March 2015

Consistent with our commitment to provide [updated information] on current tax issues, we summarize below the most significant tax amendments introduced by Law 4321/2015 "Regulations to restart the economy"

The most important amendment of the new law is to the provisions of (ιγ) of article 23 of L. 4172/2013 in relation to the non-deduction of expenses paid to:

a) tax residents in non-cooperative countries;

b) tax residents in countries with a preferential tax regime.

In addition to introducing amendments, the provisions extend non-deductibility to payments made to:

c) "de facto affiliated entities" unless Transfer Pricing Documentation requirements have been met prior to carrying out the transaction or prior to the issuance of the invoice;

d) suppliers who do not meet substance requirements to support the respective transaction (nor whose affiliated entities meet such requirements).

In particular, the following amendments are introduced:

- The restriction to the deductibility of expenses is extended to transactions carried out with "de facto affiliated entities". This is a new concept introduced in the tax law without, however, specifying which entities it concerns as there is no reference to "affiliated entities" as these are defined by the provisions for auditing intra-group transactions.

- The restriction to the deductibility of expenses is extended to transactions carried out with any legal entity which might be considered by the tax authorities that neither itself nor any one of its affiliated entities have the required organization and substance in order to perform the relevant business transactions.

- As regards the new conditions for cases c) and d), it is explicitly stipulated that the taxpayer has the burden to prove that the relevant conditions do not apply for its counterparties. Such provisions would obstruct international transactions entered into by Greek legal entities on the grounds that the Tax Administration invites them to obtain information on the structure and organization of their counterparties, whereas it is not certain that independent legal entities would be willing to share such information with their customers. However, in case a Greek legal entity's independent foreign supplier refuses to share any information requested as necessary by the Greek State in relation to its internal structure and organization (the nature of which we understand will be identified by the issuance of a Ministerial decision), the Greek legal entity will be "punished" and will not be able to deduct such expenses. However, we note that according to the formulation of the amendment it appears that c) and d) might apply also to transactions performed between Greek legal entities.

- We note that the said expenses under case d) can be deducted only if the relevant transactions have been documented in advance in the Transfer Pricing Documentation File, whereas article 21 of L. 4174/2013 clearly states that the Transfer Pricing Documentation File shall be prepared within four months from the end of the tax year.

March 2015

- A "withholding tax" at the rate of 26% is due by the Greek paying entity in order for the latter to be able to deduct the expense. Therefore, the Greek entity shall pay in advance to the Greek State a tax of 26% on the gross expense amount, whereas it will be able to claim such tax back within three months if it proves that the expense relates to real and ordinary transactions at current market levels through a procedure which is not clearly set by the Law but will be clarified by the issuance of a Ministerial Decision. The result is that Greek legal entities will finance the Greek State at no interest cost to the State, using capital to which they already have difficult access, channeling liquidity away from further development in Greece. At the same time, their costs and profitability will be burdened with interest expenses which are also significantly higher than those imposed on similar European entities due to the country's extremely high financial risk.

- No exception to the withholding tax of 26% is provided even for transactions that are obviously considered as real and ordinary transactions such as transport costs paid to shipping entities (generally tax residents in non-cooperative countries) and which constitute a significant expense for export and industrial entities. Thus such expenses will not be deductible for income tax purposes at the Greek legal entity's level unless the tax is withheld.

Our comments

- Due to the said provision, Greek legal entities will be required to pay 26% tax on the gross amount of their expenses and not on their net earnings as stipulated by the tax law.

- In essence, this constitutes an increase of 26% on Greek legal entities' running costs which will lead to devastating consequences for the competitiveness of the Greek economy.

- The grey areas as regards the documentation required to be submitted by the Greek legal entity as well as the refund procedure and timing, create opportunities for corruption which this Administration was committed to combatting.

- The new amended provisions no longer provide that payments made to suppliers located in EU member states or within the EEA are deductible on condition that there are legal provisions for exchange of information. This oversight could give rise to discrimination issues for payments made in particular to EU member states with low tax rates (Cyprus, Bulgaria, Ireland).

- Clarification is required concerning which expenses will be considered real and ordinary and thus exempted from 26% withholding tax. Similarly, clarification is required as to whether certain items such as the purchase of stock or other materials constitute expenses to which the provisions (and the withholding tax) will apply.

Other changes introduced by the new Law

- Fines for late payment of tax stipulated by article 57 of L. 4174/2013 are abolished.

- Deemed income on the basis of living expenses will not be determined in cases where taxpayers/individuals receive income only from interest and real estate.

- VAT adjustment of capital goods effected in tax years as from 1 January 2014, shall be included in the VAT returns submitted by the last working day of the seventh month of the calendar year following the end of the tax year.

- As from 1 January 2015, the duration of a tax period for VAT purposes is defined to be a calendar month or a calendar quarter (the semester and the year are abolished) depending on the type of the accounting system. However, tax payers which fall under the special VAT regime according to which VAT is remitted on deemed basis shall submit a special VAT return every semester.

Contact us

Georgia Stamatelou
Partner, Head of Tax
T: + 30 210 60 62 227
E: gstamatelou@kpmg.gr

More information at
www.kpmg.com/gr/en