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TAX ALERT

KARAKITIS TAX & LAW

EMPOWERING TRUSTED DECISIONS

Greek Parliament enacts extensive tax reforms

Summary

The second week of December the Greek Parliament passed the much-awaited tax bill.

The tax reforms enacted can be categorized as follows:

- **New investment and growth targeting reforms,** which consist in: **1.** the cut of the corporate and dividend tax rates, **2.** The non-dom tax resident status relating to high-net-worth individuals who transfer their tax residence to Greece and invest half a million euros: Persons who meet the requirement of not having resided prior to 2019 in Greece for 7 years may choose to be taxed according to this new rule, which, however, pertains only to their offshore income. The tax amounts to € 100,000 per annum and is increased by € 20,000 per family member included. With this tax, the tax liability of the family members included in its scope and relating to offshore income items becomes exhausted and no reporting requirement must be complied with in relation to these income items in Greece. In addition, the offshore properties of these persons are excluded from the scope of Greek donation and inheritance tax, for as long as their offshore income is taxed in accordance with this new rule, **3.** the introduction of the participation exemption for capital gains from shares in EU subsidiaries, **4.** the tax exemption of the interest income of tax non-residents from Greek corporate bonds traded in regulated markets, **5.** the decrease of the tax leakage of Collective Investment Vehicles;
- **Measures for boosting real estate market activity,** including the suspension of the VAT on the supply of buildings, to the extent the supply would normally trigger VAT (specifically, the supply of buildings which have never been occupied before and were built in 2006 or later), the postponement of the capital gain taxation on the sale of properties until 31.12.2022 and the simplification of the real estate transfer process;
- **Personal income tax reforms,** comprising limited personal income tax enhancements, which pertain to the taxation of sole traders, free-lancers and employees and relate to the income tax scale, the treatment of company cars and stock options. The new law makes also more clear the scope of application of the alternative 183-day tax residence criterion and considers individuals

who have spent, during any given twelve-month period, 183 days of presence in Greece to be tax residents from day one of this period (the existing rules consider as part of the 183 days also short intervals of absence, without determining how short these intervals should be).

- **Go-green tax incentives for company cars;**
- **Measures for reducing the gap between the effective and nominal tax rate** and relating to the tax treatment of certain book entries including the write-offs of payables and receivables, the taxation rules governing the capitalization of tax-free profits and untaxed reserves and the increase of the threshold in order for a country to be considered as a country with preferential tax regime with regards to the application conditions of the Controlled Foreign Company (CFC) rules, thereby excluding countries with an effective tax rate of 10% or more, such as Bulgaria, which previously was considered as a country with a preferential tax regime;
- **Other measures for improving the cash flow of businesses** and relating to the reduction of the corporate tax advance payment made for this year on the basis of the Fiscal Year (FY) 2018 tax return filing and the abolishment of the withholding tax on certain domestic interest payments;
- **Rationalizing the rules on the joint liability of the corporate executives for the payment of the tax obligations of the company;**
- **The negative aspect of the tax reforms: the general limitation period for tax audit assessments is effectively increased by 1 year;**
- **Unblocking the effective operation of alternative dispute resolution mechanisms in tax treaty matters by enhancing the existing procedural requirements for opening a Mutual Agreement Procedure (MAP);**
- **Measures against tax evasion involving digital platform transactions;**
- **Obligation for the digital transmission to the tax office of accounting books and records data.**

Discussion

A. Reforms targeting new investments and growth

Wide cut of the corporate tax rate: One of the major reforms is the reduction of the corporate tax rate from the current level of 28% to 24%, which shall be effective for any taxable profits generated from 2019 onwards. Unlike prior announcements about its further reduction in 2020 to 20%, the government avoided to make any relevant reference in the new law. Nevertheless, what is positive is that in contrast to the initial draft bill published for comments, the version enacted does not limit the application of the 24% rate to the profits realized in 2019. Instead it includes in its scope any profits realized in 2019 onwards. Hence, effective from this year, the corporate tax rate is reduced to 24%, as opposed to the conservative gradual reduction in the period 2019-2022 of the year 2018 corporate tax rate of 29% by one ppt per annum, which has been so far provided

in the existing legislation.

