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## Newsletter

8 May 2019

### **“Strategic Investments” Law 4608/2019 (Gazette A’ 66)**

Law 4608/2019 amends the Strategic Investments regulatory framework in order to attract large scale investments with qualitative characteristics across all strategic sectors of the economy, with legal certainty, fast track procedures and efficiency for the Investors, the Public Authorities and the economy.

#### **The main provisions of the new regulatory framework in summary, are as follows:**

- Strategic Investments now refer to more sectors of the economy.
- Enhanced incentives are provided, and especially for Manufacturing and Research & Development (R&D).
- It is possible to use real estate owned by the Greek State or Public Sector (excluding real estate owned by Hellenic Republic Asset Development Fund or by Hellenic Corporation of Assets and Participations) in order for private Investors to implement Strategic Investments.
- Strategic Investments are categorized according to provided incentives.
- The criteria for the inclusion and the evaluation of the investment proposals are now specified.
- The law introduces an organized electronic public consultation.
- The Fast Track Procedure has been accelerated.
- The law introduces the mandatory signing of a Cooperation Memorandum between the Public Authority and the Investor which includes a binding timetable for the licensing and the implementation of the investment.
- The law provides for the possibility to submit for Arbitration all the disputes arising from the interpretation and implementation of the Cooperation Memorandum.
- The law introduces an auditing process for the implementation progress of the investment as well as a procedure for imposing penalties in case of the investor’s inaction.

In particular:

#### **Strategic Investments**

Strategic Investments are defined as investments that, due to their strategic importance for the national and/or the local economy, result in both a quantitative and qualitative impact of significant intensity in the increase of employment, productive reconstruction and promotion of the country's natural and cultural environment, featuring extroversion, innovation, competitiveness, all-encompassing planning, and saving of natural resources under the cyclical economy perspective and high added value, particularly in the economic activity sectors of internationally marketable products or services.

Pursuant to the provided incentives, the following categories of Strategic Investments are set: “Strategic Investments 1”, “Strategic Investments 2”, “Emblematic Investments”, “Fast Track Strategic Investments”, “Automatically included Strategic Investments”.

## Investment Incentives

The investment incentives provided by the new regulatory framework of Strategic Investments are the following:

### — Incentives for spatial development

- i. The law provides for the possibility to implement investments upon Special Plans for the Spatial Development of Strategic Investments (ΕΣΧΑΣΕ), as a general rule on joint land, and only exceptionally and under conditions, on separate plots.
- ii. Especially for Emblematic Investments in Manufacturing, it is possible to use ΕΣΧΑΣΕ at a built to surface ratio of 0.6.
- iii. The law provides the possibility for expropriation of properties or establishment of rights in rem on real estate, under the condition that the expropriated property is not larger than the percentage of 3% of the total land on which the investment is to be implemented.

### — Tax incentives

- i. The stabilization of the tax rate incentive is provided for all the Strategic Investments categories.
- ii. The law provides for the possibility for a tax exemption, i.e. the exemption from income tax on pre-tax profits arising, according to the tax legislation, from the total business activities of the entity, after the deduction of the corporate tax which relates to the distributed or undertaken profits. The amount of the tax exemption forms a reserve and is calculated under the scale provided by the law. The Investor may use the full tax exemption within 15 tax years and in a period not less than 3 tax years from the year in which the incentive is granted.
- iii. The law provides for the possibility for the acceleration of the tax depreciations of the assets which are included in the approved investment plan, with a 100% increase of the relevant rates. The final increased rate cannot exceed the rate of 40% if the original depreciation rate is higher than 20%.
- iv. Especially for manufacturing companies, the depreciation of machinery and equipment are deducted from the gross revenue at the time of their realization, increased by a percentage of 30%.

