

**TAX BRIEFING:** Monthly Insight

# Recent Developments in Tax Legislation

*Law 4378/05.04.2016 transposes Council Directives regarding the mandatory automatic exchange of information in the field of taxation and the tax treatment of intra-group dividends, Ministerial Circulars with regard to the income tax return for the 2015 tax year, mutual assistance for the recovery of claims relating to taxes, transfer pricing, redundancy payments and the tax treatment of claw back and rebate amounts assessed by the National Health Services Organisation.*

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## **A. Council Directives 2014/107, 2015/2060, 2014/86 and 2015/121 are Transposed into National Law**

Law 4378/2016 (Government Gazette No. Α' 55/ 05.04.2016) transposed four Council Directives regarding the mandatory automatic exchange of information in the field of taxation and the tax treatment of intra-group dividends into National law.

In particular:

- I. Law 4170/2013 transposing Council Directive 2011/16 on administrative cooperation in the field of taxation has been amended to incorporate the provisions of Council Directive 2014/107 as regards the mandatory automatic exchange of account information. Account information to be automatically exchanged between EU Member State tax authorities for the first time from 1 January 2017 concerning the 2016 tax year includes not only income from interest or dividends, but also account balances and sale proceeds from financial assets.

For further information on the contents of this Briefing, please do not hesitate to get in touch with your usual M. & P. Bernitsas Law Offices contact or

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2. Law 3312/2005 transposing Council Directive 2015/2060 was amended to incorporate the repeal of Directive 2003/48 on taxation of savings income in the form of interest payments with effect from 1 January 2016 onwards.

It is noted that Council Directive 2003/48 was repealed in order to avoid the overlapping exchange of account information under both Directive 2003/48 and Directive 2014/107.

Notwithstanding the repeal of Directive 2003/48/EC, information collected before the date of the repeal will be processed and transferred as originally envisaged.

3. Articles 48 and 72 of the Income Tax Code were amended to incorporate the provisions of Council Directives 2014/86 and 2015/121 regarding the tax exception for intra-group dividends between legal entities established in different Member States.

According to the new provisions, dividends received by Greek parent entities are tax exempt to the extent that such profits are not deductible by the subsidiary. This restriction determines the tax treatment of hybrid loans between affiliated legal entities (profit participating loans) and aims at avoiding situations of double non-taxation of profit distributions between Member States.

Furthermore, as a means of tackling aggressive tax planning and the abuse of the Parent-Subsidiary Directive, a general anti-abuse rule is introduced. According to this rule, the benefits of tax exceptions for dividends paid by Greek legal entities to their EU parent entities, or received by Greek legal entities from their EU subsidiaries, are not granted to arrangements put into place solely to obtain an advantage that is not justified by a solid business reasoning reflecting the economic reality.

## **B. Ministerial Circulars POL. 1041/05.04.2016 and POL. 1044/18.04.2016 Dealing with Income Tax Returns of Individuals for the 2015 Tax Year**

The form of the income tax return to be submitted by individuals for the 2015 tax year was published by way of Ministerial Circular POL. 1041/05.04.2016. This provides instructions regarding the content of the income tax return and supporting documentation. In accordance with Ministerial Circular POL. 1044/18.04.2016, the deadline for the submission of income tax returns by individuals for the 2015 tax year is extended to 30 June 2016.

## **C. Ministerial Circular POL. 1047/12.04.2016 Accepting Council of State Opinion No. 372/2014 on Mutual Assistance for the Recovery of Claims Relating to Taxes, Duties and Other Measures (Law 4072/2012 Transposing Council Directive 2010/24)**

Following Council of State Opinion No. 372/2014 regarding the application of Law 4072/2012 on mutual assistance in the recovery of claims relating to taxes, the Ministry clarified that the execution of a request for recovery of claims in Greece is subject to the provisions of the Code of Tax Procedure (Law 4174/2013).

If the uniform instrument (*eniaios titlos*) that accompanies the request for mutual assistance relates to income or withholding tax, the State may take precautionary measures pursuant to the provisions of the Code of Tax Procedure.

The relevant authority will charge interest for late payment from the date on which the recovery request is received. The tax authorities must serve a copy of the uniform instrument along with the accompanying note to the taxpayer directly and notify him of the applicable surcharges.

## **D. Clarifications Regarding Transfer Pricing Documentation (ΔΕΑΦ Β 1054893 ΕΞ 2016/ 17.03.2016)**

The Ministry of Finance held the view that expenses which are non-deductible for tax purposes and adjusted upon submission of the income tax return (accounting adjustments), are not subject to transfer pricing documentation for compliance with the arm's length principle. The adjusted expenses must be included in the transfer pricing documentation file and the relevant list of intra-group transactions in support of the Summary Information Table, along with a reference to the fact that they have been adjusted in the annual income tax return.

## **E. Tax Treatment of Redundancy Compensation (ΔΕΑΦ Α 1060851 ΕΞ 2016/ 12.04.2016)**

The Ministry of Finance reiterated its position that redundancy compensation is subject to income tax at the time the beneficiary is entitled to receive it. Accordingly, the beneficiary will include only the installments paid in the respective tax year in their income tax return, if the compensation is paid in installments. The tax however, is calculated on the total amount of the compensation at a rate of 0% to 30%, irrespective of the number of the installments.

**F. Tax Treatment of Claw Back and Rebate  
Amounts Assessed by the National Health  
Services Organisation (E.O.Π.Y.Y.) (ΔΕΑΦ Α  
1052893 ΕΞ 2016/ 04.04.2016)**

Pursuant to Article 100 of the Income Tax Code and further to Ministerial Circulars POL. 1113/02.06.2015 and 1191/12.08.2014, the Ministry of Finance clarified that claw back and rebate amounts assessed by E.O.Π.Y.Y. prior to the deadline for the submission of the 2015 tax year income tax return, are deducted from the gross revenues of the same year.