Reduction of the dividend tax: In line with government's announcements, the dividend tax rate is halved, thus going down to 5% (i.e. the dividend tax, which had been equal to 15% until the end of 2018, had been already reduced for 2019 to 10% and with the new law it goes further down to 5%). Thus, dividend income of tax residents from both domestic and foreign sources shall be taxed at 5%, with a tax credit for any taxation that the same income suffered abroad. Likewise, the dividend withholding tax applied to dividend distributions to tax non-residents is reduced to 5%. The new rule for the reduction of the dividend taxation to 5% shall apply to dividend distributions which take place from 01.01.2020 onwards.

The newly introduced non-dom tax resident status for HNWI (High-Net-Worth Individuals): A new, optionally applied, taxation method is introduced for HNWI who wish to transfer their tax residence to Greece (widely known as non-domiciled tax resident regime).

In Greece, tax residents are taxed on a worldwide income basis and receive a tax credit for the income taxes paid abroad.

The non-dom tax regime provides that individuals who, during the last 7 years, have not been tax residents of Greece or have become tax residents of Greece in 2019, but before that year had not been tax residents of Greece during any of the preceding 7 years, may apply to become tax residents and choose to be taxed for any amount of offshore income earned with a fixed annual tax amount of € 100,000. They may also request that family members are included, in which case they will have to pay an additional amount of € 20,000 per family member who they wish to include in this alternative way of taxation. Specifically, any person of the following can be included: spouse, children, parents.

This is an optional way of taxation in the sense that if a person who becomes tax resident does not request the application of this alternative tax, he will be taxed, on both the offshore and onshore income earned, with the generally applicable income taxation rules for tax residents and with the progressive solidarity levy scale and be entitled to a tax credit on any income tax suffered abroad, up to the amount of the corresponding to that income aggregate Greek income tax and solidarity levy.

In addition to the time of absence requirement specified above, the other cumulative requirement for the application of this alternative taxation method is that within 3 years from the filing of the relevant application, the person must implement of an investment of at least € 500,000 in Greece, consisting in any of the following assets: Full or partial ownership of a business entity located in Greece, acquisition of shares or other securities issued by entities established and operating in Greece or acquisition of real estate located in Greece. The investment must be carried out directly by the applicant or his/her spouse or any of his/her parents or children or through a company the majority of shares of which are owned by him/her. This investment, which is on top of the annual tax amount specified above, is not required when the relevant person has in place a valid residence by investment permit relating to an investment of a value of at least € 400,000 and relating to either one of the following assets: Greek company's shares issued in the context of an IPO or bonds which are subsequently admitted for trading in a regulated market, or the purchase of Greek sovereign bonds upon their issue or a fixed-term bank deposit or an investment in qualifying REICS, mutual funds or venture capital

schemes which invest their funds in Greece, or to Greek corporate or sovereign bonds of a value of at least € 800,000 which are purchased while they are traded in a regulated market. Equally valid for this purpose is a residence by investment permit which is issued on the grounds of an approved business investment which has been characterized by the relevant state agency as strategic or as having a positive impact on the Greek economy, further to the submission by the applicant of a detailed business plan.

The application for taxation on the basis of this alternative method is due for filing by March 31st of the year in which the person will start being tax resident of Greece or of the year that follows; hence individuals who in 2019 have transferred their tax residence to Greece and wish to be taxed with this alternative taxation method, must apply until March 31, 2020. The relevant tax of € 100,000 or any higher amount determined by reference to the family members included in the application must be paid in full within one month from the approval of the application and thereafter by July 31st of each subsequent year.

