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TAX BRIEFING: Monthly Insight

## Law 4337/2015

# Changes in the Tax Legislation

*The Hellenic Parliament ratified Law 4337/2015 on 17th October 2015, which provides for an extension of the limitation period for files under audit, abolishment of the provision permitting taxpayers to assign uncollected income from real estate leases to the State, a significant reduction in fines for tax infringement and stricter penal sanctions for tax evasion.*

### IN THIS ISSUE

- One year extension of limitation period for files under audit
- Abolishment of assignment to the State of accrued lease payments
- Measures available to the State
- Reduced fines for tax infringement
- Tax evasion – stricter penal sanctions

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A brief overview of the major amendments in the tax legislation is set out below.

### A. Extension of Limitation Period for Files under Audit

The deadline of 31st December 2015 for the State's right to issue administrative acts regarding:

1. an administrative, estimated or revised tax assessment; and
2. the imposition of any tax, duty, fine or contribution,

is extended for one year for cases where prosecutor's orders, audit mandates, research or processing investigation orders and requests have been issued by 17th October 2015 or will have been issued by 31st December 2015 by the judicial, tax, audit or anti-money laundering authorities.

### B. Assignment of Uncollected Lease Payments to the State

The ability to assign to the State uncollected income accrued from the leasing of real estate without consideration is abolished for income acquired from 1st January 2015 onwards.

### C. Measures Available to the State

In cases of:

1. non-payment or inaccurate payment, set-off, deduction or retention of VAT, turnover, premium, withholding or imputed tax, duty or

2. contribution with a view to avoiding an amount exceeding €150,000; and
3. refund of the above taxes as a result of misrepresentation of facts before the tax authorities,

the State may freeze 50% of deposits and accounts of any kind, as well as cash in safety deposit boxes. Other assets in safety deposit boxes can be frozen in their entirety. These measures can be applied to partners in a partnership and any person authorized to manage or represent any legal person or entity.

#### **D. Reduced Fines for Tax Infringement**

1. Fines for procedural infringements (for example, in the case of failure to maintain a reliable accounting system and documents, non-submission or delayed submission of tax returns, failure to provide information requested by the tax authorities, omissions to notify the tax authorities of the appointment of a tax representative and failure to register with the tax authorities) can also be imposed in cases involving tax on capital. The cap of €30,000 per tax audit is abolished.
2. Fines imposed in cases of delayed submission, non-submission, submission of inaccurate or incomplete summary information tables for intragroup transactions, or delayed submission or non-submission of a transfer pricing file, are reduced to a maximum amount of €20,000.
3. Following a tax audit, the fines which can be imposed in cases of non-submission or submission of an inaccurate tax return, are decreased to a maximum of 50% (applicable rates are 10%, 25% and 50%) of:
  - a. the difference between the tax assessed on the basis of the inaccurate tax return and the actual tax which should have been assessed; or
  - b. the amount of tax which would have been assessed if a return had been filed.

These fines are not applicable to VAT or withholding tax returns (please see 4. below).

4. Following a tax audit, the fines for VAT infringements are as follows:

|  |                                |
|--|--------------------------------|
| a. non issuance of tax documents, issuance or receipt of inaccurate tax documents: | 50% of the VAT due             |
| b. submission of inaccurate or non submission of VAT return:                       | 50% of the VAT due or refunded |
| c. failure to file a tax statement upon commencement of a business activity:       | 50% of the VAT due             |
| d. issuance of tax documents subject to VAT by persons not subject to VAT:         | 50% of the VAT due             |
| e. non-submission or submission of inaccurate withholding tax return:              | 50% of the tax due             |

Fines can no longer be imposed in cases of estimated tax assessments where returns have not been filed.

5. Fines relating to the submission of tax returns and the summary information table for intragroup transactions or transfer pricing file are applicable to:
  - a. any tax assessment or administrative act for the imposition of a fine, duty or contribution issued from 12th October 2015 onwards and relating to tax liabilities, tax periods or tax years ending after 31st December 2013; and
  - b. cases from 1st January 2014 onwards to which the provisions of Articles 58 (fines for the non-submission or submission of inaccurate tax returns) and 59 (fines for non-payment of withholding tax) of the Code of Tax Procedure (Law 4174/2013) apply,

on condition that the new regime is more favorable for the liable person.

6. The same rule applies to any cases that are currently pending before the tax authorities or the Courts, on condition that an irrevocable statement is submitted by the taxpayer within the deadline provided by law. The following provisions apply to forged and fictitious tax documents:
  - a. Law 4337/2015 abolished the imposition of increased fines in the field of income tax and VAT in cases of forged or fictitious invoices. The newly applied fines cannot exceed 50% of the value of the respective invoices.
  - b. Where there has been an infringement of the legislation governing the maintenance of accounting books and documents up to 31st December 2013, and on condition that no final actions imposing fines have been issued up to 12th October 2015, the following is applicable:

|   |  |
|---|--|
| i. issuance of false documents:   | 50% of the value of each document  |
| ii. issuance or receipt of fictitious documents or falsification of same, as well as registration with the accounting books of entries without the relevant supporting documents: | 40% of the value of each document (or 40% of the partially fictitious value) |
| iii. partially fictitious values that cannot be determined:   | 20% of the value of the document   |
| iv. fictitious documents attributed to its issuer:  | 20% of the value of the document   |
| v. receipt of a fictitious document:  | 10% of the value of the document for each infringement, under certain        |

|   | conditions  |
|---|---|
| vi. non-issuance or inaccurate issuance of documents or other infringements resulting in concealing the transaction in whole or in part and the concealed value exceeds €1,200: | 25% of the value of the transaction or 25% of the part of the concealed value for each infringement |
| vii. for all other infringements:   | 1/3 of the fines imposed under the previous legislation   |

The above provisions are also applicable to any pending cases as well as to infringements committed up to the publication of Law 4337/2015.

