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# Information Note on the guidelines provided by the Secretariat-General for Public Revenues with regard to (a) the deduction of expenses related to intra-group dividends and (b) the treatment of crimes of tax evasion

With two recent documents the Secretariat-General for Public Revenues has provided intructions on the matters (a) of the deduction of expenses relating to intra-group dividends and (b) the treatment of crimes of tax evasion by the Code of Tax Procedures. This note hightlights the main points of these documents.

## A. Deduction of expenses in respect of tax-exempt intra-group dividends

With its document No ΔΕΑΦ Β 1131644 ΕΞ 2016 the Secretariat-General for Public Revenues (SGPR) has provided further instructions on the matter of the deduction (for income taxation purposes) of expenses relating to intra-group dividends.

More specifically, it is recalled that, pursuant to SGPR's Circular 1039/2015, it has been clarified that if the dividend received is tax exempted under the conditions of art. 48 of I.T.C. (L. 4172/2013), then any expenses incurred that are related to that participation of a legal entity (recipient) in another legal entity, including notary charges, taxes, professional fees paid to third persons as well as any financial charges (eg interest on loans for the acquisition of holdings), are not deductible.

By virtue of the above document, it is further clarified that the said expenses are not deducted, regardless of whether in the fiscal year, during which the aforementioned expenses were incurred, a distribution of profits of the legal entity, in which the recipient participates, took place or not, that is to say the expenses are not deducted even if the legal entity, in which the recipient participates, does not distribute dividends in the year the expences have incurred. Furthermore, the non deduction of expenses applies also when the expenses are incurred for the financing of the participation in an already existing subsidiary, regardless of whether or not this financing extends the possibility of acquiring tax-free income (intra-group dividend).

## B. Crimes of tax evasion

The Circular 1142/2016 of SGPR gave instructions in respect of the new chapter of the Code of Tax Procedures (Law 4174/2013 – "C.T.P.") regarding the tax evasion crimes. It is noted that after the entry into force of L. 4337/2015 (which has added the aforesaid new chapter to the C.T.P.), i.e. as of 16.10.2015, tax evasion crimes are regulated only by CTP and articles 17, 18, 19, 20 and 21 of L. 2523/1997 (that was until then applicable) have been abolished.

According to the new provisions, a tax evasion crime is perpetrated, if the relevant tax not paid exceeds 100.000€ per fiscal year (in case of income tax, Uniform Tax on Real Estate Property - "ENFIA" - Special Tax on the real estate of enterprices, withholding taxes, duties and contributions) and 50.000€ (in case of VAT). The act is punished as a fellony, if the tax not paid exceeds 150.000€ per fiscal year (in the first case above) and 100.000€ in the case of VAT. In case of issuance or acceptance of fictitious or false tax records related to totally or partially non existing transactions, the act is considered as a misdemeanour, if the total value of the fictitious or false tax records exceeds the amount of € 75.000 per fiscal year and as a felony, in case the total value of the fictitious or false tax records exceeds the amount of € 200.000 per fiscal year.

In connection with the clarifications given by the aforementioned Circular, it should be especially noted that:

- The issuance of fictitious or false tax records, the acceptance of false tax records as well as the falsifying of tax records are punished regardless if the relevant tax has indeed been paid.

  The above-mentioned crimes are not punished, though, should these tax records be used for the commission or the support of any offence in respect of income taxes, VAT, withholding taxes etc. In this case, the only penalties imposed are those for tax evasion offences with regard to those other tax objects (income tax, VAT etc) and not to the relevant tax records.

- As regards the perpetrators and accomplices of tax evasion in the case of legal entities, it should be noted that according to the previous tax regime (L. 2523/1997) they were punished provided that they had the capacity of the legal representative of the company and that they were aware or given their capacity should have been aware of the commission of the tax evasion. Under the current tax regime, they are punished provided that they contributed to the tax evasion with any action or omission.

- The criminal report is submitted immediately by the competent tax office, without there being any of the past exceptions, which were depending on the amount of the tax dispute. The only condition that should be met is the dtetermination that a tax evasion crime (irrespectively of the amount of the alleged tax evasion) has been committed, based on the Corrective Tax Assessment Act.

- The penal procedure is not affected:
  - By any acceptance by the taxpayer of the assessment of the tax.
  - By the submission of a quasi-judicial appeal (ie an appeal before the appropriate administrative Commitee).
  - By the existence of any equivalent or higher counterclaim of the taxpayer against the Greek State.

- As regards the tax evasion offences committed until 31.12.2013 (even if they have been discovered after 1.1.2014), it has been accepted that:
  - The criminal report is not submitted if a taxpayer unreservedly accepts the initial decision of the imposition of tax or fine issued against him and pays off the debt within the deadline provided by law.
  - On the contrary, in the event that a quasi-judicial appeal is submitted, the criminal report will be submitted without delay, in other words the criminal report will be submitted immediately after the submission of the quasi-judicial appeal, regardless of whether the debt has been paid off or not.



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