

Recent tax developments in Greece

Law 4446/2016, gazetted on 22 December 2016, introduces, among others, a number of changes in the field of taxation, along with a new voluntary disclosure program. Highlights of the new tax rules are summarized in the present newsletter.

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Taxation of Income

E-payments as a prerequisite for income tax deduction for individuals

The new law aims, among others, to discourage individuals from cash transactions in an effort to combat tax evasion. Tax rules to this direction that will apply for tax years starting from 1 January 2017 are the following:

- In order to qualify for an income tax deduction (provided in art. 16 L. 4172/2013), individuals should make electronic payments for the purchase of goods or the receipt of services (through credit/debit cards, bank account transfers). The minimum annual requirement of e-payments depends on the total taxable income of the respective year, according to the below progressive scale:

Taxable Income (in Euro)	Required e-payments (as a percentage of taxable income)
1-10,000	10%
10,000.01-30,000	15%
30,000.01 and above	20% (capped at Euro 30,000)

In the event that the taxpayer does not meet the minimum e-payment requirement, the annual income tax to be assessed will be increased by 22% on the difference between the minimum requirement and the actual e-payments.

The law provides for an exemption from the above obligation for specific categories of taxpayers, whereas a ministerial decision will list the expenses to be exempt, additional groups of taxpayers to be exempt, as well as the tax incentives for taxpayers exceeding the minimum e-payment requirement.

- Medical expenses (doctor's fees, pharmaceutical expenses etc.) will be taken into consideration for income tax deduction purposes, only under the condition that the relevant payments have been made electronically.
- Finally, according to the new law, individuals are prohibited from making payments exceeding the amount of Euro 500 in cash.

The above provisions apply for tax years starting from 1 January 2017.

Tax deductibility of salary payments

In the same context, in order for salary payments made by legal entities to be tax deductible, they should be paid electronically. The e-payment obligation concerns any kind of employment relationship, whereas payment of even part of the salary in cash would lead to the disallowance of the total salary expense.

Fringe benefits: New method of calculation of taxable value of cars

The new law revises the method of calculation of the taxable value of cars granted as a fringe benefit. According to the new rule, which applies from 1 January 2016, the taxable value of the car benefit to employees, shareholders or partners is equal to a percentage of the car's retail price excluding any taxes on such price. Depending on the retail price of the car (irrespective of whether the car is owned or leased), the applicable rate to define the taxable value is as follows:

Retail price before taxes (in Euro)	Applicable rate
0-12,000	4%
12,001-17,000	7%
17,001-20,000	14%
20,001-25,000	18%
Exceeding 25,000	22%

The taxable value is reduced depending on the age of the car according to the following table:

Age of the car (in years)	Reduction rate
0-2	0%
3-5	10%
6-9	25%
10+	50%

The cars with a retail price up to Euro 12,000 (before taxes) granted to employees, shareholders or partners exclusively for business purposes are not considered as a taxable benefit in kind.

Capitalization/distribution of tax free reserves; corporate income tax liability in case of losses

The new law provides that the capitalization or distribution of tax free reserves triggers a corporate income tax liability for the legal entity, notwithstanding any tax losses that the enterprise may have for the same fiscal year. The new rule applies for fiscal years starting from 1 January 2017.

Deductibility of foreign tax losses

An amendment regarding the scope of the restriction on foreign tax losses which can be deductible against taxable business income in Greece or carried forward, has the effect of rectifying a previous interpretation by the tax authorities in POL 1088/16 that the restriction covered also losses arising from the disposal of securities issued by foreign issuers. Under the relevant amendment, the restriction now covers only tax losses arising from the conduct of business activities through a permanent establishment in foreign jurisdictions, with the exception of EU/EEC jurisdictions having concluded a Double Taxation Agreement on the basis of which business profits are not exempt from tax in Greece.

Calculation of technical provisions established by Insurance Undertakings

According to L. 4364/2016, which implemented Directive 2009/138/EC (Solvency II), Insurance Undertakings are obliged to establish technical provisions with respect to all of their insurance and reinsurance obligations. The method of calculating such technical provisions is provided for under L. 4364/2016. However, by virtue of art. 99 par.6a of the new law, for fiscal years starting from 1 January 2016, the pre-existing calculation method (art. 7 L.D. 400/1970, as well as relevant Ministerial Decisions) -which may in practice result in less fluctuations- is being reinstated for corporate income tax purposes exclusively.

