Recent tax developments in Greece

In this issue:

Mandatory Automatic Exchange of Information for year 2016: Bill submitted to Parliament for ratification

On 15 March 2016, a bill (the "**Bill**") was submitted to Greek Parliament to transpose into Greek law the provisions of Council Directive 2014/107/EU amending Directive 2011/16/EU (transposed by Greek Law 4170/2013) as regards mandatory automatic exchange of information in the field of taxation.

By way of reminder, Directive 2014/107/EU was adopted to expand the scope of the tax information to be automatically exchanged between EU Member State tax authorities and to implement the reporting and due diligence rules that have to be applied by Reporting Financial Institutions (incl. investment entities) to that end. The rules apply between EU Member State Financial Institutions and account holders. In the meantime, EU agreements with certain non-EU countries initially based on Directive 2003/48/EC are currently being revised to be aligned with Directive 2014/107/EU and the Common Reporting Standard developed by the OECD.

Key provisions of the new bill, addressed to Greek Reporting Financial Institutions and Greek tax authorities, may be summarised as follows:

1. **Type of information to be reported:** Information to be reported and automatically exchanged includes not only income from interest or dividends, but also proceeds from the sale of financial assets and account balances (as standing at the end of the relevant calendar year or upon closure of the account, if closed before year end). Reporting Financial Institutions shall report,

among others, the relevant account number as well as the name, address and Tax Identification Number of the account holder(s).

2. **Exceptions:** Information on "excluded accounts" (e.g. retirement or pension accounts) will not be reported or exchanged. Furthermore, certain entities such as governmental entities, central banks or international organisations constitute "Non-Reporting Financial Institutions" and are thus exempt from reporting obligations.

3. **Timeframe:** Reporting shall take place annually, within nine months following the end of the tax year.

4. **Due diligence requirements:** Different due diligence requirements apply for "old" and "new" accounts (i.e. accounts opened before or after 1 January 2016); requirements are also distinguished, depending on whether the account holder is an individual or a legal entity (incl. corporations, partnerships, trusts and foundations).

   i. **Pre-existing ("old") individual accounts:** For low-value accounts (total value of less than the Euro equivalent of US$1M on 31 December 2015), Reporting Financial Institutions may refer to the current residence address of the account holder in order to determine such account holder's tax residence. If the account holder has not declared a current residence address, Reporting Financial Institutions will search in electronic records, based on specifically designated indicia (e.g. telephone number, "hold mail" instructions etc.). For high value accounts (total value above the Euro equivalent of US$1M on 31 December 2015), a paper records search and a relationship manager inquiry for actual knowledge are additionally required.
   ii. **New individual accounts:** Reporting Financial Institutions must obtain a self-certification from the account holder in order to determine the account holder's tax residence.

Financial Institutions must establish whether the entity is an active or passive Non-Financial Entity ("NFE"), based, among others, on the ratio of passive income over total annual revenues. Passive NFEs are required to identify their ultimate controlling persons.

   iii. **Pre-existing legal entity accounts:** Financial Institutions are not required to report legal entity accounts of a balance below the Euro equivalent of US$250,000. For account balances exceeding such threshold, Financial Institutions must establish whether the entity is an active or passive Non-Financial Entity ("NFE"), among others based on the ratio of passive income over total annual revenues. Passive NFEs are required to identify their ultimate controlling persons. In determining the tax residence of the controlling persons for accounts of a value below the Euro equivalent to US$1M, Reporting Financial Institutions may rely on information collected under their AML/KYC due diligence procedures; for accounts of a value exceeding such threshold, Reporting Financial Institutions must obtain self-certification on behalf of the NFE.

iv. **New legal entity accounts:** Reporting Financial Institutions are required to obtain a self-certification of the status and tax residence of the entity and of the controlling persons, if applicable.

5. **Method of exchange**: Information collected by the Greek Reporting Financial Institutions will be transmitted to the Greek tax authorities and will be consequently exchanged between Member States automatically by electronic means.

6. **Maximum retention period**: Information processed as per the aforesaid procedure shall be retained in accordance with the Greek rules on statute of limitations.

7. **Legal force**: The above rules apply from 1 January 2016; therefore, automatic exchange of tax information will take place for the first time from 1 January 2017 until 30 September 2017 concerning tax year 2016.

On another note, the Bill also incorporates the provisions of Council Directive 2015/2060/EU, pursuant to which Directive 2003/48/EC (transposed by Greek Law 3312/2005) on taxation of savings income in the form of interest payments is repealed with effect from 1 January 2016. Notwithstanding such repeal, information gathered by paying agents and Member States before the date of the repeal will be processed and transferred as originally envisaged.

