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Tendencies of the Greek Income Tax Law

By George J. Pitsilis *

1. General Description of the Greek Income Tax System

1.1. Income tax on individuals

Under the Greek Income Tax Code[1] [*hereinafter* "ITC"], income tax on individuals is imposed on the basis of a calendar year, to every person with income arising from sources in Greece, irrespective of citizenship or residence. Also, resident individuals are subject to income tax on their worldwide income, regardless of their citizenship.

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* The author is a practicing attorney before the Court of Appeals of Greece and Senior Associate at FDM&A Law Firm in Athens. Mr. Pitsilis is also a PhD candidate at the University of Paris 1 (Panthéon - Sorbonne) from where he earned a D.E.A. in Tax Law. The author holds an LL.B and an LL.M in Public Law from the University of Athens, School of Law, and is member of the Hellenic Society of Tax Law and Public Finance Studies.

1 Income Tax Code of Greece, Law 2238/1994, Republic of Greece.

The taxable income is classified into six categories: real estate, movables, business, agricultural, employment and professional services income. After the income from each category has been separately calculated, the aggregate income from the above categories is subject to deductions of personal allowances (*e.g.* life insurance) and the total net taxable income is taxed on the basis of a predetermined tax scale, as follows:

2009 Tax scale[2]

Bracket of income	Tax rate of bracket (%)	Tax on bracket	Total income	Total tax
€ 12,000	0	€ 0	€ 12,000	€ 0
€ 18,000	25	€ 4,500	€ 30,000	€ 4,500
€ 45,000	35	€ 15,750	€ 75,000	€ 20,250
Excess	40			

2009 General Tax scale[3]

Bracket of income	Tax rate of bracket (%)	Tax on bracket	Total income	Total tax
€ 10,500	0	€ 0	€ 10,500	€ 0
€ 1,500	15	€ 225	€ 12,000	€ 225
€ 18,000	25	€ 4,500	€ 30,000	€ 4,725
€ 45,000	35	€ 15,750	€ 75,000	€ 20,475
Excess	40			

2 2009 Tax scale for employees/pensioners.

3 An additional tax at 1.5% is imposed on the gross income from real estate.

Article 9 ITC allows the deduction of certain expenses from the payable tax (*e.g.* 20% of the annual rental paid for the taxpayer's principal residence, 20% of the total annual amount of medical and hospitalization expenses, etc). Such reductions may not, however, exceed the amounts provided in the law (*e.g.*, €1,200 for the annual rental, € 6,000 for medical expenses, and so on).

Lastly, the ITC allows full tax credit for taxes paid in foreign countries for income generated therein. Such tax credit may not exceed, however, the amount of the Greek tax corresponding to such income.

The Greek tax legislation provides for a wide range of withholding taxes on income, which exhaust the tax liability of individuals. Thus, a 5% withholding tax applies on the transfer value of non listed shares of Greek AEs *anonimi eteria* (*i.e.*, the Greek "*société anonyme*").

Likewise, a 10% withholding tax is imposed on interest accruing to resident individuals from deposits with banks and special banking institutions operating in or outside Greece, from bond loans issued by private enterprises established in or outside Greece, from returns on repos, on T-bills or bonds of the Greek State listed on the Athens Stock Exchange, etc. A 20% tax is withheld on the severance pay of an employee after the deduction of € 20,000, on payments to foreign artists for performances in Greece, on payments to salaried athletes, including payments from their participation in national teams, etc. A withholding tax of the same rate applies to the capital gains arising from the transfer of intangible assets such as trademarks, patents, parts of limited liability companies and partnerships, a business as a whole, etc.

1.2. Income tax on partnerships, joint ventures and civil law entities

Partnerships, joint ventures and civil law entities are subject to tax in their name. The profits of partnerships are taxed at the rate of 20 percent, whereas joint ventures and civil law entities are taxed at the rate of 25 percent. Losses of partnerships, joint ventures and civil law entities may be carried forward for the next five years, provided that these accounting books are kept efficiently and accurately.

1.3. Income tax on corporations

Greek corporations, mainly AEs and EPEs, *eteria periorismenis eythinis* (*i.e.*, the Greek limited liability company) are subject to corporate tax on their worldwide income, whereas foreign companies are taxed only on income arising from sources located in Greece and on profits from the activities of a local permanent establishment.

Corporate tax is levied on total annual profits before distribution of dividends, fees to directors and profits otherwise distributed.

