

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation and ECJ Decision on Exchange of Information

Circulars clarify the position on Tax Treatment of Bad Debts, the Solidarity Contribution, Shipping Dividends and Limitation Periods. The ECJ issues a decision on the Exchange of Information between Member States and the Union Customs Code is amended.

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A. Bankruptcy - Tax Treatment of Bad Debts

1. By way of Ministerial Circular POL. 1080/2017, the Ministry of Finance provided guidelines with regard to the tax treatment of bad debts created by debtors declared bankrupt by the court or subject to the pre-bankruptcy recovery procedure. In particular, a tax deductible provision for bad debt may be posted in the accounting books of a creditor in cases where an application has been filed before the court for bankruptcy of the debtor or for the opening of the recovery procedure. Such provision may be formed on condition that the creditor has not provided for the same claim in the past.

2. Exceptionally in the case of the recovery procedure the amount of the provision may not exceed the discounted amount of the claim as included in the application for the recovery procedure. This bad debt provision is subject to restrictions provided by the Income Tax Code.
3. In the case of any future collection of the claim by the creditor, the deducted provision will be recovered and it will be added back to the creditor's profits.

B. The Legal Nature of the Solidarity Contribution

The Legal Council of the State opined (Opinion No 130/2017) that the solidarity contribution provided by Article 43A of the Income Tax Code (ITC) does not constitute income tax. In particular, the Opinion provides that the solidarity contribution is imposed on all income of the taxpayer while income tax is imposed only on taxable income. The provisions of the ITC which exclude certain types of income from income tax do not apply to the solidarity contribution, which is aimed at achieving a high primary surplus to reduce the public deficit resulting in restoration of fiscal sustainability. Income tax on the other hand is imposed in order to serve the operational needs of the State.

C. Shipping Companies - Dividends to Shareholders of Non-Greek Ship-owning Companies

The Ministry of Finance accepted (by way of Circular POL. 1087/2017) the Opinion of the Legal Council of the State on

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dividends distributions to shareholders of non-Greek ship-owning companies. In particular, dividends paid to shareholders of a ship-owning company managed by a third party designated by a Greek legal entity of Law 27/1975 (Managing Company), are tax exempted on condition that the criteria of the law are met.

D. Limitation Period - Claims from Profits Distribution of Limited Liability Companies and Partnerships

Circular POL. 1079/2017 stipulates that the five (5) year limitation period provided by Legislative Decree 1195/1942 for claims on securities' dividends does not apply to claims on profit distributions by partnerships or limited liability companies (ΕΠΕ).

E. ECJ C-682/15 - Exchange of Information Between Member States

On 16 May 2017, the European Court of Justice released its decision (Case C-682/15, *Berlioz Investment Fund v. Director of the Direct Taxation Administration, Luxembourg*) on administrative cooperation in the field of taxation. In particular the Court ruled that:

1. Article 51(1) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:
 - a. a Member State implements EU law within the meaning of that provision; and
 - b. the Charter of Fundamental Rights of the European Union is therefore applicable, when the Member State makes provision in its legislation for a pecuniary penalty to be imposed on a person who may be the subject of administrative measures (Relevant Person) and who refuses to comply with an administrative decision directing that person to provide information (Information Order) in the context of an exchange between tax authorities based, in particular, on the provisions of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.
2. Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a Relevant Person on whom a pecuniary penalty has been imposed for failure to comply with an Information Order in the context of an exchange between National tax administrations pursuant to Directive 2011/16, is entitled to challenge the legality of that decision.
3. Article 1(1) and Article 5 of Directive 2011/16 must be interpreted as meaning that:
 - a. where one authority has received an Information Order submitted by another authority pursuant to Directive 2011/16, the authority which is the recipient of the request

must conduct verification procedures which are not limited to the procedural regularity of the request, but also take into account whether the information sought has a foreseeable relevance to:

- i. the identity of the taxpayer concerned;
- ii. that of any third party asked to provide the information; and
- iii. the requirements of the tax investigation concerned, (Foreseeable Relevance).

b. the Foreseeable Relevance of the information requested by one Member State from another Member State is a condition which the Information Order must satisfy, in order for the Member State to which an Order been submitted to be obliged to comply with the Order. Therefore it is a condition of the legality of the Information Order addressed by that Member State to a Relevant Person and of the penalty imposed on that person for failure to comply with that information order.

4. The provisions of Directive 2011/16 and Article 47 of the Charter must be interpreted as meaning that:
 - a. in the context of an action brought by a Relevant Person against a penalty imposed on them for non-compliance with an Information Order issued by an authority;
 - b. which Information Order has been made in response to a request for information sent by another authority pursuant to Directive 2011/16, the National Court not only has jurisdiction to vary the penalty imposed but also to review the legality of the Information Order in question.
5. As regards the condition of legality of an Information Order, which relates to the foreseeable relevance of the requested information, the Courts' review is limited to verification that the requested information manifestly has no such relevance.
6. The second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that, in the context of a judicial review by a Court of the Member State to which a request has been submitted, the Court must have access to the Information Order in question.
7. The Relevant Person does not however have a right of access to all the Information Order, which is to remain a secret document in accordance with Article 16 of Directive 2011/16.
8. In order for the Relevant Person to be given a full hearing of his case in relation to the lack of any Foreseeable Relevance of the requested information, it is in principle sufficient that he is in possession of the information referred to in Article 20(2) of that Directive.

F. Union Customs Code - Correction and Amendment

The Union Customs Code (UCC) has been corrected and amended by Regulation 2017/89 adopted by the European Commission on 8 June 2017. The amended UCC provides for a

simplified procedure with regard to the issuance of a long-term supplier's declaration, wider time frame for exporters to get a REX number for CETA and new financial terms that better secure the International Transport of Goods.

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