concern a debtor who has his residence in a Member State of the European Union or in Greece respectively.

6.2 Amendment and completion of the Greek VAT Code

Article 39 of the tax law integrates the following Directives into Greek legislation, and, specifically, into the Greek VAT Code:

- (a) Council Directive 2006/112/EC, which constitutes a codification – redrafting of the provisions of the Sixth VAT Directive (Council Directive 77/388/EEC) on the common system of value added tax.
- (b) Council Directive 2009/162/EU, which amends various provisions of Council Directive 2006/112/EC as regards:

- the expansion of the special system that applies to gas and electricity,
- the treatment of joint enterprises that are established by the European Union as international organisations and
- the right of deduction of VAT in the case of mixed use of immovable property / capital goods and services.

(c) Council Directive 2009/69/EC, amending Council Directive 2006/112/EC as regards tax evasion linked to imports.

Consequently, the provisions of articles 5, 7, 11, 13, 14, 23, 27 and 30 of the Greek VAT Code has been amended. The adoption of the proposed article is necessary so that national legislation may be harmonised with the corresponding community legislation.

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