

Tax Flash

September 2022

We set below some recent significant tax legislative amendments as well as developments in administrative jurisprudence.

Legislative amendments

On 23rd of September, Law 4972/2022 was published in the Government Gazette introducing the following amendments into the tax legislation:

Stamp duty on interest bearing financing arrangements

Following the jurisprudence of the Supreme Administrative Court (2323/2020 and 2163/2020) based on which interest-bearing loans granted from taxable persons are falling within the scope of VAT and therefore are not subject to stamp duty, article 63 of VAT Code has been restated to clarify that loans, other financing arrangements and corresponding interest will continue be subject to stamp duty. Furthermore, it is explicitly stipulated that any exemptions from stamp duty based on other tax provisions (e.g. bond loans) remain in force.

The new provision applies retroactively as of 1/1/21, while it is explicitly stipulated that the relevant stamp duty returns can be filled until 31/12/22.

Going forward, any stamp duty on loans or other financing arrangements should be assessed independently, under the general rules of the Stamp Duty Code and existing exemptions, whereas stamp duty on financing arrangements may again become number one topic in the agenda of tax audits.

Fiscal years before 2021 should not be impacted by this amendment and it may be worth examining on a case-by-case basis whether there is room for any stamp duty refunds for previous fiscal years.

On the other hand, the mechanics of the retroactive application of the new provision require a detailed examination of each individual case as it may also affect outstanding or ongoing financing arrangements that have been put in place before 1/1/21.

Introduction of corresponding adjustments – Transfer Pricing

If, following a tax audit, additional profits relating to intercompany domestic transactions are taxed at the level of a taxpayer in Greece, the related party that is also subject to tax is entitled to perform a corresponding adjustment to its taxable profits accordingly. This is performed through the submission of an amending income tax return (accompanied by the tax audit report) which should be submitted within 3 months from the delivery of the tax audit report.

The above does not apply only to tax assessment notes issued after the entry into force of the new provision, but to previously issued assessment notes to the extent that those are considered as “pending cases” (ongoing litigation, pending administrative or court procedure, etc.).

Condition for the refund or the offsetting of taxes, at the level of the taxpayer, is the payment from the related party of any taxes imposed due to the correction of profits of their intercompany transactions. If the tax assessment note is challenged by the taxpayer and an administrative or a legal decision is issued, the tax administration proceeds with the corresponding adjustment of profits to the related party.

These types of Transfer Pricing adjustments, known as corresponding adjustments, are met in various Double Tax Treaties and have as primary objective the consistent allocation of profits by the two jurisdictions and the relief from double taxation. Through this provision now related parties could also obtain relief from double taxation resulting from transfer pricing adjustments in domestic transactions.

Penalties for non-transmission of retail receipts

Article 54H has been inserted to the provisions of the Tax Procedures Code (L.4174/2013), according to which penalties for non-transmission of retail receipts have been introduced. Specifically, in cases of non-transmission of the receipt summary to the myData platform through the Information System of the Tax Machines of Independent Authority of Public Revenue Department, the following penalties are imposed:

- For transactions subject to VAT, a penalty equal to the 50% of the VAT which cannot be less than 250€ or 500€ per tax audit, for liable persons to single entry books and double entry books, accordingly.
- For transactions not subject to VAT, a penalty equal to 500€ or 1,000€ per tax audit, for liable persons to single entry books and double entry books accordingly.

- In case the same infringement is identified to a subsequent tax audit within the following 5 years, the above penalties are doubled.

Furthermore, the case of non-transmission of retail receipts which are issued through tax machines to the Information System of the Tax Machines of Independent Authority of Public Revenue Department, is added to the cases where the operations of a business unit can be suspended from the tax authorities. Specifically, apart from non-issuance, or inaccurate issuance of more than 10 sales receipts or in case the sale receipts exceed the amount of 500€, the case of non-transmission of sale receipts which are issued through tax machines (with same thresholds) will result to the suspension of the operations of the business unit for 48 hours. If similar infringements are identified within the same of the following year for at least 3 receipts, the suspension will be imposed again for 96 hours. In case similar infringements are identified within 2 tax years, the suspension will be imposed for 10 days.

The above apply for infringements taking place from 31/10/22.

Abolishment of special solidarity tax for individuals

The exemptions provided to the application of special solidarity contribution to individuals in 2021 (for all types of income apart from employment income in public sector and pensions) are extended to tax year 2022, whereas as of 1/1/23 the contribution is permanently abolished for all types of income.

Administrative jurisprudence

Imposition of capital duty on share premium amounts in case of sole-shareholder companies

Based on a recent decision, the Dispute Resolution Department has accepted the position of the tax audit that capital duty is due on share premium amounts, in case of a sole-shareholder company. In particular, the tax audit considered that the increase of the company's share capital at nominal and premium accounts constitutes an artificial arrangement having as sole purpose the avoidance of payment of the capital duty, on the basis of the General Anti Abuse Rule (as provided from article 38 of the Tax Procedures Code L.4174/2013). To be noted that the tax authorities adopted the view that the Circular 1238/2018, which accepted the Supreme Administrative Court's Decision 1774/2018, based on which capital duty is not due on premium amounts, applies only in cases where there are more than one shareholders or a new shareholder is entering into the share capital due to the increase. The case is expected to be litigated before the tax courts; however, this is an important precedent to be taken into account.



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