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Indirect Tax Alert

Greece's tax authority issues instructions on adjusting input VAT deductions on capital goods related to non-use

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Greece's Independent Authority for Public Revenue (IAPR), in the context of complying with Decision 1862/2019 of the Greek Supreme Administrative Court, issued instructions[1] regarding the obligation of taxable businesses to proceed with an adjustment of input value-added tax (VAT) incurred on the purchase or construction of capital goods, if they are not utilized within five years as of the date of the respective expense.

Specifically, the instructions provide:

- According to the Greek value-added tax (VAT) Code (Law 2859/2000, article 33, par. 3), if capital goods are not put to use within five years as of the date of incurring expenses for their purchase or construction, they are considered to have been used only for activities outside the scope of VAT. Thus, the taxable business is obliged to perform a one-off adjustment of input VAT originally deducted through the VAT return that is submitted by the last working day of the fourth month following the end of the fiscal year (for fiscal years that have ended from 19 August 2015 onwards, POL. 1205/2015)
- The Greek Supreme Administrative Court in Decision 1862/2019 has held that the right to deduct input VAT incurred on the acquisition of capital goods remains, even if the taxable person finally does not put to use the capital goods due to circumstances which are independent of the taxable person's will. This is predominantly the situation when capital goods are not put to use due to unlawful actions or omissions of the State.

- Consequently, if it is determined on the basis of law or of a court decision that capital goods have not been put to use within the five-year period due to circumstances independent of the taxable person's will, the latter is not obliged to adjust the related input VAT amount incurred and originally deducted
- According to Circular 2200/2019, this is indicatively the case when investment plans that have been subject to incentive laws 3299/2004, 3908/2011, 4399/2016 are not completed but have been granted with an extension of completion by way of specific laws.
- The Circular provides specific instructions regarding the supporting documents that must be at the disposal of businesses, in order to prove that they are not obliged to adjust the input VAT amount due to an extension of completion of the investment plan, depending on the applicable incentive law and for the duration of such an extension.
- Finally, the Circular explicitly states that businesses that have adjusted input VAT incurred for investment plans that have been granted with an extension of completion, are entitled to seek the recovery of the relevant VAT amounts by amending the VAT returns through which they have proceeded with the VAT adjustment, subject to statute of limitations provisions.
- Final tax assessment acts cannot be overturned, while VAT amounts paid by virtue of such acts are not recovered.

In the light of the above:

- Decision 1862/2019 of the Greek Supreme Administrative Court was issued by invoking the recent decision of the Court of Justice of the European Union (CJEU) dated 2 February 2018 in case C-672/16 (*Imofloresmira – Investimentos Imobiliarios SA*), which makes reference to the same position of the CJEU regarding the lack of obligation of the taxable person to adjust input VAT due to circumstances independent of the latter's will in the earlier cases C-37/95 (Ghent Coal) and C- 110/94 (INZO).
- The Greek Supreme Administrative Court holds that the right to the input VAT deduction remains not only if the delay is due to unlawful acts or omissions of the State, but in general in any case where the delay is due to independent circumstances of the taxable person's will. In that regard, it extends the scope of the exceptions from applying article 33 par. 3 of the Greek VAT Code dictating an input VAT adjustment if capital goods are not put to use within five years as of the date of incurring expenses for their acquisition.
- Further to this recent evolution of case law and the issuance of Circular 2200/2019 of the IAPR, it would appear that all businesses that incur expenses for the acquisition of capital goods are entitled not to proceed with the adjustment of input VAT, if these are not put to use timely due to independent circumstances of the taxable person's will, even if the relevant investments do not fall under any incentive law.
- Businesses may now investigate the conditions and supporting documents they would need to have available to evidence that they are not obliged to adjust input VAT in their specific case, as well as request an interest-bearing refund of relevant input VAT amounts, if adjusted already, taking into account applicable statute of limitation provisions or any time or other restrictions depending on the case.

Endnote

1. Through Circular 2200/2019.

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