This special tax regime can apply for up to 15 years. After that period, the offshore income shall be mandatorily taxed in accordance with the general rules. The individual can at any time opt out from the alternative taxation regime, in which case he shall be taxed on both his offshore and onshore income according to the general rules, whereas during the application of the special tax regime only the onshore income is subject to reporting and taxation according to the general rules.

Failure to pay during any year the full amount of alternative tax, results, from that year onwards, to the taxation of the offshore income in accordance with the general rules.

Once the application for the alternative taxation is filed and in line with international administrative cooperation rules, the Greek competent authority shall contact the competent authority of the most recent tax residence country stated in the application to update it about the transfer of the individual's tax residence to Greece.

The choice of this taxation option may seem appropriate for persons who are interested in making Greece as place of primary residence and who generate from sources outside Greece very high amounts of income. For instance, if their income is constituted by dividends, such dividend income would normally be taxed in Greece with a 5% dividend tax (assuming no taxation is suffered in the dividend's origin country which would entitle to a tax credit for an amount of up to the aggregate of the 5% dividend tax and the corresponding solidarity levy). The solidarity levy, which is calculated according to a progressive scale, with rates ranging from 2.2%-10%, would come on top. Hence, with the alternative tax, new tax residents can now choose to avoid circumstances in which very high amounts of income which they earn abroad are effectively more heavily taxed in Greece than in the country of origin of the income, when such taxation would result being higher than the burden which this alternative taxation entails.

On the other hand, the new provision lacks sufficient clarity. It also leads to a controversial treatment of EU vs third country citizens who have been granted a residence by investment permit relating to an investment in financial assets. Specifically, from the wording of the provision of the law it seems that a third-country citizen who has received a residence by investment permit to Greece,

by investing € 400,000 in financial assets, may not need to invest another € 100,000 and still qualify for the alternative taxation regime. On the contrary, an EU-country citizen must invest € 500,000, since the residence by investment rule is not applicable for him. In addition, what is not clear and is something that the ministerial decree implementing this new provision must clarify is the period during which the investment must remain in place and on what conditions the person could exceptionally liquidate investments, without being deprived of this taxation option.

Participation exemption for capital gains: Currently, the capital gains of a tax resident company from the disposal of shares in another company are subject to corporate tax, even when the shares relate to a shareholding in an EU subsidiary. This is so, because in line with the scope of the EU Parent-Subsidiary Directive, Greece exempts from the taxation the dividend income received from an EU country subsidiary, but not the capital gain income.

With the new law the capital gains become tax exempt provided the participation qualifies for the application of the EU Parent – Subsidiary Directive on dividend income, including a 10% or higher participation in a company that meets the application requirements of this directive and a minimum holding period of 24 months.

In addition, the new provision on the capital gain participation exemption provides that any capitalization of the tax-exempt capital gain income shall not trigger corporate income taxation; hence taxable shall only be the distribution of the capital gain income to the shareholders.

The capital gain participation exemption provision becomes effective for transactions occurring from July 1, 2020 onwards. The transitional rules provide that any losses from the transfer of shares in EU subsidiaries which under the new rule qualify for the participation exemption regime are recognized for tax purposes, provided that a relevant accrual is posted in the books of the entity until 31.12.2019 and the losses are realized until 31.12.2022. The amount that can be claimed for tax deduction is the lower between the accrual and the amount of losses eventually realized.

Tax exemption of tax non-resident persons for their interest income from corporate bonds that are traded in regulated markets: In line with what has been provided so far regarding the exemption from Greek taxation of the interest income of tax non-residents from treasury bills and bonds of the Greek state, the new law extends the scope of the tax exemption to cover interest income which tax non-resident persons generate from Greek corporate bonds that are traded in a regulated market. Furthermore, the tax exemption covers the interest income which relates to corporate bonds issued by foreign entities and traded in regulated markets, to the extent that income would have been taxable in Greece had this new provision not been introduced (i.e. when the respective interest expense of the entity that issued the bonds is allocated to a permanent establishment of that entity in Greece).

