

**TAX BRIEFING:** Monthly Insight

# OECD Automatic Exchange of Information and Common Reporting Standards

*Law 4428/2016 ratified the OECD Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and incorporated the OECD Common Reporting Standard into domestic law.*

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## **A. Ratification of the OECD Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information**

Article I of Law 4428/2016 ratified the OECD Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, which was signed by the Greek State on 29 October 2014 (the Agreement).

According to the Agreement:

1. Greek financial institutions or Greek branches of international financial institutions are under an obligation to report account information regarding interest, dividends, account balances and sale proceeds from financial assets to the Ministry of Finance and follow certain procedures, consistent with the reporting and due diligence procedures set out in the OECD Common Reporting Standard.
2. The Greek competent authorities are obliged to automatically exchange this information annually with the competent authorities in signatory countries where account holders are resident.
3. If the account holder is a passive non-financial legal entity, information relating to its controlling persons will be exchanged with the competent authorities in signatory countries of residence. This will be the case if, for example, more than 50% of the legal entity's gross income for the preceding calendar year is passive income and more than 50% of the assets held by the legal entity during the preceding calendar year produce or are held for the production of passive income.
4. Greece may also mutually agree to exchange information automatically with one or more countries on a bilateral basis between the competent authorities. The Agreement comes into effect between two competent authorities on the later of the following dates:
  - a. the date on which the second of the two competent authorities has notified the OECD Secretariat of the jurisdictions with which it intends to enter into the Agreement; and,

- b. if applicable, the date on which the OECD Convention on Mutual Administrative Assistance in Tax Matters (as such may be amended by Protocol) has entered into force and is in effect for both jurisdictions.
5. Greece has committed to exchange of information on all accounts opened on or after 1 January 2016 by 30 September 2017. For pre-existing accounts which were already open on 31 December 2015, the intended deadlines for exchange of information are:
- 30 September 2017 for individual high-value accounts with an aggregate balance or value exceeding US\$1,000,000 on 31 December 2015, and 31 December of any subsequent year; and
  - 30 September 2017 or 30 September 2018 for accounts of legal entities or individual low-value accounts with an aggregate balance or value that does not exceed US\$1,000,000 on 31 December 2015, depending on when the accounts were identified as reportable.
6. A Ministerial Decision will be issued determining the list of countries with which Greece will automatically exchange information on the basis of the Agreement. Similar Ministerial Decisions will determine the entry into force of any bilateral agreements for the automatic exchange of information.
7. Law 4378/2016 has already incorporated the Council Directive 2014/107 on the mandatory automatic exchange of account information between EU Member State competent authorities into domestic legislation. On this basis, information regarding interest, dividends, account balances and sale proceeds of financial assets concerning the 2016 tax year will also be exchanged for the first time from 1 January 2017.

## B. Incorporation of the OECD Common Reporting Standard (CRS) into Domestic Law

Article 3 of Law 4428/2016 incorporated the CRS into domestic law, as this was approved on 15 July 2014 by the Council of the OECD. The provisions regarding the implementation of the CRS will enter into force in Greece on 1 January 2016.

According to the new provisions, financial institutions or branches of financial institutions resident in Greece must follow specified due diligence procedures for the purpose of identifying new or pre-existing accounts of individuals and legal entities and report their findings annually to the Ministry of Finance.

For these purposes, the term pre-existing account means an account maintained by the financial institution as of 31 December 2015. If, irrespective of the day it is opened, an account is considered to be one and the same account with a pre-existing one and no further information is required regarding its opening, then both accounts are treated as pre-existing.

Certain types of pre-existing accounts do not fall within the scope of the reporting requirements, in particular:

- an individual account holding a cash value insurance contract or annuity contract, provided the reporting financial institution is effectively prevented by law from selling such contract to residents of a jurisdiction with which Greece has agreed to exchange information (a reportable jurisdiction); or
  - the account of a legal entity with an aggregate account balance or value that does not exceed US\$250,000 as of 31 December 2015, unless the aggregate account balance or value exceeds this amount on the last day of any subsequent calendar year or the reporting financial institution elects otherwise.
3. Account information to be reported to the Ministry of Finance includes:
- the name, address and jurisdiction of residence of the account holder;
  - if the account holder is a passive non-financial legal entity, the name, address and jurisdiction of residence of any controlling persons residents in a reportable jurisdiction;
  - the account balance or value on the last day of the calendar year or on the date of closure of the account;
  - the gross amount of interest, dividends and other income generated with respect to the assets held in the account; and
  - the gross proceeds from the sale or redemption of financial assets.
4. For the purposes of determining the aggregate balance or value of accounts, the financial institution will:
- if the account holder is an individual, add together the balance on all accounts held by the individual;
  - if the account holder is a legal entity, add together the balance of all accounts maintained by it or by any related legal entities, to the extent the accounts can be linked by reference to a common data element in the financial institution's database, such as a client or tax registration number; and
  - in the case of joint accounts, attribute the entire balance of the jointly held account to each account holder.

This Briefing is intended to provide general information and is not meant to constitute a comprehensive analysis of the matters set out herein or to be relied upon as legal advice. It is not meant to create a lawyer-client relationship. Legal and other professional advice should be sought before applying any of the information in this Briefing to a specific situation.

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