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Global Tax Alert

Greece amends taxation of legal entities

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Executive summary

In July 2020, the Greek Parliament enacted L. 4714/2020, published in the *Government Gazette* on 31 July 2020 (GG A'148) and L. 4712/2020, published in the *Government Gazette* on 29 July 2020 (GG A' 146). These two laws have enacted the following changes:

- Extension of the time to submit annual corporate income tax returns for tax year 2019 up to 28 August 2020
- Reduction of the corporate income tax prepayment for tax year 2019
- Introduction of tax incentives for research and development (R&D) expenses
- Introduction of new penalties regarding non-maintenance of accounting data and infringements relevant to Electronic Tax Mechanisms (ETMs)
- Transposition of the provisions of the Directive 2016/1164/EU, as amended by Directive 2017/952/EU, regarding exit taxation and hybrid mismatches into the Greek Income Tax Code (L. 4172/2013, GITC)

This Alert summarizes the key provisions of these developments.

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Detailed discussion

Extension of time to submit income tax returns for tax year 2019

- The filing deadline for annual corporate income tax returns for the tax year ending on 31 December 2019 is extended up to 28 August 2020.
- The income tax payment shall be effected in eight equal installments, where the two first installments shall be paid up to the last business day of August and each subsequent installment shall be paid up to the last business day of the following six months.

Reduction of corporate income tax prepayment for tax year 2019

- The corporate income tax prepayment for tax year 2019 for legal entities and individuals conducting business activities has been decreased.
- In principle, the decrease is proportional to the reduction in value-added tax (VAT) turnover on the first six months of 2020 compared to the first six months of 2019, as follows:

Reduction of VAT turnover	Decrease of tax prepayment
≥ 5% up to 15%	30%
15.01% up to 25%	50%
25.01% up to 35%	70%
>35%	100%

- Legal entities or individuals performing business activities that are not required to submit VAT returns throughout the comparable six-month period or are transferred from a VAT exempt status to a non-exempt status and vice versa within the comparable six-month periods are entitled to a tax prepayment decrease of 50%.
- The tax prepayment is set to zero for legal entities or individuals performing business activities that are either:
  - Subject to VAT of the tertiary sector[1] and more than 50% of their 2019 turnover has been realized within the third trimester of 2019.
  - Belong to the sectors of air or ferry transportation.
- The beneficial provisions regarding the decrease of tax prepayment are not applicable to (with the exception of businesses for which the tax prepayment is set to zero, as per the above):
  - Newly established legal entities within the first three financial years as of the commencement of their business.
  - Individuals conducting business activities that acquire business income for first time.
- Legal entities or individuals performing business activities benefiting from the reduced tax prepayment without being entitled -in whole or in part- thereto, are subject to a penalty equal to twice the amount of the reduced tax prepayment that they benefited from.

Increased deduction of R&D expenses

- R&D expenses are deducted at the time of their realization from legal entities' gross income increased by 100% (instead of 30%).
- The new provisions introduce an alternative procedure for the review and certification of such expenses by the General Secretariat for Research and Technology, through an audit report by a certified auditor or audit firm.
- The increased deduction of R&D expenses applies as of 1 September 2020, while the alternative review and certification process of such expenses may apply also to R&D expenses that have already been submitted to the General Secretariat for Research and Technology through 29 July 2020.

Penalties for non-maintenance of accounting data and infringements relevant to ETMs

- The new provisions provide for penalties for non-maintenance of accounting data, non-preservation of ETMs and tax memories and data created by ETMs, infringements relevant to violation or falsification or interference with the operation of ETMs as well as for the issuance of retail receipts through ETMs operating based on non-approved specifications.

Non-maintenance/non-disclosure of accounting data

- A penalty of 15% of the business revenues is imposed per each audited year during which the non-maintenance of accounting data (books) is identified, following the statutory deadline for the drafting of financial statements pursuant to L. 4308/2014 (Greek Accounting Standards – GAS).
- The term "non-maintenance of accounting data (books)" also includes the non-updating of accounting data (books) within the statutory deadline for the drafting of financial statements.