Income and expenses are allocated on the accrual basis. Taxable profits are the annual net profits arising from all operations in Greece or abroad according to the accounting books of the company. The taxable profits are adjusted to take account of expenses incurred for tax-free or specially taxed income and income from participations, non-deductible expenses, tax-free income and income subject to tax on the basis of special regulations

According to Article 31 ITC and pursuant to its interpretation by the Greek courts, in general, all business expenses are deductible, provided that they are real, properly recorded in the accounts in the year to which they relate, sufficiently substantiated (*e.g.*, by supplier invoices or third-party receipts), contributory to the production of income in general, certain, and settled.

Tax losses may, in principle, be carried forward for the next five accounting years, with no right of carry back. The Greek tax legislation does not allow the submission of consolidated tax returns.

The profits of Greek corporations are taxed at the rate of 25 percent. The profits of EPEs are taxed only at the company level, and there is no withholding tax on profits in the name of the members of an EPE. A 10% withholding tax is imposed on dividends or profits otherwise distributed by AEs to their shareholders and to their directors.

2. Recent developments

The main goal of the Greek tax policy in the last years has been to render the Greek tax system attractive to foreign investors in that perspective, the tax rates of the income tax on individuals and legal entities were significantly reduced and the withholding tax rules were relatively simplified, by setting the relevant tax rates to 10 or 20 percent, depending on whether the taxable income derives from investment or from business activities.

Furthermore, until recently, profits of Greek SAs were taxed only at the company level, and there was no withholding tax on outbound dividends or profits otherwise distributed or any other income tax in the name of the shareholders of a SA. Inbound dividends received by Greek tax residents were subject to a 20% withholding tax, which did not exhaust the income tax liability of the taxpayer. Also, Greece did not impose any income tax on the capital gains arising from transfer of listed shares in the Athens Stock Exchange

However, the recent financial crisis obliged Greece to readjust, rather abruptly, its tax policy within the last year. Thus, while the income tax rates were further reduced for the coming fiscal years, at the same time the legislator increased the rate of the advance tax payment for the forthcoming fiscal year (*see* **2.1.**). Also, it modified the tax treatment of dividends (*see* **2.2.**, **2.3.**) and of capital gains from the sale of listed shares (*see* **2.4.**).

2.1. Decrease of income tax rates and increase of advance payment tax rates

More specifically, according to Article 19 of Law 3697/2008,[4] as from fiscal year 2010, the corporate income tax rate shall be reduced by 1% each year until it reaches 20%. Therefore, the applicable tax rate shall be 24% for fiscal year 2010, 23% for fiscal year 2011, 22% for fiscal year 2012, 21% for fiscal year 2013 and 20%, as from fiscal year 2014. Furthermore, pursuant to Article 14 of the said law, the 25% tax rate that applies to the middle bracket of all individual tax scales shall be gradually reduced by 1% each year, starting from year 2010, until it reaches 20%, as from year 2014.

[4] Transparency of State Budget, Law 3697/2008, Republic of Greece.

The decrease of the applicable tax rates was, however, counterbalanced by the increase of the advance corporate income tax rate to 80%, for corporate income tax returns filed as of January 1, 2009.

Furthermore, Law 3697/2008 provided for the elimination of the tax free bracket of for freelancers and entrepreneurs. As of January 1st, 2008, the taxable income up to € 10,500 accruing to those taxpayers would be subject to income tax at a rate of 10%. However, this tax measure was severely criticized for introducing an unjustified discrimination against freelancers and entrepreneurs and was finally abolished by Law 3756/2009,[5] without having been applied.

2.2. 10 percent withholding tax on outbound dividends

Article 18 of Law 3697/2008 introduced a 10% withholding tax on profit distributions made by Greek SAs, on the basis of approvals granted by General Meetings of Shareholders that take place as of January 1, 2009. The new 10 percent tax is withheld on profits distributed to members of the Board of Directors, and directors, in excess of their salary, and dividends and pre-dividends distributed to resident or non resident individuals or legal entities, in cash or in the form of shares. The 10% is to be withheld by the distributing SA upon payment or credit of the profits under distribution and exhausts the respective income tax liability of the recipient of the profits.

