

TAX BRIEFING: Monthly Insight

Recent Developments in the Tax Legislation

The Ministry of Finance amended the tax list of non-cooperative countries for 2016 and provided clarifications on legislation governing REICs, insurance tax, registration of limited liability companies, the winding - up special regime, withholding tax exemptions, annual withholding tax certificates, expenses of individuals and guidelines for the electronic submission of the tax return of certain vessels.

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A. Updates to List of Non-Cooperative Countries for 2016

The Ministry of Finance issued an updated list of the countries considered to be non-cooperative for 2016. The tax consequences of performing transactions with residents in these countries are as follows:

1. Payments executed to a tax resident in a preferential tax regime country or a non-cooperative country are non-deductible, unless the Greek taxpayer can provide evidence that the respective expenses correspond to real and ordinary transactions which do not result in the shifting of profits, income or capital aimed at tax avoidance or evasion. However, payments made to a tax resident of an EU or EEA country may be deducted if there is a legal basis for the exchange of information between Greece and this country.
2. For the purposes of the Controlled Foreign Companies (CFC) Rules, the non-distributed income of a CFC, subject, inter alia, to tax in a non-cooperative country or in a country with a preferential tax regime, may be considered as taxable income of the Greek tax resident who controls it. The CFC Rules do not apply to EU tax resident CFCs and EEA tax resident CFCs (EEA countries with which an agreement for the exchange of information is in force), provided the establishment or the economic activity pursued is not artificial and aimed at the avoidance of the tax due.

The following countries are included in the list of the non-cooperative countries:

Andorra	Monaco
Antigua and Barbuda	Panama
Bahrain	Philippines
Barbados	Niue
Brunei	Nauru
Dominica	St. Lucia
FYROM	St. Kitts and Nevis
Guatemala	St. Vincent and the Grenadines

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Grenada	Samoa
Hong-Kong	The Bahamas
Lebanon	The Cook Islands
Liberia	Uruguay
Liechtenstein	US Virgin Islands
Malaysia	Vanuatu
Marshall Islands	

B. REICs - Tax Treatment of Reserves

Following Opinion no 249/2016 of the Legal Council of the State, the Ministry of Finance issued document ΔΕΑΦ Β' 1008198 ΕΞ 2017 providing clarification for the tax treatment of reserves formed under the ordinary regime of the previous income tax code (Law 2238/1994). In particular, reserves posted in the net equity of a corporation that was subsequently transformed to a Real Estate Investment Company (REIC) are subject to the special tax provisions of Law 2778/1999 (the law regulating REICs) excluding the general provisions of the new income tax code (Law 4172/2013). The special tax regime of REICs in Greece provides that they are exempted from corporate income tax and their tax is calculated on the average of the current value of their investments at the rate of 10%.

At company level the main benefit is the exemption from company income tax, with the exception of dividends acquired in Greece (according to Law 4389/2016 in effect from 1 June 2016). REICs have to pay tax at a rate of 10% of the valid European Central Bank intervention rate (Interest Reference Rate) increased by one point and calculated on the average of the investments, plus any available funds, at their current value.

C. Insurance Tax Exemptions

By way of Ministerial Circular POL. 1028/22-2-2017, the Ministry of Finance clarified that the following insurance contracts are excluded from the tax on premiums:

1. insurance contracts of vessels and aircrafts within the framework of Article 3 of P.D. 551/1970;
2. life insurance contracts with a duration of at least 10 years;
3. insurance contracts between non-Greek legal entities and Greek shipping companies established under Law 27/1975;
4. exemptions provided by Agreements ratified by Law; and
5. reinsurance premiums.

In the case of insurance contract cancellations, the insurance tax on premiums is not refundable.

The tax on insurance premiums on tobacco leaves remains unchanged at 15%.

D. Transformation of Greek LLCs to Sociétés Anonymes - Branch Registration

Under the special regime of the tax incentive Law 2166/1993, Greek Limited Liability Companies (*ΕΠΕ*) may transform to Sociétés Anonymes (S.A.s) enjoying the benefits provided by this law. The Ministry of Finance clarified by way of ΔΕΑΦ Β 1019871 ΕΞ 2017 that after the date of the Transformation Balance Sheet any new branch of the company will be registered with the tax authorities under the S.A. that will derive from the transformation, even if the transformation process has not been concluded. The special regime of Law 2166/1993 introduced the pooling of interests accounting method for mergers and business combinations in Greece.