New, more favorable, taxation rules for Collective Investment Vehicles (CIVs): REICs (Real Estate Investment Companies), REITs (Real Estate Investment Trusts), Portfolio Investment Companies and mutual funds have been subject to a minimum tax, which was triggered when the result from the application of the regular tax was lower. With the new law, the minimum tax, which, on a semi-annual basis amounted to 0.375% of the average market value of the investments realized increased by any

available cash and cash equivalents and, in the case of mutual funds, to a range between 0.025-0.375%, is abolished. Henceforth, their taxation will be exclusively calculated at 10% of the relevant ECB interest reference rate, which is first increased by 1ppt or less for certain mutual fund and, in line also with the already existing rules, the tax will be reported on a semi-annual basis.

B. Tax measures for boosting real estate market activity

Optional exclusion of new buildings from VAT until 31.12.2022: The supply by a VAT liable person of buildings before their first occupation is generally subject to VAT at 24%. This rule applies to buildings that started to be constructed in 2006 or later, based on a construction permit issued in 2006 or later, when they are supplied by a VAT liable person before their first occupation. The transfer for a consideration of any other real estate property, which is not included in this specific scope of application of the VAT, is subject to real estate transfer tax at 3.09%.

To support the sale of new buildings which remained unsold during the years of the crisis and to boost, in general, real estate market activity, the government included, in the new law, the suspension of application of the relevant VAT until 31.12.2022. The suspension shall not occur automatically. It will be up to every single constructor to decide, in respect of all properties which he has constructed from 2006 onwards and have remained unsold, whether to apply for the suspension of the VAT or not. The option shall be exercised by the constructor, in respect of all existing properties unsold, within 6 months from the entry of the law into force, whilst for construction permits issued after the entry into force of the new law, the relevant option shall be exercised within 6 months from their issue.

Together with his application and as far as existing buildings are concerned, the constructor must include a table with all unsold properties constructed in 2006 or later. This table must include information about the input VAT recovered that corresponds to each of these properties. The VAT amount corresponding to each property becomes due for settlement upon their supply and before the filing of the relevant real estate transfer tax return.

Finally, the new law stipulates that a ministerial decree can be issued setting forth other requirements regarding the suspension of the application of VAT on the supply of buildings that will be built until 31.12.2022 when their construction permits are issued in 2020 or later.

Suspension until 31.12.2022 of the capital gain tax on the sale of real estate properties: The application of the 15% capital gain tax on the transfer of real estate properties by individuals, which relates to transactions which are not driven by the intention of realizing profits and thus are not characterized for tax purposes as business transactions, is suspended until 31.12.2022.

The sale of real estate property by a person who has real estate property tax related debts become possible when the consideration for the sale covers the part of the real estate tax debts that corresponds to the relevant property.

The E9 forms, regarding changes in the real estate properties of the parties participating in a real estate transfer, shall henceforth be prepared and filed by the notary, within 30 days from the transaction.

C. Personal Income Tax Reforms

Slight reduction of the personal income tax rates for employees, sole traders and free-lancers: The income tax rates for individuals who derive employment or free-lance or trade income are slightly reduced and their lowest income tax bracket is split in two. The first bracket shall be taxed at 9%, whilst the currently lowest income tax rate of 22% shall continue to apply for the second bracket and the part of income between € 10,000 and 20,000. The other income brackets, i.e. € 20,001 – 30,000, € 30,001 – 40,000 and the part of income exceeding € 40,000, remain the same, however, the corresponding tax rates are reduced, in each case, by 1 ppt, thus going down to, respectively, 28%, 36% and 44%.

At the same time, the tax-free allowance, which has been provided only to individuals earning employment income, is substantially reduced, thereby causing the tax rate related saving to shrink.

