

Greece

Payments Made for Use of Advertising Software are Royalties Subject to WHT in Greece, Says Complaints Settlement Directorate

11 October 2023

Report from our correspondent Dr Vassilis Dafnomilis

The Complaints Settlement Directorate (Directorate) of The Independent Authority for Public Revenue, in an administrative appeal decision, has determined that payments for the use of software on a platform for advertising registration will be categorized as royalties. Consequently, the income received by foreign companies is subject to withholding tax (WHT) in Greece, as per the rates outlined in the relevant tax treaty.

(a) Facts. The case revolves around payments made by the appellant company, a tax resident of Greece, for advertising services through websites and applications. These services use specialized software, enabling targeted ad displays to specific consumer groups based on factors such as age, gender, and consumer habits.

During an audit for the tax year 2016, it was discovered that the appellant company made payments to foreign companies for online advertising, which were classified as royalties. However, no tax was withheld on these payments for that tax year. Consequently, the audit assessed the WHT owed in Greece based on tax treaties with Bulgaria, Cyprus, the United Kingdom, and Turkey, along with corresponding penalties.

The appellant company disputed this decision, arguing that the payments they made were compensation for the display of advertisements by the recipient foreign companies, facilitated by their use of the relevant software. They contended that it was not a payment for granting the use of the software to the appellant company.

(b) Issue. The Directorate examined the issue whether the payments for advertising services were in the nature of royalties.

(c) Decision. The Directorate did not agree with the appellant's grounds and based on the Greek Income Tax Code, commentary to article 12(3) of the [OECD Income and Capital Model Convention and Commentary](#) (OECD Model) and circular 1042/2015 of the Independent Public Revenue Authority, confirmed that the said payments must be classified as royalties.

In that regard, the Directorate referred to the Explanatory Memorandum to the Income Tax Code, which states that the definition of royalties in article 38(1) of the Income Tax Code must be consistent with the OECD Model and the relevant commentaries. In addition, the introduction of this definition facilitates the determination of the place of taxation for the application of tax treaties that Greece has concluded.

Furthermore, the concept of income from royalties is broader than the definition provided in the OECD Model as it considers the relevant reservation that Greece had expressed and therefore, covers the consideration for the use or the right to use software for commercial exploitation or personal use, as well as advisory services provided electronically through information networks.

The decision, published on 29 September 2023, is available [here](#) (as a pdf and in Greek only).

Greece - Payments Made for Use of Advertising Software are Royalties Subject to WHT in Greece, Says Complaints Settlement Directorate (11 Oct. 2023), News IBFD.

Exported / Printed on 6 Mar. 2024 by hkermadi@deloitte.lu.