

Tax

Flash

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Tax incentives for corporate restructurings and cooperation of small and medium-sized enterprises

Law 4935/2022 establishes tax incentives for the development of small and medium-sized enterprises and other provisions relating to corporate restructurings.

Scope of the new Law

Tax incentives are adopted to facilitate corporate restructurings and cooperation of Greek companies, with an emphasis on micro, small and medium-sized enterprises. Moreover, the ultimate aim is to create a framework that promotes cooperation between enterprises, which will consequently become more extroverted, improve their productivity and broaden their financing prospects.

A. Corporate restructurings of small and medium-sized enterprises – Business Cooperation

Areas of application of the new Provisions

The new provisions apply to any form of corporate restructuring.

However, the tax incentives provided by the new Law cannot be applied in parallel with the tax incentives provided by Decree Law 1297/1972, Law 2166/1993 and Law 4172/2013.

30% exemption from income tax on business transformations

Exemption of 30% from payment of income tax (in particular 50% for farmers) in the case of corporate restructuring, conversion or merger of sole proprietorships.

In particular, the 30% exemption from payment of income tax on profits is provided:

- to the new company resulting from the transformation
- to the new company in the case of a contribution of a sole proprietorship to any form of company (existing or new).

<p>Maximum amount of tax benefit</p>	<p>For the entities resulting from the corporate transformation (or mergers of sole proprietorship), the tax benefit can reach up to 500,000 euros.</p>
<p>Conditions for receiving the tax benefit</p>	<p>For business transformations to receive the 30% tax exemption, the following conditions must be met:</p> <ul style="list-style-type: none"> □ transformed entities (which are micro, small or medium-sized enterprises) must have a total average turnover in the previous three years of at least 150% of the turnover of the largest of them, within the same period and □ the turnover of the new company, i.e. the sum of the turnover of the transformed companies, should be equal to or greater than 375,000 euros and □ the new company must have more than 9 full-time employees. <p style="color: #e67e22;">It is not clear how to apply the above conditions in the case of a company conversion, as the turnover comparison criterion cannot be applied.</p>
<p>30% exemption from income tax in cases of business cooperation</p>	<p>Exemption from payment of 30% income tax is also provided for the case of business cooperation.</p> <p>"Cooperation" is defined as follows:</p> <ul style="list-style-type: none"> □ It is created by any form of contract between unrelated persons, a) for the purpose of establishing any form of legal entity, including consortia, cooperatives, organisations, etc. b) for the purpose of contract farming and (c) for the purpose of franchising □ aims to jointly promote the business activities of the cooperating entities or persons; and □ lasts for at least five (5) years from the date of conclusion of the agreement or the establishment of the legal person or entity; and □ the total average turnover of the entities participating in it, taking into account the previous three (3) years, is at least equal to one hundred and fifty (150%) percent of the turnover of the entity with the highest average turnover of the last three (3) years
<p>Maximum amount of tax benefit</p>	<p>The tax benefit cannot exceed 125,000 euros for each of the cooperating legal entities.</p>
<p>Conditions for receiving the tax benefit</p>	<p>In case of business cooperation, between persons pursuant to the establishment of a new legal entity, the exemption shall be granted if:</p> <ul style="list-style-type: none"> □ each of the cooperating individuals contributes at least 10% of the share capital of the new legal entity and □ The share capital of the new legal entity is not less than the amount of 125,000 euros. <p>If the cooperation is established under a franchising agreement, the incentive for the exemption is granted exclusively to the franchisee.</p>

It should be noted that the tax exemption does not apply to construction consortium/JVs, as well as to transformations and collaborations in which construction consortium participate, in any way.

Duration of the exemption from income tax

The income tax exemption is granted for a period of up to nine (9) tax years starting at the year following the date of completion of the restructuring of companies or the date of the contribution of a sole proprietorship to any form of company (existing or new) or the date of beginning of any form of cooperation.

Regarding the cases of cooperation, it is not clear whether the duration of the exemption is nine years, as follows from paragraph 1 of the Article, or three years, as follows from paragraph 3 of the same Article.

Exemption from income tax of the capital gain on the transfer of fixed assets

Exemption from income tax is granted on the income arising from the capital gain on the transfer of intangible assets of the new company to a third party within the five years following the completion of the transformation, if the turnover of the new company, i.e. the sum of the turnover of the last approved and published financial statements or, where applicable, the last income tax returns, of the transformed companies, net of transactions between them, is equal to or greater than € 375,000.

The exemption is granted for a total valuation of the property, at the time of the transformation, equal to 20% of the average turnover of the transformed companies over the last three years and, apparently, irrespective of the selling price of the assets and therefore of the capital gains actually obtained.

It is not clear whether this provision applies only to transformations of small and medium-sized enterprises implemented under this law.

Other exemptions - Maintenance of Administrative Authorisations

Provision is made for exemption from income tax, stamp duty or any other fee or levy for the corporate restructurings and it is explicitly stated that administrative authorizations remain in force in the case of a contribution of a sole proprietorship to any form of company in favour of the new company.

B. Other provisions

Deduction of participation acquisition costs

The deduction of all expenses incurred for the purpose of acquiring shares in another company is recognized for tax purposes, subject to the following conditions:

- the total turnover of the transferee and the acquiree entity, shall be, in accordance with the latest approved and published financial statements or, where applicable, the latest tax return equal or greater than 450,000 euros; and
- the total amount of expenses deductible shall not exceed thirty (30%) percent of the average turnover of the acquiree entity, during the last three (3) years prior to the acquisition of the shares.

The said conditions for the recognition of expenses are not required to be met, when the acquiring entity, has not completed a full year of operation since its establishment or has no other activity other than its participation.

This provision seems to contradict to the provisions of Articles 48 para. 4 and 48A para. 3 of the ITC, according to which expenses relating to subsidiaries within EU are not deductible and it should be clarified whether it leads to an indirect abolishment of the limitations of the ITC.

Exemption from capital duty on corporate restructurings of D.L. 1297/1972, L. 2166/1993 and L. 4172/2013

An exemption from capital duty is introduced in the case of corporate restructurings carried out in accordance with the provisions of the said legislation, provided that the turnover of the new company, i.e. the sum of the turnover of the last approved and published financial statements or, where applicable, the last income tax returns of the transformed companies, after deduction of transactions between them, is equal to or greater than 450,000 euros.

The addition of the turnover condition raises concerns, as it is questionable whether this restriction is compatible with Directive 2008/7/EC on indirect taxes on concentrations of capital.

Tax losses carried forward on transformations of Law 2166/1993

The provisions of par. 3 of Article 2 of Law 2166/1993 on the transfer of losses from the transformed companies to the balance sheet of the new company are amended. The loss carried forward to the balance sheet of the new company shall be offset against the part of the loss recognized for tax purposes, if the turnover of the new company is equal to or greater than 450,000 euros.

The requirement to report the losses in the balance sheet raises concerns as the accounting results may differ from the tax results.

Abolition of time limit on the transfer of shares of D.L. 1297/1972

The provisions of Decree Law 1297/1972, which imposed time restrictions on the transfer of shares and shares of companies resulting from corporate restructurings, are abolished for restructurings completed after the entry into force of Law 4935/2022.

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