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Why bother for Complicated Things like BEPS? Greece has the “Perfect” Solution

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BEPS-Project? CFC rules and transfer pricing? Treaty abuse and dispute resolution? Why bother for such complicated things? Greece has a “perfect” solution against base erosion and profit shifting through cross-border schemes: It is for this purpose that Greece has imposed since March 21st, 2015, an additional condition for the recognition of any expenses payable to taxpayers residing in non-cooperative jurisdictions or countries with privileged tax regime.

According to this new rule, such expenses are not recognized as deductible, unless the Greek taxpayer has paid (seemingly at the same time with the realisation of the expense) the amount of regular Greek corporate tax that would have corresponded to these expenses in question, if they had not been true expenses. It is then the Greek taxpayer that has to prove within a three months deadline that the transaction was “usual” and it took place on “current market prices”, in order to achieve refund of the tax that had been paid at the time of invoicing.

For example: A Greek importer buys electronic equipment from Ireland, an EU member which is (together with EU member States Bulgaria and Cyprus) a standard commercial partner for Greece with “privileged” tax regime according to the Greek understanding. “Privileged” is namely a tax regime, when its corporate tax rate amounts 50% or lower than 50% of the Greek corporate tax rate; the latter is currently fixed at 26%. If the imported equipment costs, for example, 1,000,000 Euros, then the Greek importer has to pay, at the time he/she is invoiced for the equipment, a tax amounting 260,000 Euros, in order to have this expense recognised as deductible for tax purposes. If the importer is subsequently able to prove within three months that the expense was “usual” and was done at “current market prices”, then the amount of tax paid for the above mentioned example will be refunded.

This new rule has created a lot of frustration among taxpayers and tax consultants, but also among Greek officials. Many practical issues arise thereof. First of all, enterprises performing “usual” transactions at “current market prices” will be in necessity of much additional cash in times of heavy financial crisis, in order to comply with the new rule. The most important concern would be even worse: namely, huge uncertainty about whether and how exactly a “usual” and at “current market prices” transactions will be subsequently recognised as such. The new rule reverses the burden of proof about whether a transaction aims to tax evasion or to tax avoidance totally against the taxpayer. Last but not least, a lot of legal issues arise, such as violation of the EU-non-discrimination rule or violation of Double Tax Treaties rules.

The said provision sets on the same level complying and non-complying taxpayers. It is a typical example of how Greek tax authorities push Greek taxpayers to tax evasion: If laws and administrative practice do not differentiate between compliance and non-compliance, then non-compliance becomes by far more attractive: By complying, one loses the forbidden fruits of non-compliance, while one does not enjoy the legitimate goods of compliance. If compliance does not offer any visible benefit, then non-compliance becomes an option that will be examined practically by many taxpayers and will not be followed only by true tax heroes – fortunately and curiously enough, there are still a lot of them in Greece.

In addition, the provision in question is of dubious efficiency: Even a tax consultant with only elementary experience would easily perceive a couple of ways to overcome the obstacles set by the new provision, in order to continue tax avoidance or even tax evasion without any disturbance from the part of the new rule.

One would certainly wonder: Does Greece not possess in its tax legislation any standard tools like the ones suggested by the BEPS-Project against international tax avoidance and evasion? The answer is affirmative and it had been affirmative, even many years before the income and corporate tax reform of 2014, which enhanced the Greek arsenal against international tax avoidance and evasion. But the truth is that Greek authorities are annoyed, when they are faced with the idea to perform tax audits involving *complicated things* like CFC legislation and transfer pricing. The Greek Secretary for Public Revenue has publicly admitted on 27th of March, 2015, that, for example, no tax audits, aiming to apply the new CFC rules, have been ordered since their introduction on January 1st, 2014; in addition, no intention to order such audits exists for the foreseeable future. As a result, the Greek CFC rules are not applied in practice and they exist only in theory.

The new provision on the recognition of expenses payable to countries with privileged tax regime is of the type that Greek tax authorities have always been loving: Forbid everything that could be suspicious of tax evasion or avoidance and let then the taxpayers follow heavy procedures that would allow them to overcome such too general interdictions. The underlying reason for such rules and administrative practice is exactly that Greek tax authorities are not really fond of tax audits involving “complicated things” like, for example, really uncovering tax evasion. In this way, tax evaders can take advantage of any bugs entailed in provisions involving procedural obstacles, while complying taxpayers still face huge bureaucratic obstacles: This has been standard history of Greek tax law at least during the last 25 years.

For the time being the Greek Ministry of Finance is still deliberating on how the problems created by the new provision could be overwhelmed. The provision in question is silently not being applied – though with absolutely no legal safety for the taxpayers. A draft regulation providing for some improvements has been presented towards the end of April 2015. However, it seems that partial improvements do not and will not offer any satisfactory solution.

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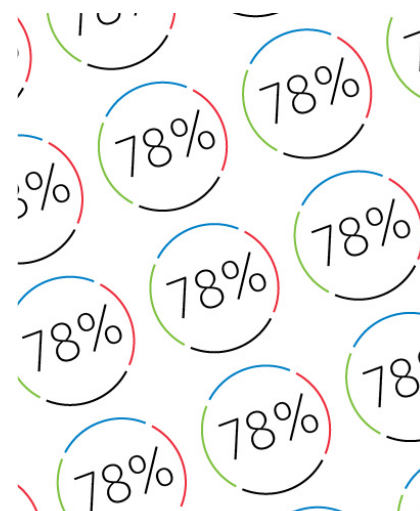
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