- The penalty may not be less than €10,000 per audited year (for taxpayers obliged to maintain single-entry accounting books) and €30,000 per audited year (for taxpayers obliged to maintain double-entry books). Increased penalties are imposed in the case of non-submission of the annual income tax return.
- The non-disclosure of the accounting data (books) to the tax audit for any reason equals to non-maintenance thereof and is subject to the aforementioned penalty.
- In the case of non-maintenance and non-disclosure of the accounting data, the relevant penalty is imposed for tax years ending from 31 December 2020 onwards.

Non-preservation of ETMs

- If the audited entity did not maintain or did not disclose, upon a relevant request, ETMs and tax memories and data created by ETMs, the aforementioned penalty of non-maintenance of accounting books is imposed.
- The penalty is imposed on infringements that are identified from the entry into force of L. 4714/2020 onwards.
- In the case of issuance of a final corrective corporate income tax assessment for the tax year during which the aforementioned infringements are identified, the penalty is reduced by 50% (unless the amount of the final corrective tax assessment is less than 50% of the penalty of non-maintenance, in which case a different penalty decrease applies).

Violation or falsification or interference with the operation of ETMs

- In the case of an infringement relevant to violation or falsification or interference with the operation of ETMs in any way, penalties are imposed per audited year as follows:
  - If the entity/person that has committed the infringement is the owner-user of the ETM, the penalty of non-maintenance of accounting data is imposed.
  - If the entity/person that has committed the infringement is the enterprise that has received software or hardware approval or any person that has resold software or provides technical support relevant to the aforementioned infringements, a penalty of €100,000 is imposed.

Retail receipts infringements

- Infringements relevant to the issuance of retail receipts through ETMs that operate based on non-approved specifications are subject to the penalty applicable for the non-maintenance of data.
- This penalty is not imposed insofar as the authenticity of origin and the integrity of content of the data, as per the GAS, are not affected.
- The penalties for the violation or falsification or interference with the operations of ETMs or the issuance of retail receipts is imposed for infringements identified from the entry into force of L. 4714/2020 onwards.

Suspension/Deactivation of Tax Identification Number (TIN)

- The Tax Administration may suspend or deactivate a TIN, if the taxpayer:
  - Has ceased to perform business activity
  - Commits tax evasion
  - Violates or falsifies or interferes with the operation of ETMs
  - Has declared false or inaccurate information so as to obtain a TIN
  - Has been registered to the tax registry more than once

Enactment of exit taxation rules and rules on hybrid mismatches

Exit taxation

- The new provisions provide that once a taxpayer (Greek tax resident legal person/entity as well as a Greek permanent establishment) transfers assets, the business carried on by its permanent establishment or its tax residence out of Greece, Greece taxes the capital gain created in its territory (even if that gain has not yet been realized at the time of the exit).
- At the time of the exit, the taxpayer is subject to Greek corporate income tax (24% for tax years as of 1 January 2019 onwards). For the purposes of this rule, exit taxation is imposed on the following cases:
  - *Transfer of assets* from a Greek head office to a foreign permanent establishment or from a Greek permanent establishment to a foreign head office or a foreign permanent establishment, insofar as Greece no longer has the right to tax the transferred assets due to the transfer.
  - *Transfer of the business* carried on by a permanent establishment from Greece to a foreign country, insofar as Greece no longer has the right to tax the transferred assets due to the transfer.
  - *Transfer of tax residence* out of Greece, except for those assets which remain effectively connected with a permanent establishment in Greece.