E. Credit Institutions - Extension of First Year Under the Winding - Up Special Regime

Under the previous income tax code (Law 2238/1994), the first accounts of corporations, including credit institutions, could cover a period of more than 12 months. After 1 January 2014 and the introduction of the new income tax code (Law 4172/2013), this provision has been abolished. Nevertheless, the Ministry of Finance clarified by way of ΔΕΑΦ Β 1006036 ΕΞ 2017 that the special provisions regulating the winding - up of credit institutions prevail over the general provisions. Consequently, the first accounting year of the winding - up period may exceed the 12th month.

F. Tax Deductible Expenses Paid by Electronic Means

Ministerial Decision POL. 1005/2017 (Government Gazette B 145/25-01-2017) detailed the expenses which the Income Tax Code stipulates must be paid electronically and in respect of which receipts must be collected for the 2017 fiscal year in order for them to be tax deductible.

According to the Income Tax Code, taxpayers must pay for the purchase of goods and services in Greece or in EU or EEA countries by the use of electronic means such as cards, e-banking and e-wallets, in order to avoid increase in their annual income tax liability. The minimum amount of expenses required for payment by electronic means correlates positively to the taxable income. The following table depicts this correlation, representing the minimum amount of expenses as a percentage of the taxable income. The scale is applied on a progressive basis:

Taxable Income (in €)	% of minimum amount of expenses
1 - 10,000	10%
10,000.01 - 30,000	15%
30,000.01 and above	20% capped at €30,000

The expenses for the purchase of consumer products and

services have to be included in the following groups of consumer indexes of the Hellenic Statistic Authority:

- Group 1: Food and non-alcoholic beverages
- Group 2: Alcoholic beverages and tobacco
- Group 3: Clothing and shoes
- Group 4: Housing, excluding lease payments
- Group 5: Long term goods, household effects and services
- Group 7: Transportation, excluding expenses for road taxes and the purchase of vehicles not including bicycles
- Group 8: Communications
- Group 9: Leisure, cultural activities, excluding the purchase of airplanes, aircrafts and boats
- Group 10: Education
- Group 11: Hotels, cafes, restaurants
- Group 12: Other goods and services

Certain categories of tax payers are exempted from the use of electronic means of payment. In the case of spouses, the amount of expenses is calculated separately for each spouse. However, if the amount declared by the one spouse is not sufficient in order to benefit from the tax deduction, the difference may be covered by the expenses of the other spouse upon assessment of the tax.

In cases where the minimum amount requirement is not met, the remaining expenses will be taxed at 22%.

G. Withholding Tax Exemption for the Permanent Establishment in Greece of EU or EEA Legal Entities

Article 62 par. 1 of the Income Tax Code (Law 4172/2013) stipulates that fees paid for the provision of technical services, management services, advisory services and other similar services are subject to 20% withholding tax. By way of Ministerial Circular POL. 1007/2017, the Ministry of Finance clarified that fees for services provided in Greece by the permanent establishment of an EU or EEA legal entity are not

subject to withholding tax in Greece. This Ministerial Circular assimilates the tax treatment of these fees charged by the permanent establishment of EU or EEA legal entities with the exemption provided for Greek legal entities supplying similar services in Greece. This exemption does not apply to services provided to governmental bodies (subject to withholding tax at 1%, 4% or 8%) or to other legal entities for technical works (subject to withholding tax at 3%).

H. Shipping Industry - Electronic Submission of Tax Return of Vessels Included in the First Category of Law 27/1975

By way of Ministerial Decision POL. 1022/20-2-2017, the Ministry of Finance defined the type and content of the tax return of vessels included in the first category of Law 27/1975. The Ministerial Decision also provides guidelines for the electronic submission of tax returns and details the documentation that should be filed with the tax return. The ordinary deadline for the submission of the tax return is the end of February of each tax year, but for the 2017 tax year, the deadline has been extended to 20 March 2017.

I. Annual Withholding Tax Certificate

The Ministry of Finance has recently issued Ministerial Decision POL 1025/28-2-2017 with regard to the obligation of Greek legal entities or persons to submit annual withholding tax certificates for the 2016 accounting year. This Decision details the requirements concerning the type, content and procedure for electronic submission of withholding tax certificates for income deriving from employment and business activities. The deadline for submission of the 2016 certificates for employment and income from business activities expires on 31 March 2017, while for dividends distributed to individuals by legal entities keeping revenues - expenses books, the deadline expires on 30 June 2017.

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