Hence, the tax rate reductions of individuals are more meaningful for free-lancers and sole traders. This is consistent with government's announcements about providing reliefs to free-lancers and sole-traders from the heavy taxation imposed on them during the previous years.

The new tax rates shall apply for income derived from 01.01.2020 onwards.

The flip side: personal income tax surcharge for insufficient spending through electronic means of payment: In addition to the applicable personal income tax and the temporary solidarity levy, (which, during the foreseeable future, shall continue to apply, thereby burdening the part of income exceeding € 12,000 with solidarity levy, calculated according to its existing progressive scale, which starts with 2.2% and reaches up to 10%), there shall apply a 22% surcharge on any amount below the minimum amount which the new law sets as mandatory for annual spending via electronic means. Such amount is set to the lower between 30% of the annual effectively available income (i.e. the reported taxable income minus the solidarity duty charge and any amounts paid for alimony) and € 20,000 [hence, the maximum possible impact from this surcharge is € 4,400 (€ 20,000 multiplied by 22%)]. Subject to this surcharge, which is triggered by not spending enough money via electronic means (i.e. credit/debit cards, wire transfers through banks) for consumer or household goods and services, shall not only be individuals who earn employment income and who have already been subject to a conceptually similar requirement, but also sole traders, free-lancers and even individuals earning real estate income.

However, individuals who are not tax residents of Greece shall not be affected by this rule.

This surcharge shall apply for any income and annual spending realized from 01.01.2020 onwards.

Company cars: The new law changes the percentages by which part of the net retail reference price of company cars used by executives, employees or shareholders is considered as taxable employment income of the beneficiary. At the same time, it increases the exception limit relating to pool cars and sets it to € 17,000 of net retail price - before transaction taxes and duties- per vehicle. The new percentages for executive and limit for pool cars shall apply to fiscal years starting 01.01.2020 onwards.

Stock options: According to the new rules, the gain from the exercise of the stock option shall not be treated as taxable

employment income, provided the beneficiary continues for at least 24 months to own the shares granted following the vesting period. However, following this 24-month period, the gain realized shall not be tax exempt. Instead, it shall be subject to the tax rate generally applicable to capital gains of individuals, i.e. to 15%. To ensure that these gains are at least taxed with the 15% capital gain tax, an additional provision has been added which exceptionally treats the gains from the sale of listed shares that stem from stock option plans as taxable, despite of the general provision for the capital gain tax exemption of individuals who hold less than 0.5% of the capital of the listed company. Finally, it is introduced a reduced capital gain tax rate of 5% for gains related to stock option plans and involving shares issued by newly established small or micro entities when these shares continue to be held for at least 36 months after the exercise of the stock option.

The new stock option rules shall apply to shares acquired from 01.01.2020.

D. Go-Green tax incentives for company cars

The new tax law introduces a combination of tax incentives in order that the companies replace their car fleet with eco-friendly cars, defined as those which produce zero emissions or emissions of up to 50 gCO^2/km. Specifically, the following incentives shall be provided:

- **Exemption from the personal income tax:** The executives, employees or shareholders who use eco-friendly company cars will not be taxed with personal income tax, for any part of the vehicle's net retail price provided such price, before taxes, does not exceed € 40,000.
- **Tax deduction of the operating lease expense at 130%:** Operating lease expenses of eco-friendly company cars shall be tax deductible at 130% thereof, provided the net retail price of the relevant cars does not exceed € 40,000. The same increased tax deduction is provided in relation to expenses incurred for the purchase, installation and operation of EV charge points.
- **Higher tax depreciation rates:** Depending on whether the relevant car produces zero emissions or emissions of up to 50 gCO^2/km, the tax depreciation rate to be applied shall be 25% or 20%. The entity is free to choose to increase the relevant tax depreciation rate on passenger cars with zero or low emissions by 30% and thereby apply an annual tax deduction reaching 32.5% or 26% of the relevant expenditure, when the net retail price of such cars is up to € 40,000. Currently the tax depreciation rate for all types of passenger car is 16%.

