

Recent tax developments in Greece

On 6 June, 2017, the Greek Parliament ratified a new law that adopts the EU Directive on Mandatory Automatic Exchange of Information. The same law extends the term of the Voluntary Disclosure Program that has been running in Greece since the beginning of the year. Other tax rules introduced through the same law include changes in the field of withholding taxes and inheritance taxation, in line with EU law principles, as well as a provision to enhance the level of protection of taxpayers in case of change of the tax authorities' stance on the interpretation of tax provisions.

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Mandatory Automatic Exchange of Information: Adoption of EU Directive

The new law adopts the EU Directive (2015/2376/EU) on mandatory automatic exchange of information with respect to advance cross-border tax rulings ("rulings") and advance pricing agreements ("APAs"). Greece and other EU Member States were under the obligation to adopt the Directive into their domestic legislation by 31 December, 2016.

According to the new law and in line with the scope of the Directive, specific information will be automatically exchanged between Greece and other EU Member States, whereas limited information will be communicated to the European Commission. The new domestic provisions are built into the existing framework for information exchange, through amendments to Law 4170/2013.

The definition of rulings and APAs to be exchanged among Member States covers a wide range of situations, e.g. advance cross-border agreements issued by a tax authority to a particular person

upon which such person is entitled to rely and unilateral, bilateral or multilateral APAs which determine the appropriate criteria to be set for the determination of the transfer pricing for the transactions or of the attribution of profits to a permanent establishment. Automatic exchange does not extend to rulings concerning -purely domestic transactions, rulings concerning exclusively tax affairs of one or more natural persons and bilateral or multilateral APAs with third countries under certain conditions.

Information to be exchanged between EU Member States includes, among others, the identification of the person or group of persons (other than a natural person), a summary of the content of the ruling or of the APA including a description of the relevant business activities or transactions or series of transactions provided in abstract terms, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, the start and end date of the period of its validity, the identification of the set of criteria used for the determination of the transfer pricing or the transfer price of itself in the case of an APA.

The above rules apply for rulings and APAs issued, amended or renewed from 1 January 2017. Exchange of information occurs within three months after the end of calendar half-year in which the ruling or APA was granted. Under certain circumstances, rulings and APAs which have been issued, amended or renewed after 1 January 2012, or after 1 January 2014, as the case may be, will also be exchanged.

Exchange of information is one of the measures adopted by the EU, in an effort to increase transparency, to facilitate administrative cooperation and to face challenges posed by cross-border tax avoidance, aggressive tax planning and harmful tax competition, in the light also of the OECD BEPS project and particularly Action 5 on Countering Harmful Tax Practices.

Four-month extension of the Greek Voluntary Disclosure Program

The new law extends the Greek Voluntary Disclosure Program (the “VDP”), which originally expired on 31 May, until 30 September 2017.

VDP penalty rates will be slightly increased for filings made after 31 May 2017. The rate for taxpayers who are not under tax audit has been set at 12% on the main tax, readjusted for years prior to 2010. The revised rates are as follows:

Year of reporting obligation	Applicable penalty rate
up to 2001	15%
2002	15%
2003	14%
2004	14%
2005	14%
2006	13%
2007	13%
2008	13%
2009	13%
2010-2013	12%
2014-2015	0.73% per month

Different penalty rates apply for taxpayers who have been notified with a tax audit order. In such cases the penalty rate is 18% or 36%, depending on the stage of the tax audit, whereas a 10% or 12% penalty rate may also be applicable under specific conditions.

Further to the ratification of the VDP's extension, a new Circular is expected to be issued by the Ministry of Finance resolving practical matters that have occurred during the reporting process.

Withholding tax exemption for service fees earned by Greek PE of EU or EEA resident company

The new law amends the regime of withholding corporate tax for permanent establishments of EU or EEA tax resident companies. More specifically, article 62 of Income Tax Code (Law 4172/2013) is modified in order to include permanent establishments of EU and EEA tax resident companies in the regime applicable to resident companies, which are exempt from withholding tax on fees earned

from the provision of technical services, management remunerations, remunerations for consultancy services and other remunerations related to similar services.

The amendment is intended to address the concerns expressed by the European Commission in the context of EU Pilot procedure launched in 2016, by granting legislative force to the clarifications that had already been provided by Circular POL 1007 earlier this year.

Binding effect of circulars on tax matters; changes for further protection of taxpayers

The new law introduces amendments in the Greek Code of Tax Procedure (Law 4174/2013) in relation to the effect of the interpretative circulars issued by the Independent Authority of Public Revenues on tax matters. According to the new rules, circulars are binding towards tax administration, not only until they are explicitly revoked or amended, but also until the legislation they interpret is amended (without in such case being required for the circulars to be explicitly revoked).

Furthermore, the new law provides that any change in the tax administration's interpretative position cannot have a retroactive effect, if it is to the detriment of the taxpayer. Also, it is clarified in case the taxpayers have acted in line with the relevant interpretative circulars, they cannot be deemed to have filed inaccurate tax returns, or to have failed to file tax returns, as the case may be (and therefore respective penalties are not applicable).

ENFIA supplementary tax exemption for fields owned by private individuals

According to the new law, the exemption from the real estate ("ENFIA") supplementary tax for fields (plots outside city planning zones) owned by private individuals, which had been set to apply for year 2016, is extended for years 2017 and 2018.

Changes in scope of primary residence exemption following ECJ judgment against Greece

The new law introduces an amendment of article 26 Part A paragraph 1 of the Inheritance Tax Code, concerning the exemption from inheritance tax on primary residence for nationals of Greece and the EU. The exemption is now applicable to nationals of countries of the European Economic Area (EEA)

as well. In addition, this tax advantage shall be granted with no prejudice to the state of tax residence of the heir.

The above extension of scope is also applicable in cases of parental donation.

The new provision comes as a measure of compliance to the judgment of the Court of Justice of the EU in Case C 244/15, Commission v. Hellenic Republic, which underlined the restriction on the free movement of capital.

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