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GREECE: ABOLITION OF THE 26% WITHHOLDING TAX ON TRANSACTIONS WITH CYPRUS, BULGARIA AND IRELAND

Further to the adoption by the Greek Parliament of Law 4336 of 2015 under the title *Pension Provisions - Ratification of the Draft Agreement for Financial Assistance by the European Stability Mechanism and provisions for the implementation of the Financing Agreement* on 14th August 2015, the withholding tax on corporate expenses paid from Greek corporate entities to, among others, tax residents of three member- states of the European Union, namely Cyprus, Bulgaria and Ireland, has been abolished.

THE PRE-EXISTING REGIME REGARDING 26% WITHHOLDING TAX ON EXPENSES IN TRANSACTIONS OF GREEK CORPORATE ENTITIES WITH CERTAIN PERSONS

On March 2015 the Greek Parliament, introduced amendments to the Greek Income Tax Code - Law 4172 of 2013 - ("the Law"), including an amendment to article 23 of the said Law regarding non-deductible business expenses.

Pursuant to the aforementioned amendment, the total expenses paid to a natural person or legal person or entity falling within one of the following categories, were not deductible:

- **a)** Persons which at the time of issuance of the invoice or at the date of the transaction were tax residents in a non- cooperating country (as per article 65 of the Law)
- **b)** Person which at the time of issuance of the invoice or at the date of the transaction were tax resident in a country with a preferential tax regime (as per article 65 of the Law)
- **c)** Persons which were in fact associated companies, and had not complied, before the issuance of the invoice or the performance of the transaction with the obligations set by the Tax Procedures Code (regarding transfer pricing documentation rules)
- **d)** Person s which did not have at the place of their registered office or at an affiliate business, the requisite organization and infrastructure in order to carry- out similar transactions as the one for which the invoice was issued, regularly and professionally.

In all aforementioned cases, the taxpayer had to "pay a withholding tax" of 26 % over the total amount of the expense. Provided the taxpayer produced proof, within three months from the date of the transaction, that the said transaction was an ordinary transaction executed at arm's length, the amount thus "withheld" would be returned to the taxpayer.

According to the Greek Tax Code (article 65), a person is considered as residing in a country with a "preferential tax regime" if in the said country, which may also be an EU member- state, either the person is not subject to taxation, or the tax on profits or income or capital is equal to or lower than a percentage of 50% of the corporate income tax rate that would be due according to the provisions of the Greek tax legislation, if the beneficiary of the said income was a tax resident or maintained a permanent establishment in Greece.

As a result of the foregoing, transactions of Greek businesses with, among others, Cypriot, Bulgarian or Irish tax residents were affected by the withholding tax regime on expenses, thus causing both concern and complaints in the business world and raising the question of consistency of the amended article 23 of the Law with both the EU fundamental principles and legislation and the bilateral treaties in force for the avoidance of double taxation.

ABOLITION OF THE WITHHOLDING TAX AND CURRENT PROVISIONS

With the adoption of Law 4336 of 2015 ratifying the third Memorandum of Understanding for financial assistance to Greece, the Greek parliament was required to pass several amendments to its tax legislation as pre- conditions set by the international institutions, including the abolition of the aforementioned withholding tax on payments of Greek businesses to Cyprus, Bulgaria and Ireland, thus reinstating the previous applicable regime regarding the non- deductibility of expenses paid to natural or legal persons who are tax residents in a non- cooperating country or a country with preferential tax regime.

According to the current wording of the relevant provision, the total expenses are not deductible if paid to natural or legal persons which are tax residents in a non- cooperating country or are subject to preferential tax regime, in accordance with the provisions of article 65 of the Greek Income Tax Code, unless the taxpayer provides proof that the said expenses concern real and ordinary transactions and do not have as a result the transfer of profits or income or capitals with the purpose of tax- evasion or tax- avoidance are not deductible.

It is however expressly provided that the aforementioned provision does not exclude the deduction of expenses which are paid to a natural or legal person or legal entity which is tax resident in a member state of the EU or the EEA, as long as there exists a legal basis for the exchange of information between Greece and the said member state.

The abolition of the 26% withholding tax seems to satisfy both Greek businesses and their business partners abroad, as this will relieve them of complex procedures and additional expenses and payments.

August 2015

FOR ANY FURTHER INFORMATION AND OR CLARIFICATION PLEASE FEEL FREE TO CONTACT US

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