  For vehicles with similar zero or low emission features that are used for the transportation of cargo, their tax depreciation rate shall become, respectively, 20% and 15%, as opposed to the current tax depreciation rate of 12%.

The Go-green tax incentives become available for fiscal years starting 01.01.2020.

E. Measures for reducing the gap between the effective and nominal tax rate

Enhancement of the tax treatment of certain book entries: The new law sets

forth the conditions for the tax deductibility of expenses for Corporate Social Responsibility (CSR) initiatives and clarifies that the write-offs of payables shall be consistently treated as taxable business income and not as a donation tax triggering event. It also allows the tax deduction of the write-off of receivables, without first exhausting any collection enforcement measures, when: (i) they have remained outstanding for 12 months, (ii) the amount of the receivable does not exceed (including any VAT amount embedded therein) € 300 and (iii) such write-offs do not exceed 5% of the total balance of receivables at fiscal year-end. Nevertheless, none of these limitations, with regards to either the amount or the proportion to the total balance, shall apply when the write-off of the receivable is the result of a mutual settlement.

The new rules regarding the tax deductibility conditions of expenses for CSR initiatives and the new rules for the write-off of small value receivables become effective for fiscal years starting 01.01.2020.

Revision of the taxation rules relating to the capitalization of tax-free profits and untaxed reserves: Subject to corporate income taxation are not only realized profits, but also the capitalization or distribution of profits which have not already suffered corporate income tax. Such profits may, for instance, relate to tax holidays provided by special investment incentive laws. These profits must be posted in special reserve accounts and are taxed upon their distribution to the shareholders or their capitalization.

Another case of untaxed reserves are the ones originating from events posted directly in the equity accounts of the entity, such as the difference between the market value of the shares received in exchange and the book value of a business segment which has been spun-off and contributed to the capital of another entity or, in a merger of two other entities the difference between the book value of the shares in the merged company cancelled and the shares received in exchange in the capital of the surviving entity. Similar tax treatment has been provided in case an entity receives new shares for free which are issued by subsidiaries or other investee entities as a result of the capitalization of the statutory book value readjustment of their real estate asset values.

In 2018 a law amendment was introduced that enabled companies to capitalize the tax-free profits for a reduced tax payment. It also provided for the tax exemption of the capitalization of the above-mentioned equity accounting events. However, with regards to the magnitude and requirements of the application of the benefit of the reduced taxation, it differentiated between listed and non-listed companies, to the favor of the listed ones. In addition, it stipulated that the beneficial treatment would be waived and the amounts capitalized would be taxed according to the general taxation rules (with a credit for the reduced tax already applied), should the company be liquidated or should its capital be reduced in order for the amounts that benefited from this special treatment to be distributed to the shareholders and provided that any of these events happens within a period of 10 years.

With the new law, the more restrictive requirements for the application to non-listed companies of the favorable taxation rules of the capitalization of tax-free reserves are relaxed, in the sense that it is no longer required that an equal amount of cash is contributed by the shareholders in the capital of the entity. In addition, the tax rate of 10%, which has been the one relevant for the capitalization of tax-free

profits of non- listed entities (or 20% when the capitalization occurs in 2020) is reduced to 5%, which is same with the tax rate applicable to the capitalization of tax-free profits of listed entities.

Finally, the 10-year period before liquidating the company or reducing the capital for distributing to the shareholders amounts that benefited from the favorable treatment is reduced to 5 years.

In the final version of the bill, which the Parliament has passed, the scope of application of this reduced taxation of the capitalization of tax-free reserves was further extended and has eventually also included any remaining reserves from profits which had been realized before 2014 and had been taxed not according to the general corporate tax rate which was then in force but according to any of the special taxation regimes which were provided by the previous Income Tax Code, Law 2238/1994.

The new rule shall apply to reserves which shall be capitalized from 01.01.2020 onwards.

