

Tax Updates

June 2022



Consistent with our commitment to provide updated information on current tax issues, we set down below the main provisions of the new Law 4935/2022 which introduces incentives for the development of enterprises through collaborations and corporate restructurings

The provisions of the recently issued Law 4935/2022 (FEK A' 103/26.05.2022) under the title "**Incentives for the development of enterprises through collaborations and corporate restructurings**" provide various tax incentives applicable to business restructurings and collaborations of persons, and they also introduce improvements to tax incentives granted by previously issued Incentive Laws.

We set down below a brief description of the new incentives provided and the improvements in the existing incentive legislation introduced by the new law.

Incentives for the Development of Enterprises

General Comments

- The tax incentives of the new law are applicable to all types of business restructurings covered by L.4601/2019 (mergers, demergers/spin offs, conversions) including the contribution of a personal business to another company of any legal form, and to all types of restructurings governed by L.D. 1297/1972, Law 2166/1993 and Law 4172/2013 and any other incentive laws.
- The incentives of the new law are also applicable in case of collaboration of persons, either by virtue of conclusion of contracts / agreements (for contract farming or franchising agreements) or by virtue of establishing new legal entities.
- The tax incentives of the new law mentioned under A-D below, cannot apply jointly with the other incentive laws and specifically with Law 1297/1972, Law 2166/1993, and Law 4172/2014.

A. Income tax exemption

- Exemption by 30% from the payment of income tax on the taxable profits of the company that results from any type of restructuring or the taxable profits of the company that receives a personal business or, in case of collaborations, the taxable profits of the collaborating persons (we note that for collaborations under a franchise agreement, tax exemption is

exclusively provided to the franchisee).

Income tax exemption conditions

- Especially in cases of business restructurings, the following conditions must apply cumulatively:
 - The total average turnover in the previous three years of all the restructured companies added together should be at least equal to 150% of the turnover of that company among the restructured companies which has the highest average turnover of the last three years,
 - the restructured companies should belong to the very small, small or medium enterprises (SmEs), pursuant to the definition of the European legislation and the General Block Exemption Regulation (GBER),
 - the turnover of the company resulting from the restructuring (i.e. the total turnover of all the restructured companies as per their latest approved and published financial statements or, as the case may be, of their latest income tax returns), after deducting any transactions carried out between them, should be at least EUR 375 000, and
 - the company resulting from the restructuring should employ at least nine (9) full time employees.
- Various different conditions are required for application of the income tax exemption incentive in case of collaborations of persons resulting to the establishment of a new legal entity and in cases of contribution of private business to some other company; whilst there seems to be no similar conditions required in cases of collaboration of persons by virtue of franchising agreements.

General provisions for income tax exemption

- The income tax exemption shall apply for maximum nine (9) tax years from the year following the date of completion of the restructuring or the date of

contribution of the personal business or the date of commencement of the collaboration.

- The maximum tax benefit should not exceed the amount of EUR 500 000 for a period up to 9 years in the case of business restructuring or contribution of personal business and the amount of EUR 125 000 for each of the collaborating persons in case of collaboration of persons.
- The above income tax exemption does not apply to construction consortia nor to restructurings or collaborations with the participation of construction consortia.

B. Tax exemption of capital gains arising from the transfer of fixed assets to third parties

- In case of business restructurings covered by the provisions of this law, tax exemption is provided (under specific conditions) for capital gains derived from the transfer to third parties of those fixed assets of the new company (i.e. the company that resulted from the covered restructuring) that were acquired by such new company from the restructured companies in the course of the previous restructuring.

C. Exemption from stamp duty and income tax on capital gains arising from business restructurings

- Any transaction or contract related to the restructuring shall be exempted from any tax burden, including stamp duty and income tax on capital gains arising from the restructuring (whilst the only charge shall be the payment of EUR 300 as fees to real estate registries and cadastral offices).

D. Transfer of administrative licences of contributed personal businesses

- In case of contribution of a personal business to any type of company, all administrative licences issued at the level of the personal business and all rights and claims acquired by the personal business from national and international institutions, are transferred and continue to be in force in the name of the new company.

Improvements and amendments of provisions of existing incentive laws

Transfer of losses under Law 2166/1993

- Following amendment of the relevant provision of Law 2166/1993, it is now possible for losses of the restructured companies to be transferred to the balance sheet of the new company in the course of restructurings under Law 2166/1993 and to be set-off against profits of the new company arising in the current or subsequent financial years, to the extent that they are tax deductible, pursuant to the general

provisions of income tax legislation, on condition that the turnover of the company resulting from the restructuring, i.e. the total turnover of all the restructured companies, after deducting any transactions carried out between them, is at least EUR 450 000.

Exemption from Capital Concentration Tax for restructurings under L.D. 1297/1972, Law 2166/1993 and Law 4172/2013

- Following amendment of the relevant provisions of respective laws, an exemption from capital concentration tax is introduced for restructurings carried out under L.D. 1297/1972, Law 2166/1993 and Law 4172/2013, provided that the turnover of the company resulting from the restructuring, i.e. the total turnover of all the restructured companies, after deducting any transactions carried out between them, is at least EUR 450 000.

Abolition of the restriction on the transfer of shares/company units as per the provisions of L.D.1297/1972

- The provisions of L.D. 1297/1972, which limit for a period of five (5) years the transfer of 75% of the shares/company units of the company (Societe Anonyme or Limited Liability Company) resulting from certain forms of conversion or merger carried out in accordance with L.D. 1297/1972, are abolished.

Deduction of costs incurred for the acquisition of participations in companies

- The new law introduces the conditions that must be met for the tax deduction of costs incurred by a company for the acquisition of participations in another company. In particular, the total turnover of the company whose shares are transferred in addition to the turnover of the company acquiring them, must be at least EUR 450 000 and the total amount of deductible costs must not exceed 30% of the average turnover of the acquiring company during the three years preceding the acquisition of the participation.

- The above conditions are not required if the acquiring company has not completed one year of operation or has no other activity other than the shareholding.

Other provisions and observations

- The new law also includes tax exemption incentives in the case of collaboration of farmers (individuals).
- The new law enters into force as of its publication in the Government Gazette and covers restructurings, the procedure of which commences as of that date.

— Relevant clarifying circulars are expected to be issued so that the new law can be implemented quickly, efficiently and extensively.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case