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Amendments to the Greek legislation regarding the issuance of a Tax Compliance Report

Introduction

On 18.03.2016 the Greek Ministry of Finance issued Ministerial Decree No 1034/2016, which amended the existing regime regarding issuance of a Tax Compliance Report by an audit firm. The newly issued Decree introduced amendments relating to the categories of companies that are obliged to issue such a report, the effect of the time barring of the right of the tax administration to conduct an audit as well as the consequences of each category of a Tax Compliance Report. These changes are discussed in more details hereunder.

A. Companies required to issue a Tax Compliance Report

Under the Greek Code of Tax Procedure (L. 4174/2013), which is in force as of 01.01.2014, certified auditors shall conduct mandatory audits to joint stock companies, limited liability companies as well as to branches of foreign companies. These audits will result into the issuance of a Tax Compliance Report.

In particular, as regards branches of foreign companies, such obligation was introduced under the previous Code of Income Tax (L. 2238/1994) as of 01.01.2013. However, the newly issued Decree highlights that the issuance of a Tax Compliance Report provided by L. 2238/1994 includes branches of foreign companies. Due to the fact that Ministerial Decree No 1034/2016 aims to address issues under both the new and the previous regime, it shall be applied retroactively. Therefore, branches of foreign companies are obliged to be audited by certified auditors for previous tax years.

B. Consequences of the time barring of the right of the tax administration to audit each tax year

According to the previous regime, auditors were required to maintain the Special Documentation File for a period of seven (7) years after the issuance of a Tax Compliance Report. Under Ministerial Decree No 1034/2016, this time-period is linked with the right of the tax administration to audit each tax year. In particular, auditors are now required to maintain the Special Documentation File as long as the right of the competent tax authority to audit each tax year lasts; in general, this right becomes time barred five (5) years after the end of the year for which a tax return shall be submitted, though special circumstances for its extension may apply. In line with this provision, Decree No 1034/2016 provides that all audits shall be conducted in the aforementioned time-barring deadline. Moreover, with regard to the obligation to maintain accounting documents by companies for which a Tax Compliance Report has already been issued, the same time-barring deadline applies.

C. Consequences of each type of Tax Compliance Report

Ministerial Decree No 1034/2016 provides for different consequences based on the type of the Tax Compliance Report. To begin with, a Tax Compliance Report without reservations will not lead to a full tax audit, unless the competent tax authority is aware of any additional data, which was not at the disposal of the certified auditors at the time of the audit, or if the special requirements due to which an audit shall be conducted are met. On the contrary, in cases where a Tax Compliance Report is issued either with emphatic statements (i.e. pointing out issues whose tax treatment is questioned) or with reservations, a partial tax audit shall be conducted. This audit will aim to evaluate the emphatic statements or the reservations accordingly. If this partial audit discloses indications of tax evasion, a further tax audit shall commence.

Additionally, the new provisions define the term of a Tax Compliance Report with a negative result. Such a report is to be issued in cases where certified auditors are unable to reach a conclusion, due to the fact that all necessary information was not disclosed to them. In such cases, an order of audit will be issued by the competent tax authority.

In conclusion, Ministerial Decree No 1034/2016 introduced significant amendments regarding the issuance of a Tax Compliance Report. However, it is noted that, under the existing Code of Tax Procedure, the issuance of such a report is not mandatory for tax years after 01.01.2016, thus the aforementioned provisions are to be applied retroactively. As the Deputy Minister of Finance, Mr. Trifon Aleksiadis, stressed recently though, the Ministry of Finance is considering to prolong the obligation for issuing Tax Compliance Reports.