

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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A. Mergers and Acquisitions of Very Small, Small and Medium Sized Companies

1. By way of Law 4935/2022 (Government's Gazette Bulletin A 103/26.5.2022) (the Law) the Greek Government introduced a new tax incentive law on mergers and acquisitions of very small, small and medium sized businesses as defined in Regulation 651/2014.
2. The Law provides for the following tax incentives that may apply depending on the type of business combination and on specific economic criteria:
 - a. reduction of the nominal corporate tax rate;
 - b. exemption from the capital gains tax in the case of asset sales;
 - c. exemption from stamp duty; and
 - d. tax deduction of expenses related to the acquisition of companies.
3. In the case of a business combination provided for by Law 4601/2019 (ie mergers, divisions, partial divisions, spin-offs, contributions of sole proprietorship to a company), the nominal corporate income tax rate is reduced by 30% on condition that:
 - a. the total turnover of the combined companies is equal to or exceeds the average turnover of the last three years of the biggest company participating in the business combination;
 - b. the combined companies are classified as very small, small or medium sized in accordance with Regulation 651/2014 of the Commission;
 - c. the turnover of the new company is equal to or exceeds the amount of €375,000; and
 - d. the new company employs more than 9 persons full time.
4. In the case of contribution of a sole proprietorship to a company, the nominal corporate income tax rate is reduced by 30% on condition that:
 - a. the contributing sole proprietorship commenced activities at least three years before the date of the contribution;
 - b. the new company keeps double-entry books;
 - c. in the event of more sole proprietorships, the turnover of the new company is equal to or exceeds the average turnover of the last three years of the biggest company participating in the business combination by 150%.
5. In the case of cooperation of legal persons:
 - a. the nominal corporate income tax rate of the each of the cooperating legal persons is reduced by 30% on condition that each of the cooperating legal persons contributes to a new legal entity an amount equal to 10% of its share capital and the total amount of the share capital is not lower than €125,000;
 - b. a tax benefit exceeding the amount of €125,000 for each of the cooperating legal persons over a time period of three years commencing from the date of implementation of the tax benefit cannot be claimed.
6. The following applies to all combinations under paragraphs A.3, 4 and 5 above:
 - a. the reduction of the corporate income tax rate by 30% applies for 9 years commencing from the year following the year of completion of the combination; and
 - b. the tax benefit cannot exceed the threshold of €500,000 within this 9 years' time period.
7. Capital gains arising from the sale of assets in the context of business combinations, are tax exempted on condition that:
 - a. the turnover of the new company is equal to or exceeds the amount of €375,000;

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- b. the transfer of assets to a third party pertains to items transferred by the combined companies and takes place within a 5 years' time period from the completion of the combination; and
 - c. the total value of the transferred assets of the new company exceeds the threshold of 30% of the average turnover of the last three years of the combined companies.
8. A stamp duty exemption is provided for cooperation agreements signed in the context of the Law, including the contribution, transfer of assets of the combined companies, decisions of the competent bodies of the combined companies, participation rate in the companies resulting from the combination, transfers of assets and liabilities or obligations and rights in rem.
9. Registration of the assets of the combined companies with the land registry incurs €300 fixed charges of the registrar agent. The above acts are fully exempted from other duties, fees, or charges.
10. In the case of purchase of participation in another legal entity, the related expenses incurred by the acquiring company are fully deducted on condition that:
- a. the total turnover of the acquired company and of the acquiring company is equal to or exceeds the amount of €450,000;
 - b. the total amount of the expenses deducted do not exceed the threshold of 30% of the average turnover of the acquiring company during the last three years before the purchase of the participation; and
 - c. the above limitations under a. and b. do not apply in the event that the sole activity of the acquiring company is participation in other companies (ie it is a holding company) or if it has been established before the lapse of one year from the acquisition date.

B. Losses Carried Forward and Capital Registration Tax Exemption for Business Combinations Defined Under Law 2166/1993

1. Losses carried forward by combined companies may be transferred to a new company and set-off against its profits only to the extent that this is provided for by taxation provisions and on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds the amount of €450,000.
2. The amount of non-deductible losses for tax purposes is depreciated on annual basis, although the depreciation itself is not tax deductible.
3. Losses carried forward by the absorbing company are subject to the time limitations of the income tax code (ie

carried forward for a maximum of 5 years).

4. The new company may apply the tax exemptions provided by Article 3, par. 1 of Law 2166/1993 to the tax year following the date on which the transfer of the losses to the new company was completed.
5. The combination agreement or any other contract or agreement, the transfer of assets of the combined companies or any other act or agreement related to the transfer or contribution of assets/liabilities or rights in rem or other obligations, the decisions of the competent bodies of the companies, as well as any registration in the Government's Gazette, is exempted from capital registration tax on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds the amount of €450,000.
6. Registration of the assets of the combined companies with the land registry incurs €300 fixed charges of the registrar agent. The above acts are fully exempted from other duties, fees or charges.

C. Capital Registration Tax Exemption on Business Combinations Defined Under Legislative Decree 1297/1972

1. The agreement on merger or transformation or the transfer of assets of the combined companies or any other act or agreement related to the transfer or contribution of assets/liabilities or rights in rem or other obligations, the decisions of the competent bodies of the companies, as well as any registration in the Government's Gazette, is exempted from capital registration tax on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds the amount of €450,000.

D. Capital Registration Tax Exemption on Business Combinations Defined Under Law 4172/2013

1. The agreement on merger or transformation or the transfer of assets of the combined companies or any other act or agreement related to the transfer or contribution of assets/liabilities or rights in rem or other obligations, the decisions of the competent bodies of the companies as well as any registration in General Commercial Registry (GEMH), performed under Articles 52-55 of Law 4172/2013 (Income Tax Code), is exempted from capital registration tax on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds the amount of €450,000.

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