

your Legal Lab

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Amendments to Greek Code of Tax Procedure included in Law 4337/2015 (Memorandum III)

Introduction

On 17 October 2015 Law 4337/2015 was enacted by the Greek Parliament in order to comply with some of the prerequisites for the implementation of the 3rd Memorandum. This law introduced amendments to Code of Tax Procedure (C.T.P.), the purpose of which was to rationalize the tax policy regarding fines. These amendments relate to issuance of fictitious tax records, amendments in the area of transfer pricing, revised fines upon audit and introduction of new provisions in order to confront tax evasion. These changes are discussed in more details hereunder.

A. Tax Offences regarding the Issuance of Invoices

Under the new provisions, non-issuance or issuance of inaccurate invoices is not anymore considered as a separate procedural infringement, therefore it is not subject to a separate fine. As a result, such offences fall under the general provisions for bookkeeping violations.

Moreover, it should be stressed that from 17.10.2015 the issuance of falsified/fictitious invoices and the receipt of fictitious invoices are included in the relevant provisions regarding tax evasion, which were added by virtue of the law at issue, and, thus are subject to stricter substantive penalties.

B. Transfer Pricing

Major changes have been introduced to fines for non-compliance with documentation obligations of intra-group transactions. More specifically, under the Greek Income Tax Code, associated entities as well as permanent establishments of foreign entities in Greece are obliged to maintain a Transfer Pricing Documentation File and to submit a Summary Information Table yearly stating their intra-group transactions. Fines for failure to comply with these obligations were calculated up to now as a percentage of the company's gross revenues. Aiming to the rationalization of the Greek tax penalty system, fines from now on will be calculated on the value of transactions subject to documentation requirements and not on company's gross revenues. According to the new provisions, the following penalties apply:

Infringement	Fine under Law 4337/2015
Late filing of Summary Information Table	1/1000 on the value of transactions subject to documentation requirements (no less than 500€ no more than 2.000€)

Late filing of amending Summary Information Table	1/1000 on the value of transactions subject to documentation requirements (no less than 500€ no more than 2.000€) *Only if there is an impact on the value of reported transactions that exceeds 200.000€
Filing of inaccurate Summary Information Table	1/1000 on the value of transactions subject to documentation requirements (no less than 500€ no more than 2.000€) *Only if the inaccuracy has an impact on the value of the reported transactions, that exceeds 10% of the company's transactions subject to documentation requirements
Non-filing of Summary Information Table	1/1000 on the value of transactions subject to documentation requirements (no less than 2.500€ no more than 10.000€)
Late filing of Transfer Pricing Documentation File	Fixed penalties ranging from 5.000€ to 20.000€ depending on the length of the delay

C. Revised Penalties Imposed upon Audit

Law 4337/2015 revised the existing penalties imposed on a number of violations related to the filing of tax returns, which aimed at enhancing tax collection. In particular, the law at issue reduced those fines, as follows:

Infringement	Fine under Law 4337/2015
Inaccurate tax return (i.e. the amount of tax arising from the tax	10% of the difference *if the amount of the difference is from 5% to 20% of the tax arising upon audit

return is less than the amount that comes out upon audit)	25% of the difference *if the amount of the difference is from 20% to 50% of the tax arising upon audit
	50% of the difference *if the amount of the difference is more than 50% of the tax arising upon audit
Non-filing of a tax return from which a tax would have arisen	50% of the tax arising from the tax return that was not submitted

Moreover, the law at issue provides for a special treatment for V.A.T. violations identified upon audit due to the significance of this tax. Therefore, a new article was added to C.T.P., which provides the following fines:

Type of infringement	Fine under Law 4337/2015
Non issuance of an invoice or issuance/receipt of an inaccurate invoice for transactions subject to VAT	50% of the tax that would have arisen, had this record been issued or had it been issued properly
Filing an inaccurate VAT return	50% of the tax that would have arisen
Commencement of business activity without tax registration	50% of the VAT that should have been paid during this activity
Issuance of VAT records by persons not subject to VAT	50% of the amount that was not paid

Furthermore, Law 4337/2015 revised the penalties that are imposed on infringements regarding withholding tax, intended to increase the actual tax collection, as follows:

Type of infringement	Fine under Law 4337/2015
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Non-filing of a tax return with regard to withholding tax	50% of the tax resulting from the tax return that was not submitted
Filing an inaccurate tax return with regard to withholding tax	50% of the difference arising from the inaccuracy

It should be stressed that Law 4337/2015 entitles taxpayers to take advantage of the new provisions under B and C with regard to Tax Assessment Acts that are issued from 17.10.2015 and refer to tax obligations and fiscal years that expire on 31.12.2013 or cases after 1.1.2014 for which the previous regime applies, as long as the now existing regime is more favorable. Moreover, these provisions are applicable for pending cases before the Tax Dispute Resolution Directorate and the Administrative Courts, provided that the taxpayer accepts the audit findings. A declaration of acceptance should be submitted in writing within 90 days from the publication of the law at issue or from the notification of the relevant act or decision to the taxpayer. Additionally, in order to claim the benefits of the new law, the taxpayer should pay the total amount that corresponds to the relevant audit at least within two days after the submission of the declaration of acceptance.

D. New Provisions Regarding Tax Evasion

The introduction of provisions to control tax evasion was one of the main purposes of the law at issue. To this end, a new chapter was added to C.T.P. regulating criminal prosecution for tax evasion acts broadly, i.e. acts that aim to avoid payment of taxes. According to the new rules, the following sentences apply:

Tax Evasion Act	Sentence
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Concealment of taxable income	2 -5 years imprisonment *If a) the tax resulting from the concealed income exceeds 100.000€ per tax per fiscal year or b) the tax that should have been paid exceeds per fiscal year the amount of 50.000€ in case of VAT or 100.000€ in any other case
	5-20 years imprisonment *If the tax that should have been paid exceeds per fiscal year the amount of 100.000€ in case of VAT or 150.000€ in any other case
Issuance of falsified invoices and issuance or receipt of fictitious invoices	3 months – 5 years imprisonment
Issuance or receipt of invoices for a non-existing transaction	1 – 5 years imprisonment *if the total value of forged tax records exceeds the amount of 75.000€
	5 – 10 years imprisonment *if the total value of forged tax records exceeds the amount of 200.000€

Moreover, the new provisions define the persons liable for the aforementioned criminal charges. These persons include presidents of Board of Directors, managing directors, general managers, members of Board of Directors with signature rights, ordinary member of Board of Directors in the absence of the aforementioned persons and any individuals who de facto exercise managing duties.

Finally, under the new provisions, criminal prosecution is not affected by the tax dispute proceedings before the Administrative Courts. However, Criminal Courts are entitled to postpone

the hearing until the issuance of an irrevocable decision by the Administrative Courts.