Increase of the threshold for the characterization of a country as having preferential tax regime for CFC purposes: The new law narrows the scope of countries with preferential tax regime, in that it requires that the income of the controlled foreign company is taxed by 60% less than what would have been its corporate taxation in Greece. Previously, foreign tax jurisdictions taxing by 50% less than Greece were viewed as having a preferential tax regime, for which the CFC rules were potentially relevant. The new increased threshold applies to fiscal years starting 01.01.2019.

Considering also the decrease of the Greek corporate tax rate to 24%, countries, like Bulgaria, that apply a corporate tax of 10% will no longer be classified as countries that are potentially relevant for the application of the CFC rules. This holds true when the effective taxation of the foreign entity is by less than 60% lower than in Greece.

F. Other measures for improving the cash flow of businesses

Reduction of the corporate tax advance payment assessed upon the FY 2018 corporate tax return filing: Exceptionally, for this year the corresponding corporate tax advance payment which has been calculated by reference to the FY 2018 corporate tax amount is reduced to 98%, as opposed to an amount equal to 100% of the FY 2018 tax which had been initially calculated upon filing of the FY 2018 corporate tax return. Hence, companies will get the difference refunded or it will be offset with the corporate tax instalments still due.

Abolishment of the withholding tax on certain domestic interest payments: The new law extends the scope of the existing law provision, which exempts from withholding tax cross-border interest and royalty payments when the conditions laid down in the EU Interest and Royalty Directive are met, to domestic payments when the same requirements are met. Considering that royalty payments to domestic entities are already withholding tax exempt, this new provision is of interest when interest payments are made to domestic entities. In this context the new law introduces the novelty that no withholding tax shall be applied when the entities involved in the transaction present the features which are stipulated in the EU Interest and Royalty Directive.

G. Rationalizing the rule on the joint

liability for the payment of the company's tax debts

With the new law, the persons who are in charge of a company at the time of its wind-up will no longer be jointly liable for the payment of the company's income tax obligations when these obligations did not become due for payment at the time they had been in charge or when they result from a tax audit assessment relating to a period in which they were not yet responsible for the company's affairs.

Hence, the joint liability for the corporate income tax debts of the company is aligned with the rule governing the joint liability for the payment of the VAT and withholding tax obligations of the company existing during the time of its operation, according to which jointly liable are the persons who were in charge at the time to which the relevant obligation relates. The same rule shall apply also in respect to the real estate property tax liabilities of the Company.

In addition, in line with existing case law, the new law makes the joint liability dependent on the culpability of the person regarding the tax payment delay.

Persons who can be potentially considered as jointly liable for the payment of corporate tax debts are the executive chairman (hence non-executive chairmen are henceforth excluded), general managers, administrators, managing directors or person who are delegated or are effectively exercising the management of the company, including liquidators. All these persons will be henceforth jointly liable to the extent they are culpable for the tax liabilities assessed in the course of a tax audit or for the non-timely payment of the tax obligations reported by the company.

Furthermore, the new law abolishes the joint liability of shareholders who hold a 10% or more stake in the company during the last 3 years before its dissolution. According to the existing rules which are now abolished, such joint liability has existed for an amount up to the dividends which these shareholders of the company had received over the last 3 years before its dissolution.

The new rule on the joint liability applies also for existing tax debts. The persons against whom enforcement collection measures have been initiated in relation to corporate tax debts, despite of the new rules not supporting their joint liability, may request within 3 months from the new law's promulgation in the Government Gazette, which is expected to happen before mid-December 2019, that the enforcement collection measures be lifted. However, any amounts already paid by them cannot be claimed back.

H. The audit limitation period is effectively increased to 6 years

Although it is presented as an exceptional case, in effect the new law increases by 1 year the general 5-year time bar of tax audit assessments, because it provides that the 5 year time limit – which starts from the end of the year in which the relevant tax return was due for filing - is extended by 1 year when new information comes to the attention of the tax authorities which results to a higher tax liability than the one deriving from information which the tax administration already possesses.