### — Fast Track Incentive

All licenses, approvals or opinions required for the establishment or the operation of a Strategic Investment are issued within a deadline of 45 calendar days starting from the submission date of the relevant dossier by the Investor. The licensing authority examines the formal and substantial completeness of the dossier and, within 15 calendar days and once only, may request for additional information. In such a case, the deadline is suspended and commences again from the submission of the additional information. In any case, the aforementioned 45 day deadline cannot be extended.

If the above deadline elapses, the law provides for the possibility for the Minister of Economy and Development to issue or reject the relevant license on justified grounds.

### — Incentives for increasing expenditures

The law provides for grants in order to cover part of the eligible expenses. In particular:

- i. Grant for the recruitment of disadvantaged and disabled employees, which, combined with any other State aid, cannot exceed EUR 5 000 000 per investment plan.
- ii. Grant for R&D projects, which, combined with any other State aid, cannot exceed
  - (a) EUR 20 million per investment plan for projects mainly related to industrial research;
  - (b) EUR 15 million per investment plan for projects mainly related to experimental development, and
  - (c) EUR 7,5 million per investment plan for feasibility studies and research activities preparation.

## Conditions for the inclusion and Incentives by category

The conditions for the inclusion and the provided investment incentives by category are the following:

Category	Annual Work Units (AWU)	Total Budget	Incentives (solely or jointly)
Strategic Investments 1	At least 120 new AWU	Exceeding EUR 100 000 000	<ul style="list-style-type: none"> <li>- Spatial development incentives</li> <li>- Tax rate stabilization</li> <li>- Fast Track licensing</li> </ul>
Strategic Investments 2	At least 100 new AWU	Exceeding EUR 40 000 000	<ul style="list-style-type: none"> <li>- Tax Incentives</li> <li>- Fast Track licensing</li> <li>- Expenditure Grants</li> </ul>
Strategic Investments 2 in Manufacturing	At least 75 new AWU	Exceeding EUR 30 000 000	<ul style="list-style-type: none"> <li>- Tax Incentives</li> <li>- Fast Track licensing</li> <li>- Expenditure Grants</li> </ul>
Strategic Investments 2 within Organized Manufacturing and Business Operators	At least 50 AWU	Exceeding EUR 25 000 000	<ul style="list-style-type: none"> <li>- Tax Incentives</li> <li>- Fast Track licensing</li> <li>- Expenditure Grants</li> </ul>
Emblematic Investments by distinguished internationally-renowned legal entities	Regardless any threshold	Regardless any threshold	<ul style="list-style-type: none"> <li>- Spatial development incentives</li> <li>- Tax Incentives</li> <li>- Fast Track licensing</li> <li>- Expenditure Grants</li> </ul>
Emblematic Investments in Manufacturing	At least 200 AWU	Exceeding EUR 200 000 000	<ul style="list-style-type: none"> <li>- Spatial development incentives</li> <li>- Tax Incentives</li> <li>- Fast Track licensing</li> <li>- Expenditure Grants</li> </ul>
Fast Track Strategic Investments	At least 30 new AWU	Exceeding EUR 20 000 000	<ul style="list-style-type: none"> <li>- Tax rate stabilization</li> <li>- Fast Track licensing</li> </ul>
Automatically included Strategic Investments: (a) Public and Private Partnerships (PPP), (b) Projects of Common Interest (PCI)	Regardless any threshold	Regardless any threshold	<ul style="list-style-type: none"> <li>- Tax rate stabilization</li> <li>- Fast Track licensing</li> </ul>