Stricter conditions for tax exemption of intra-group dividends to tackle tax avoidance

Dividends received by Greek legal entities from Greek or EU affiliated enterprises are under certain conditions exempt from Greek corporate income tax. Likewise, under certain conditions dividends paid to Greek and EU affiliated enterprises qualify for an exemption from Greek withholding tax.

A bill has now been submitted to Parliament proposing the adoption of stricter conditions for the tax exemption of intra-group dividends, with the purpose of tackling aggressive tax planning. The proposed changes will transpose amendments to the EU Parent-Subsidiary Directive, which must be seen in light of the EU Commission’s Action Plan against tax evasion and tax fraud and the OECD project on Base Erosion and Profit Shifting.

In particular, the exemption from Greek corporate income tax on dividends received by Greek legal entities from EU affiliates will henceforth only apply to the extent that such profits are not deductible by the subsidiary. This amendment is targeted at hybrid loans (e.g. profit-participating loans) and aims at preventing situations of double non-taxation due to mismatches in the tax treatment of profit distributions between the state of the subsidiary and of the parent company.

The appropriate interpretation and application of the proposed SAAR is a matter that is anticipated to raise uncertainties in the course of future tax dispute resolution.

Furthermore, the adoption of a Special Anti-Avoidance Rule (SAAR) is proposed, aiming at prohibiting the withholding tax exemption of dividends paid by Greek companies to their EU parent companies, as well as the relief from corporate income tax regarding dividends received by Greek companies by their EU-based subsidiaries. This is to the extent that such exemptions are claimed in the context of artificial arrangements that are not put in place for valid commercial reasons reflecting economic reality, but aim mainly at obtaining a tax advantage. The appropriate interpretation and application of the proposed SAAR is a matter that is anticipated to raise uncertainties in the course of future tax dispute resolution.

New administrative guidelines on the VAT exemption of goods placed in free zones

On 3 March 2016 the Greek Ministry of Finance published new guidelines in relation to the VAT exemption of goods placed in Free Zones and the formalities to be fulfilled for the respective purposes. More specifically, as clarified through the above guidelines, the relevant VAT exemption covers (i) the placement of non-EU goods in a Free Zone, (ii) the local supply of goods that are intended for placement in such Zone, (iii) the supply of goods within the Free Zone and (iv) the supply of certain services (such as conservation, reconstruction of the goods after transport, etc.) to goods that are placed and supplied in the Free Zone.

In all the aforementioned cases, VAT becomes due upon exit of the goods from the Free Zone, to the extent such goods are being released for free circulation in Greece. On the other hand, no VAT will be due in case of export or intra-Community supply of the goods.

Abolition of obligation for authorisation of import invoices; new administrative guidelines on the audit of customs value of imported goods

On the basis of the new guidelines recently published by the Ministry of Finance (“MoF”), importers are no longer under the obligation to submit the invoices relating to the import of goods to the customs authorities for authorisation. The abolition of the aforementioned obligation is intended to increase the capacity of customs officials to perform audits after the customs clearance of goods, towards among others the confirmation of accuracy of the customs value of imported goods declared by importers. The aforementioned guidelines of the MoF cover a wide range of issues relating to such audits, including the following:

- Situations where there is an increased risk for overpricing or underpricing of goods, such as transactions between related parties; and

- The costs that should be added to the customs value of imported goods such as royalties and license fees relating to such goods that have been paid as a condition for the sale of the goods to the importer, to the extent they have not been included in the price payable or paid.

Changes in customs legislation: Implementation of the Union Customs Code

As of 1 May 2016, the existing legal framework on customs rules and procedures throughout the EU (i.e. the Community Customs Code and the relevant implementing Regulation 2454/93/EEC) will be replaced by the Union Customs Code (Regulation 952/2013/EU) and its delegated and implementing regulations (i.e. Regulations 2015/2446 and 2015/2447 respectively). The implementation of the aforementioned new rules is intended, among others, to ensure a paperless environment for customs and trade, to increase the legal certainty for businesses performing customs-related transactions and to facilitate customs procedures for Authorised Economic Operators.

For further information, please contact:

Costas Kallideris
T (+30) 210 69 67 074
E c.kallideris@zeya.com

Hara Strati
T (+30) 210 69 67 087
E h.strati@zeya.com

Katerina Vagia
T (+30) 210 69 67 128
E k.vagia@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640
www.zeya.com

Zepos & Yannopoulos is proud to be the Greek member of the TAXAND global organisation of leading tax advisory firms. Now comprising of independent tax advisory firms in nearly 50 countries, TAXAND has more than 400 tax partners and 2,000 tax advisors delivering actionable advice, responsively, to the global marketplace. For more information, please visit www.taxand.com.

In addition to offering quality legal, tax and accounting advice, Zepos & Yannopoulos assists its international clients in capturing the intricacies of the Greek business environment and practice. Our approach is direct and client driven.