In addition, the new law extends the time limit to 10 years from the end of the year in which the relevant tax return was due for filing when:

- The taxpayer does not file the relevant tax return until the end of the 5th year from the year in which

the tax return was due for filing. If the tax return is filed during the 5th year, the time limit shall be 6 years, as before

- After the 5-year period new information comes to the attention of the tax authorities, which it could not have accessed during the initial 5-year tax audit period and from which a higher tax liability derives.

Since taxpayers are obliged to continue keeping their fiscal records when the right of the tax authorities to make a tax assessment has not been statute barred, with the new rule companies will become obliged to store their accounting records for a longer period of time (i.e. at least for 7 years after the relevant fiscal year end or longer, i.e. 11 years, if the company has been engaged in cross-border transactions or transactions which could not have been made known to the tax authorities during the initial 5-year period). However, this obligation shall not exist for periods which are statute barred or even for more recent periods which, in light of the thorough case law of the Supreme Administrative Court regarding temporal limits to the effect of changes in the statute of limitation rule, cannot be affected.

On the flip side, the 20-year time limit for tax audit assessments relating to tax evasion cases is abolished and for cases of tax evasion relating to fiscal years 2012-2017 is reduced to 10 years.

I. Unblocking the examination of MAP requests which are filed within the tax treaty time limit

The ministerial decree issued in 2017 and regulating in detail the MAP (i.e. Mutual Agreement Procedure for the alternative resolution of a dispute in a tax treaty matter with the participation, where necessary, of the Competent Authorities of both Contracting States) required not only that the relevant request be submitted, depending on what the relevant tax treaty provided, within 2 or 3 years from the first notification of the action of the tax authority which is considered by the taxpayer not to be in line with the tax treaty, but also before the lapse of the time limit provided in domestic law for a tax audit assessment. In the absence of an ad hoc derogation in the law from the general statute of limitation rule, the tax authorities had been unwilling to examine MAP requests which despite of having been filed within the time frame provided in the relevant tax treaty (i.e. two or three years from the notification of the tax audit assessment causing double taxation), they related to fiscal years which on the date of the MAP request filing had been statute barred. However, this stance was inconsistent with the overriding tax treaty rules.

The new law corrects this inconsistency by adding a new derogation to the general statute of limitations; namely, it extends the statute of limitation for MAP eligible cases for the whole duration of the MAP process and for one year after the issue of the MAP ruling, in order that the relevant tax office of the taxpayer to have time to issue a new tax assessment which conforms with the MAP results.

J. Measures against tax evasion involving digital platform transactions

Operators of digital platforms through which goods or services are traded become obliged to disclose to the Greek tax administration information on persons who sell goods or services through their platforms and who are liable to Greek taxes for their transactions. This obligation shall

exist regardless of the digital platform operator having a permanent establishment in Greece or not. ISPs located in Greece become obliged to discontinue access to internet in Greece of the digital platforms which will not comply with the relevant request for disclosure of information. The relevant obligation to discontinue access is triggered following the issue of a joint ruling by the Minister of Finance and the Governor of the Independent Authority of Public Revenues, following a request, which the digital platform operator has not complied with, relating to the disclosure of information that relates to the identification and determination of the tax liabilities of sellers using the platform.

K. Digital communication of accounting books and records data with the tax office

Companies become obliged to electronically transmit to the tax office accounting book and record data.. A ministerial decree shall specify the scope of this obligation.

About KARAKITIS TAX & LAW

KARAKITIS TAX & LAW is a law firm located in Athens, Greece. We specialize in tax law. Our services are aimed at empowering trusted decisions on transactions, investments, operations and disputes. With our expertise and with enthusiasm we focus on effectively and holistically addressing the client's issues and follow through to ensure that the relevant decisions are seamlessly implemented.

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