

TAX BRIEFING: Alert

Transactions with Preferential Tax Regimes and Non-Cooperative Countries – Withholding at the Rate of 26%

A draft Ministerial Decision regarding transactions as stipulated in Art. 21 of Law 4321/2015 has been issued for public consultation by the Ministry of Finance. This invites Greek tax residents to submit their recommendations pertaining to the application of the provisions of the Ministerial Decision electronically by 7th May 2015.

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Draft Ministerial Decision regarding the 26% withholding on transactions with Preferential Tax Regime Countries (e.g. Bulgaria and Cyprus) or Non-Cooperative Countries has been issued for public consultation

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Art. 21 of Law 4321/2015 provides for the pre-payment of a 26% tax as a condition for the deductibility of corporate expenses where these pertain to transactions with:

- i) companies which are tax residents of a Non-Cooperative Country;
- ii) companies which are tax residents of a country with a preferential tax regime;
- iii) affiliate legal entities that have not complied with the requirements for transfer pricing documentation prior to the transaction or the issuance of the respective tax document;
- iv) companies which do not have the required infrastructure and organization at their place of business (i.e. paper or box companies), or at an affiliate's place of business, for the conduct of transactions similar to those for which the tax document in question has been issued.

Provided that the tax payer proves the transaction is a usual transaction at current market prices within three months of its execution, any withholding tax paid shall be refunded to the tax payer.

As a condition for the tax payer's exemption from payment of withholding tax at 26%, the draft Ministerial

Decision provides for the pre-approval of transactions falling within one of the categories above through their electronic notification to the tax authorities within ten days of their execution.

The draft Ministerial Decision applies to invoices issued as of **1st September, 2015** onwards, while it is pointed out that transactions between Greek companies as well as between affiliates that comply with the arm's length principle and transfer pricing documentation requirements, are exempt from the scope of its provisions. If the tax payer does not submit the notification stated above, or if the latter is submitted but is deemed to be inaccurate, withholding tax must be paid by the end of the month which follows the completion of the transaction in question.

Pre-approval of transactions is granted **automatically** in cases where:

- i) delivery documents are available (e.g. dispatch notes and customs documents) and issued by the country of the invoice proving delivery and receipt of the goods, or in the case of services, the supply is effected from the country of the invoice and a protocol for the completion and delivery receipt of the work exists;
- ii) the transaction concerns the import of electricity, water and gas to Greece;
- iii) the transaction is with a company listed on a foreign stock exchange at the time of the transaction;
- iv) the transaction value, when aggregated with similar transactions with Preferential Tax Regime or Non-Cooperative Countries, does not exceed €10.000 per tax year;
- v) the transaction is a repeat of a similar transaction with the same supplier and scope, the price of which has not increased over 5% and where a pre-approval for the original transaction has been granted as per the procedure described above during the past 12 months;

- vi) the transaction concerns goods, the price of which are defined within an organized stock market, provided that the transaction was executed on the closing price at the specific date and this can be proved by documents;
- vii) the transaction concerns a lease agreement of airplanes which are registered in Non-Cooperating Countries or countries with a Preferential Tax Regime and are leased by Greek airlines or branches of foreign companies established in Greece;
- viii) the transaction concerns a ship chartering agreement with regard to the freight.

Pre-approval of transactions is granted for every other transaction falling within Art. 21 of Law 4321/2015 as well, provided that the tax payer declares that he/she possesses the documents stipulated in the draft Ministerial Decision. Transactions are exempted from payment of withholding tax and respective expenses can be deducted if, based on the submitted declaration, it is proved that the conditions for the pre-approval are met. The granting of the pre-approval does not exclude the Tax Authorities from conducting a tax audit, and if as a result of the audit it is established that the conditions for the pre-approval are not met, withholding tax is payable retroactively and any respective expenses are not tax deductible. An order for an ordinary audit to be undergone by the taxpayer is then issued.

If during the audit of the declaration submitted by the tax payer it is proved that the conditions for the pre-approval have not been met, the tax authority issues an order to audit the transaction in question. If, as a result of the audit conducted, it is established that the transaction falls within the ordinary business of the taxpayer and actually took place, any withholding tax paid is refunded to the tax payer within one month from the completion of the audit.

This Briefing is intended to provide general information and is not meant to constitute a comprehensive analysis of the matters set out herein or to be relied upon as legal advice. It is not meant to create a lawyer-client relationship. Legal and other professional advice should be sought before applying any of the information in this Briefing to a specific situation.

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