- a. In terms of penal sanctions, forged and fictitious tax documents are dealt with as follows:
  - i. the issuance of forged tax documents;
  - ii. the issuance and receipt of false or fictitious tax documents; and
  - iii. the falsification of tax documents, are treated as tax evasion and subject to imprisonment of at least three months, irrespective of whether these actions lead to evasion of tax. In cases where tax documents were used for committing or supporting the general crime of tax evasion, the respective penal sanctions will apply.
  - iv. the issuance or receipt of fictitious tax documents for a non-existent transaction (in whole or in part) are subject to imprisonment of:
    - at least one year, if the total value of the fictitious tax documents exceeds €75,000; and

- up to ten years, if the total value of the fictitious tax documents exceeds €200,000.

If the above actions have been taken in order to evade tax, the more onerous penal sanctions will apply. The amount concealed or not paid, as well as the duration of concealment or non-payment or inaccurate payment or retention is taken into consideration for the calculation of the penal sanctions. The use of special means in committing the crime constitutes an aggravating circumstance.

#### E. Tax Evasion – Stricter Penal Sanctions

1. The definition of tax evasion is rewritten to apply to anyone who intentionally avoids the payment of taxes (including income tax, unified real estate tax, special real estate tax, VAT, turnover, premium, withholding and imputable tax, duty or contribution and shipping tax).
2. Anyone who commits tax evasion is subject to:
  - a. imprisonment of at least two years, if:
    - i. the tax corresponding to the concealed taxable income or the property assets exceeds €100,000 per tax or fiscal year and per type of tax; or
    - ii. the amount of main tax, duty or contribution that was not paid or paid incorrectly, deducted or set-off or deducted or retained exceeds €50,000 for VAT or €100,000 for any other type of tax, duty or contribution per tax or fiscal year.
  - b. imprisonment of over five years if the amount of tax, duty or contribution exceeds €100,000 for VAT per tax or fiscal year or €150,000 for any other tax, duty or contribution.

The amount concealed or not paid, as well as the duration of concealment, non-payment, inaccurate payment or retention is taken into consideration in calculating the penal sanction. The use by the perpetrator of special means in

committing the crime constitutes an aggravating circumstance.

3. Failure to pay tax due for a period exceeding four months is subject to imprisonment of:
  - a. at least one year if the total debt (including any interest or other surcharge incurred up until the drafting of the relevant debt table) exceeds the amount of €100,000; or
  - b. at least three years if the total debt according to the above exceeds the amount of €200,000.
4. Measures as in force before the publication of Law 4337/2015 may be taken in cases of:
  - a. non-payment or inaccurate payment, offset, deduction or retention of VAT and withholding and attributed tax, duty or contribution, as well as non-submission or submission of inaccurate tax returns with a view to avoiding the above taxes, duties or contributions;
  - b. receipt of a refund for the above taxes as well as for income tax resulting from misrepresentations to the tax authorities; and
  - c. issuance of false tax documents, falsification of tax documents or issuance and receipt of fictitious tax documents,

on condition that special audit reports have been issued by 1st December 2015.
5. Transitional provisions apply for the definition of tax evasion as well as for fines for false and fictitious tax documents.
6. The following persons are, among others, considered liable for committing the crime of tax evasion, on condition that they contribute by way of an act or omission to the crime:
  - a. Greek Société Anonymes:
    - i. the President of the Board of Directors, Managing Directors, Authorized or Collaborating Consultants, members of the Board of Directors, General Managers or other Managers, as well as any person

- authorized to run, manage or represent the company; or
  - ii. if the persons under (i) do not exist, the members of the Board of Directors, if they actually exercised any of the above duties temporarily or permanently.
  - b. Foreign businesses and any foreign organizations in general: their managers, representatives or agents in Greece.
  - c. Limited liability and private capital companies:
    - i. managers, as well as any person authorized to run or manage the company; or
    - ii. if the persons under (i) do not exist, the Partners.
  - d. The Law also lists the individuals held liable in the case of tax evasion by all other types of legal entity.
7. Any person who knowingly signs an inaccurate tax return as proxy, as well as any other person who in any way knowingly collaborates or offers direct assistance resulting in tax evasion, is treated as a direct accomplice.
  8. Persons who for all practical purposes exercise the powers and authorizations relating to the capacities and positions mentioned listed in 6 above are also liable for tax evasion.
  9. The filing of an administrative recourse or a recourse before the Administrative Courts does not affect criminal proceedings, although the Criminal Courts may suspend their proceedings until the issuance of the final decision of the Administrative Courts, if it is considered that this decision is critical to the criminal case.
  10. Criminal liability of chief accountants is no longer explicitly dealt with in the legislation, but it does not follow that chief accountants cannot be held liable for criminal offences.