

TAX BRIEFING: Monthly Insight

## Recent Developments in Tax Legislation

The EU excludes eight jurisdictions from the list of non-cooperative offshore zones. Greece ratifies amended protocols to EU Agreements with the Principality of Liechtenstein and the Republic of San Marino for measures equivalent to those in Directive 2003/48/EC. Tax legislation introduces additional measures for the capitalization of tax free reserves and new registration requirements and sanctions, as well as reductions in fines for voluntary payment of taxes. A Directorate is established to combat financial crime and a Circular provides guidelines on the distribution or capitalization of profits from current or previous years.

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#### A. The EU Excludes Eight Jurisdictions from the List of Non-Cooperative Offshore Countries

1. On 23 January 2018, the EU excluded the following eight countries from the list of the non-cooperative countries:

1. Barbados
2. Grenada
3. Korea
4. Macao SAR
5. Mongolia
6. Panama
7. Tunisia
8. The United Arab Emirates (UAE)

2. The above countries will be under close monitoring in order for the EU to evaluate the effective implementation of their commitments.

#### B. Greece Ratifies the Amended Protocol to EU Agreements with the Principality of Liechtenstein and the Republic of San Marino

1. Greece ratifies the amended protocol to the EU's agreements with the Principality of Liechtenstein and the

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Republic of San Marino on the automatic exchange of information (AEOI) to improve international tax compliance.

2. The amended protocols detail the information to be exchanged, the time and manner of the exchange, the exchange of information upon request, the form of the Common Reporting Standard (CRS) and other procedural issues.

## C. Reduced Rates for Capitalization of Tax Free Reserves

1. By way of Law (Law 4512/2018 - Government Gazette A 5/17-1-2018 and 8/23-01-2018), reduced rates are provided on condition that Greek SAs (*AE*) and Limited Liability Companies (*EPE*) will capitalize reserves formed from non-taxed profits within the framework of tax incentive laws by the end of 2020.
2. In particular, SAs with shares listed on the Athens Exchange may capitalize such reserves until the end of 2018, subject to a reduced rate of 5%. In cases in which reserves are capitalized by the end of 2019 and 2020, the tax rate increases to 10% and 20% respectively.
3. For SAs and Limited Liability Companies with non-listed shares, the tax rate upon capitalization of the reserves is 10% for both the 2018 and 2019 tax years and increases to 20% for the 2020 tax year. However, a prerequisite to the application of the reduced rate is a cash injection by existing or new shareholders of an amount equal to the amount of the capitalized reserves.
4. If a company is dissolved or its share capital reduced in order to refund the reserves to its shareholders before the lapse of 10 years from the capitalization, the reserves will be subject to income tax at the normal tax rate. This time restriction does not apply to mergers.

## D. Reduced Fines for Voluntary Payment of Taxes

1. Law 4152/2018 extended the right of taxpayers filing late tax returns. Until now, taxpayers could file outdated initial or corrective tax returns up until the time of issuance of a tax audit mandate. This time period is extended to the date of issuance of a preliminary assessment act by tax auditors.
2. Taxpayers are subject to 8.76% interest per year plus a fine of 10%-50% calculated on the amount of tax due. The new provisions do not apply to payroll tax.
3. The fine may be reduced by 40% on condition that it is paid within 30 days from the filing.
4. The new provisions also apply to the fiscal years prior to 2013 and the 40% reduction may apply to tax assessments pending before the Administrative Courts or the Dispute Resolution Directorate, or to assessments which, until the date of publication of the new law, have not been served

on the taxpayer.

5. In order to benefit from the new provisions, taxpayers must file the tax return without reservation.
6. Circular POL. 1012/2018 provides guidelines for the application of the new favourable provisions.

## E. Registration Requirements for Specific Cases

1. Where a new legal entity applies for registration with the tax authorities, the latter may ask for a guarantee if:
  - a. within the last 5 years, the shareholder of the new legal entity:
    - i. served as a BoD member or legal representative of a legal entity or person; or
    - ii. was a related party to a legal entity that is bankrupt or at risk of default; and
  - b. the amount of the legal entity's tax debt which is deemed at risk amounts to at least €15,000.
2. Legal entities that intend to perform intra-community transactions for VAT purposes are obliged to provide a guarantee to the Greek State in cases where:
  - a. within the last 5 years, a shareholder or a BoD member served as a BoD member or legal representative of a legal entity whose tax registration number has been suspended; or
  - b. a shareholder or a BoD member developed a business activity resulting in a suspension of its personal tax registration number.

## F. Registration Sanctions in Cases of Tax Law Infringement

The tax registration number of taxpayers may be suspended or de-activated if the tax authorities conclude that the taxpayer has ceased its business activity or evades tax or has filed inaccurate data in order to obtain a tax registration number.

## G. Establishment of New Directorate for the Investigation of Financial Crimes

1. The new law provides for the establishment of a Directorate for the investigation of financial crime. The General Attorney for Financial Crime will be in charge of steering and coordinating the operation of the Directorate.
2. The Directorate will have extended powers and may investigate the business premises of the taxpayer, will have access to its bank accounts and tax books and records. It may also cooperate with other public authorities if this is required for the audit.
3. Depending on the outcome of the investigation and in cases where the auditors of the Directorate have indications that tax evasion has been committed which is punishable under

criminal law, they will report to the General Attorney for Financial Crime and to the Independent Authority of Public Revenue in order to commence a regular tax audit.

### H. Guidelines on Tax Treatment of Capitalization or Distribution of Profits and Reserves

1. Following the amendment of the provisions relating to the distribution or capitalization of profits of Law 4172/2013 (the Income Tax Code) by Law 4446/2016, the Independent Authority of Public Revenues (AADE) provides guidelines for the application of the new provisions as of 1 January 2017.
2. In general, the distribution or capitalization of non-taxed profits is considered to be business income subject to corporate income tax at the normal rate (currently 29%). This tax applies irrespectively of the financial position of the legal entity (profit or loss).
3. In cases of legal entities with tax losses carried forward, any distribution or capitalization of the current year's profits will be subject to corporate income tax. The respective amount will be grossed-up with the corresponding corporate income tax before its distribution or capitalization. The gross amount will then be added back to the previous years' tax losses.
4. The corresponding tax of the distributed or capitalized amount may be set-off against taxes withheld or paid in advance. No advance payment of this tax will be calculated in the annual income tax return of the legal entity.
5. The same treatment applies in the case of a legal entity with current year accounting profits which turn to tax losses because of adjustments in the annual income tax return.
6. In the case of distribution or capitalization of previous years' non-taxed profits (reserved profits), the distributed or capitalized amount will be subject to corporate income tax at the normal rate. However, after its taxation the respective amount will not increase potential tax losses since it relates to previous years' profits.
7. As of 1 January 2017, previous years' tax losses cannot be set-off against tax-free reserves formed under tax incentive laws or specific tax provisions. Such losses are carried forward and can be set-off against future profits.
8. The favourable tax provisions of Law 4152/2018 may apply for distribution of reserves until the end of 2020 (please see C above).

## Contacts



**Panayotis Bernitsas**  
Managing Partner  
E [pbernitsas@bernitsaslaw.com](mailto:pbernitsas@bernitsaslaw.com)



**Fotodotis Malamas**  
Senior Associate  
E [fmalamas@bernitsaslaw.com](mailto:fmalamas@bernitsaslaw.com)

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