## Strategic Investments' evaluation and inclusion procedure

- Strategic Investors are required to submit to «Enterprise Greece» an application accompanied with a dossier including, at minimum, the necessary documents and information prescribed by the law, including, inter alia, the business plan, the timetable, the budget analysis and the direct and indirect impact assessment of the investment.
- Enterprise Greece evaluates and issues its opinion regarding the investment proposal within a deadline of 45 calendar days beginning from the date of the dossier's submission. Subsequently, Enterprise Greece posts the key elements of the dossier and an executive summary of the investment proposal on an appropriately organized platform on its website and calls for public consultation. The public consultation is carried out within 15 calendar days. The final opinion of Enterprise Greece is forwarded to the General Secretariat for Strategic and Private Investments, which then submits the dossier with the relevant opinion to the Strategic Investment Coordination Committee (SICC).
- The SICC is responsible to examine the investment dossier and issue an opinion to the President of the Interministerial Committee for Strategic Investments (ICSI).
- An investment plan is defined as Strategic Investment and is included in one of the above categories upon ICSI's decision, based on the recommendation of the Minister of Economy and Development. Pursuant to the criteria prescribed by the law, the ICSI decision is issued within a deadline of 30 calendar days beginning from the submission of the dossier to the General Secretariat for Strategic and Private Investments. The decision is published in the Government Gazette.
- In order to cover Enterprise Greece's administrative cost for the evaluation of the investment dossier, a management fee of 0.1% of the investment's total cost is required, which cannot be less than EUR 50 000 nor exceed EUR 250 000. The 25% of the management fee is paid upon the submission of the application, while the rest 75% is paid before the ICSI's meeting, during which the investment proposal will be discussed. In case the investment proposal is not finally defined by the ICSI as Strategic, the 75% of the total management fee is refunded.

## Implementation of the investment

- Within 45 calendar days from the date when the relevant decision of ICSI is published in the Government Gazette, the Investor is required to submit the investment and licensing dossier with the minimum content prescribed by the law, to the General Directorate of Strategic Investments.
- Subsequently, and within 60 calendar days, a Cooperation Memorandum between the Investor and the Ministry of Economy and Development is drafted, which includes, inter alia, the detailed timetable for the licensing procedure and the implementation of the investment as well as the Investor's and the Authority's specific obligations regarding the progress of the licensing procedure.
- The total time for the issuance of all the required licenses in order to implement a Strategic Investment must not exceed 3 years effective from the date of the Cooperation Memorandum's signature.

## Supervision of the Investment's implementation

- The General Secretariat for Strategic and Private Investments is responsible for the supervision of the implementation progress of the investment proposals.
- For the monitoring of the investment proposal's implementation, the Investor, upon approval of the Minister of Economy and Development, appoints an independent financial and technical auditor from the Special Register which is retained in the General Secretariat for Strategic Investments.
- In case of violation of the Incentives Decision's or the Cooperation Memorandum's terms, the law provides for penalties, while the definitive declassification of the investment is also possible.

## Dispute Resolution

The law provides for the possibility to resolve the disputes arising from the interpretation and implementation of the Cooperation Memorandum by Arbitration. The arbitral tribunal consists of three arbitrators. The Arbitration is conducted in Athens and in the Greek language, unless otherwise provided in the Cooperation Memorandum. The arbitral Judgment is final, irrevocable and is defined as enforcement order.

## Residence permit and executives' tax treatment

- Visa D and a ten-year residence permit, renewable for ten more years, are permitted to be granted to a maximum of ten executives of the investment regarding all Strategic Investments categories. The executives of the Strategic Investments may be accompanied by their family members to whom a residence permit for family reunification is also granted.
- Executives, employed in the Strategic Investment and non tax residents in Greece, are exempt from the taxation of their global income in Greece, with respect that they are deemed to retain their tax residence abroad and are subject to Greek tax only for their income derived in Greece in a certain tax year and during the period the employment relationship lasts. A similar tax treatment also applies for their dependent children as well as for their spouses or the other party of a cohabitation agreement, under the condition that the spouse or the other party has no working activity in Greece.

## Deadline for the applications' submission

- Applications for the inclusion into the new Strategic Investments Procedure are submitted from 25 May 2019 to 31 December 2023.
- Applications for inclusion into the prior regulatory framework of Strategic Investments are submitted until 25 May 2019.
- Pending investment proposals, the evaluation of which has not yet been completed by the ICSI, may be subject to the new Strategic Investments Procedure, upon relevant request.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.

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