EU-established parent companies of Greek SAs are exempt from the said withholding tax by virtue of Law 2578/1998, which implemented in the domestic legislation the EC Parent-Subsidiary Directive. The above exemption is

[5] Investment Law 3756/2009, Republic of Greece.

granted provided that the EU parent company has held at least 10% of the share capital of the Greek subsidiary that distributes the profits for a two-year minimum holding period.

2.3. Tax treatment of inbound dividends

Foreign sourced dividends received by Greek corporations are taxed as ordinary income. However, inbound dividends are subject to a 20% withholding tax, if their payment is effected in Greece. The tax so withheld is credited against the corporate taxpayer's final income tax liability. Also, any withholding tax paid abroad is credited against the recipient's income tax liability, up to the corresponding Greek tax.

Until recently, the same tax treatment applied to foreign dividends received by Greek resident individuals. In fact, inbound dividends received by Greek individuals were subject to a 20% withholding tax, which did not exhaust the income tax liability of the individual shareholders. The tax so withheld was credited against the taxpayer’s income tax, as calculated according to the generally applicable income tax scales (*i.e.*, ranging from 0% to 40%). On the contrary, dividends distributed by Greek corporations were exempt from tax at the shareholder level.

Pursuant to Article 18 of Law 3697/2008, as of January 1, 2009, inbound dividends received by Greek resident individuals are subject to a 10% withholding tax, which exhausts the recipient’s respective income tax liability. With the new provisions, both inbound and outbound dividends received by Greek individuals are subject to the same tax burden of a 10% tax. Thus, Law

3697/2008 abolished the previous discriminatory tax treatment of inbound dividends, which had led the European Commission to refer Greece to the European Court of Justice.

Law 3697/2008 did not affect the withholding tax rules that apply to Greek corporations, which receive foreign sourced dividends. Thus, the 20% withholding tax on such dividends is still applicable.

2.4. Tax treatment of the capital gains from the sale of listed shares

Law 3697/2008 introduced a 10% withholding income tax on capital gains from the sale of shares listed in the Athens Stock Exchange or foreign markets that are purchased as from January 1st, 2009. For individuals, as well as for sellers maintaining single-entry books (mainly partnerships) and for foreign resident sellers, the 10% withholding tax exhausts the income tax liability from the sale of listed shares.

On the contrary, for sellers maintaining double-entry books, such capital gains are further subject to corporate income tax upon their distribution or capitalization. At that time, the 10% withholding tax is offset against the applicable corporate income tax.

Although introduced as a tax measure that would apply to all taxpayers, practically the above 10% withholding tax would be levied mainly upon capital gains realized by Greek residents, since most foreign sellers of listed shares would be exempt from the said withholding tax, by virtue of the relevant provisions of the Double Taxation Conventions entered into by Greece.

Furthermore, soon after the enactment of Law 3697/2008, many practical complications arose in connection with the application of the 10% withholding tax, particularly with respect to sales performed by foreign tax residents and to off-exchange share sales. Finally, urged by the immense fall of the Athens Stock Exchange since fall 2008, the Greek government was obliged to postpone the application of the above withholding tax for shares that are purchased following January 1st, 2010.

3. Conclusions

Greece has an economy which is steadily growing but which also continues to bear several lasting structural problems. The primary focus of the Greek fiscal policy has always been to restore the competitiveness of its tax system, in order to attract foreign investors, and at the same time to reduce the overall tax burden on the income of the middle class, considering that these taxpayers are the main engine of the Greek economy.

From this viewpoint, Greece has reduced significantly the applicable income tax rates over the past years. Greece has further applied a low tax treatment of investment income realized by individuals, provided for numerous tax exemptions for foreign resident investors and, until recently, did not impose any income tax on Greek sourced dividends. To end with, Greece has increased considerably the number of DTCs concluded with other countries.

However, the worldwide financial crisis reduced Greece's capacity to apply tax cutting policies. Greece was urged by the European Commission to adopt structural tax measures that will aim at the increase of national tax revenue. As a result of this pressure, Greece was forced to adopt the tax measures presented above. Currently, the Ministry of Finance is seeking new tax measures, such as the elimination of various tax exemptions that are in force today and the widening of the conditions of submission to taxation on deemed or notional income (i.e. income arising from the usage and acquisition private automobile, recreation boats, aircrafts, swimming pools, secondary residence, family expenditure etc).

It remains to be seen whether the governing party, which holds only 151 out of 300 deputy seats at the Greek parliament will have enough political support to pass such measures after having lost the European elections of June 7, 2009.

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