Greece: Changes made to thin cap and withholding tax rules

The Greek parliament approved a law on 31 December 2013 that amends the Income Tax Code and makes changes to the thin capitalization and withholding tax rules. In addition, the Ministry of Finance issued two circulars on 2 and 3 January 2014, respectively, that contain guidance on the filing of withholding tax returns and the payment of withholding tax on dividends, interest and royalties for payments made as from 1 January 2014.

**Thin capitalization** – The law clarifies that the thin capitalization rules apply to all types of loans, including bank loans, intragroup loans and third-party loans. The rules do not apply to loans provided to special purpose entities, provided the loans are used for the execution of public works or the provision of public services in specific circumstances. In addition, the following changes are made to the thin cap rules:

- The deductible percentage of net interest expense is increased from 25% to 30% of EBITDA (earnings before interest, tax, depreciation and amortization);
- The net interest expense that may be fully deducted as a business expense is increased from EUR 1 million to EUR 3 million annually, and the same limit applies to entities in a group; and
- Nondeductible net interest expense may be carried forward indefinitely.

During the period from 1 January 2014 to 31 December 2016, however, the amount of net interest expense that may be deducted is limited to a percentage of EBITDA, as follows:

- 60% as from 1 January 2014;
- 50% as from 1 January 2015; and
- 40% as from 1 January 2016.

The net interest expense that is fully deductible annually until 31 December 2015 is capped at EUR 5 million.

**Withholding tax** –

- The statutory withholding tax rates for payments to residents and nonresidents (subject to the provisions of applicable EU directives and tax treaties) are 10% on dividends, 15% on interest and 20% on royalties.
- The 20% withholding tax on fees for technical, management, consulting and similar services is a final tax for nonresident recipients (i.e. individuals and legal entities without a permanent establishment in Greece). Clarifications are expected on which “similar services” are covered.
- Interest payments made to credit institutions, including default interest and interest accruing on intrabank deposits, are exempt from withholding tax.
- The conditions to qualify for the exemption from withholding tax on intragroup interest and royalty payments under the EU interest and royalties directive are amended to capture downstream payments between direct affiliated entities and payments between sister companies. The minimum participation threshold for the exemption to apply is increased from 10% to 25%.
- The tax exemption provided to corporate nonresident investors in respect of interest income from government bonds is abolished, as is the provision that allowed corporate bonds issued in Greece to enjoy the same tax treatment as bonds issued by the government.

The new withholding tax compliance circulars confirm that the following persons must file a withholding tax return and pay any tax due:

- A Greek tax resident legal entity, or an individual acting in the capacity of an entrepreneur;
- The government and government entities; and
- A Greek permanent establishment of a foreign entity.

A withholding tax return generally must be filed electronically (although a hard copy must be filed in certain instances) three days before the end of the second month following the month the payment was made. The term “payment” for these purposes includes an amount credited in the tax books of the payer, as well as an actual payment, and the guidance defines
special cases where a “payment” of a dividend (or similar distribution) will be deemed to take place and when the return is due in these cases.

Withholding tax due must be paid through the banking system, and payment must take place by the last day of the second month following the month in which the dividends, interest or royalties are paid. Thus, although the return must be filed by the third day before the end of the second month following the payment, the tax due can be remitted before the end of the second month following the payment.

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