

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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A. Circular E.2173/2020 Provides Guidelines on the New Tax Provisions Regarding the Liability of BoD Members

1. For the first time, Law 4646/2019 introduces subjective liability for Board of Directors (BoD) members complying with court rulings issued over the last two years (see our *December 2019 Monthly Tax Briefing*).
2. Within this framework, Circular E.2173/2020 of the Independent Authority of Public Revenues (ΑΑΔΕ) (the Circular) provides guidelines for the implementation of the new provisions.
3. In accordance with the Circular, the new provisions apply to:
 - a. tax debts generated after 12 December 2019;
 - b. tax debts established after 12 December 2019 but which relate to previous tax years; and
 - c. retroactively and following an application filed by taxpayers by 31 December 2020, tax debts established before 12 December 2019.
4. Where such applications have been rejected by pending quasi-judicial recourses, taxpayers may reapply before 31 December 2020.
5. Applications may also be filed by taxpayers who previously did not file or had their quasi-judicial recourse rejected.
6. The new provisions do not apply retroactively to past cases where the taxpayers' liability was not provided for under the old regime.

7. Tax authorities examine the following to determine whether the implementation of the new provisions are relevant to each case:
 - a. the nature of the debt, for example Income Tax, VAT, Unified Real Estate Tax, Inheritance Tax and so on (it should be noted that BOD members and executives are not liable for some taxes payable by legal entities);
 - b. the time period during which the BoD member or executive was acting in the specific capacity;
 - c. the capacity in which the BoD member or executive was acting during the audited time period; and
 - d. the subjective liability of the BoD member or executive, which is rebuttable, with the burden of proof resting with the BoD member or executive.

B. Decision A.1231/2020 Clarifies Exit Tax Liability

1. By way of Law 4714/2020 Greece incorporated the provisions of the ATAD regarding exit tax liability into domestic legislation.
2. Decision A.1231/2020 clarifies the procedure and supporting documentation necessary for the assessment and payment of exit tax and provides the form and content of the required tax return.
3. The Decision itemises the cases in which legal entities must provide a guarantee for exits from Greece, which relate either to the payment of exit tax in installments or to the return of assets to Greece with a time period of 12 months.
4. The market value of assets is assessed:
 - a. either by two certified auditors or audit firms; or
 - b. based on the book value adjusted by their fair value measurement; or
 - c. by the value reflected in the transfer pricing documentation file of the legal entity.

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