- The tax imposed on exit is calculated on the difference between the market value of the transferred assets at the time of their exit and their acquisition value for tax purposes.
- In principle, the tax is payable through a one-off payment, which exhausts any further income tax liability of the taxpayer as well as of its partners/shareholders/members.
- However, it is possible to defer the payment of the exit tax by paying it in five equal interest-free installments, if the assets or the business carried on by a permanent establishment or the tax residence are transferred from Greece in another European Union (EU) Member State or in a third country that is party to the European Economic Area Agreement, insofar it has concluded an agreement with Greece or with the EU on the mutual assistance for the recovery of tax claims, equivalent to the mutual assistance provided for in Directive 2010/24/EU. If there is a demonstrable and actual risk of non-recovery of the tax determined at the exit, the Tax Administration may require a guarantee as a condition for paying in installments.
- The possibility to pay tax in installments is lifted and the tax that has not already been paid shall be paid through a one-off payment in the following cases: sale or disposition of the transferred assets/business, subsequent transfer of tax residence/business/assets to a third country, bankruptcy or liquidation of the taxpayer.
- The possibility to pay tax in installments also is lifted if the taxpayer fails to pay an installment within a three-month period as of the expiration of its payment deadline.
- Where the transfer of assets/business/tax residence is to Greece, the acquisition value of the transferred assets is the value established by the other Member State, unless this does not reflect the market value.
- Transfers of assets related to the financing of securities, collaterals, prudential capital requirements or liquidity management are not subject to taxation at the time of exit, provided that these assets will revert to Greece within a period of 12 months.
- The new provisions on exit taxation shall apply for transfers of assets, business and tax residence taking place as of 1 January 2020 onwards. For transfers that have taken place as of 1 January 2020 and until the publication of L. 4714/2020 (31 July 2020), tax returns are filed without the imposition of penalties up to 30 October 2020.
- Decisions of the Governor of the Independent Authority for Public Revenues shall regulate specific issues for the implementation of this provision.

Hybrid mismatches

- Hybrid mismatches arise from differentiations in the legal characterization of payments or entities among two different jurisdictions.
- The provisions on hybrid mismatches are categorized as follows:
  - *Mismatches that result in double deductions*, namely a deduction of the same payment, expense or loss in the payer jurisdiction (in which the expense incurred, or the loss is suffered) and in the investor jurisdiction.
  - *Mismatches that result in a deduction without inclusion*, namely a deduction of a payment in the payer jurisdiction (in which that payment is treated as made) without a corresponding inclusion for tax purposes of that payment in the payee jurisdiction.
  - *Imported mismatches*, namely mismatches through transactions between associated entities or entered into as part of a structured arrangement and which are related to payments that (directly or indirectly) fund deductible expenses that result into hybrid mismatches.
  - *Mismatches involving permanent establishments* due to the fact that a permanent establishment is disregarded based on the legislation of the state in which such permanent establishment is located.
  - *Hybrid transfers* designed to produce a relief/avoidance of tax withheld at source.
  - *Tax residence mismatches*.
- In order for a mismatch to arise, the outcome of the mismatch shall arise between associated persons (e.g., associated entities, taxpayer and associated entity, head office and permanent establishment, etc.) or under a structured arrangement.
- Mismatches are dealt with by primary and secondary correction rules, as the case may be.
  - *Correction rule for double deduction*: The relevant payment shall not be recognized for tax deductibility purposes on the taxable revenue of the investor (primary rule), while if this is so recognized, then it shall not be recognized in the payer jurisdiction (secondary rule).

- *Correction rule for deduction without inclusion*: The relevant payment shall not be recognized for tax deductibility purposes on the taxable revenue of the payer (primary rule), while if this is so recognized, then it shall be added in the taxable revenue of the payee (secondary rule).
- *Correction rule for imported mismatches*: Any payment by a taxpayer that (directly or indirectly) funds deductible expenditure that gives rise to an imported mismatch is considered as non-deductible (except to the extent that one of the jurisdictions involved in the transaction has made an equivalent adjustment).
- *Correction rule for mismatches involving permanent establishments*: The taxable income of the head office includes the income of the disregarded permanent establishment, which is exempted from income tax and which (under different circumstances) would be attributed to the permanent establishment (unless the exemption is granted under a double tax treaty entered into with a third country).
- *Correction rule for hybrid transfers*: The tax benefit on withholding tax at source relevant to a certain payment shall be limited in proportion to the taxpayer's net taxable income regarding such payment.
- *Correction rule for tax residence mismatches*: The deduction for payment, expenses or losses that is recognized for tax purposes in two jurisdictions where the taxpayer is resident for tax purposes is not considered as tax deductible if the other jurisdiction allows the duplicate deduction to be set off against income that is not dual-inclusion income.

- The new provisions shall be applied retroactively as of 1 January 2020 onwards.

Endnote

1. The tertiary industry is the segment of the economy that provides services to its consumers.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Business Advisory Solutions S.A., Athens

- Stephanos Mitsios stefanos.mitsios@gr.ey.com
- Konstantina Galli konstantina.galli@gr.ey.com
- Constantina Nicolaou constantina.nicolaou@gr.ey.com

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