VAT

VAT cash accounting system; increase of turnover threshold

Under the VAT cash accounting system, taxable persons have the right to pay to the State the VAT they charge to their clients at the time of collection. Likewise, they should deduct the VAT charged by their suppliers, at the time of payment to the supplier. This system deviates from the general rule that VAT should be accounted for on an accrual basis. Until now, only taxable persons, whose annual turnover did not exceed the amount of Euro 500,000, were entitled to make use of this system. Under the new law the turnover threshold is increased to Euro 2,000,000. The VAT cash

accounting system is also granted to taxable persons who have not completed their first year of operation.

Real Estate

Special Real Estate Tax; extended scope of exemptions

The new law extends the scope of the Special Real Estate Tax exemptions as follows:

(i) UEA companies will be entitled to the same exemptions applicable to EU companies.

The scope of the disclosure exemption that was applicable since 2010 to Greek and EU companies will apply similarly to UEA companies subject to the specific conditions.

The disclosure exemption applies to EU companies holding Greek properties that have registered shares, up to the level of the ultimate beneficiary private individual(s), holding a Greek tax ID. The disclosure exemption will now apply also to companies registered in the UEA subject to the following requirements:

- Relevant Companies are registered in the UEA with the exception of companies registered in non-cooperative tax jurisdictions.
- The ultimate private individuals who hold the shares of the above companies are tax residents in an EU or UEA country, with the exception of non-cooperative jurisdictions, and hold a tax ID in such countries.
- The above persons will obtain a Greek tax ID, within one month from the publication of the law in the Government Gazette.
- The Greek real estate has been acquired before 2009.

The tax exemption applies also to disputes which are pending before the tax authorities or the courts at the time the law was submitted to Parliament. For the granting of the exemption to these cases a penalty of Euro 2,500 will be imposed.

(ii) A 30-days window is granted for obtaining a Greek tax ID to benefit from the disclosure exemption for years 2010-2016.

Starting from 2010, one of the requirements for the disclosure exemption to apply was for the ultimate beneficiaries –private individuals, who participated in companies holding Greek properties, to have a Greek tax ID. The new law provides that the disclosure exemption will apply to EU and UEA entities holding Greek real estate during years 2010-2016, even if the ultimate shareholders individuals did not hold a Greek tax ID during the respective years, subject to the following conditions:

- The ultimate private individuals were tax residents in an EU or UEA country, with the exception of non-cooperative tax jurisdictions, and had a tax ID in such countries.
- The above persons will obtain a Greek tax ID within one month from the publication of the law in the Government Gazette.

The tax exemption applies also to disputes which are pending before the tax authorities or the courts at the time the law was submitted to Parliament. For the granting of the exemption to these cases a penalty of Euro 2,500 will be imposed.

Short term property leases in the context of sharing economy

The new law introduces a regulatory framework for the lawful operation of short term leases in the context of sharing economy. This framework covers leases that are made by individuals with the interposition of digital platforms and are legitimate provided the following conditions are met:

- The lessor is registered with the “Registry for short term lease of properties” which will be created by the General Secretariat of Public Revenues of the Ministry of Finance. It is obligatory that the respective registration number is mentioned in any relevant posts in the digital platforms, as well as in any media.
- No more than two (2) properties per tax registration number of the income beneficiary can be registered.
- The property has a minimum surface of 9 sq.m., natural light, ventilation and heating system.
- The building is compliant with all applicable building regulations.
- The lease of each property does not exceed ninety (90) days in a calendar year. In case of islands with less than 10,000 residents, the lease of each property does not exceed sixty (60) days per calendar year. The maximum term may be exceeded, to the extent the total income of the lessor from all the leased properties in the context of sharing economy, does not exceed the amount of Euro 12,000, within the respective fiscal year.
- The leased properties are furnished and no services are provided, except bed linen.

If the above conditions are not met, the leases may be legitimate, only if they are officially licensed. The above leases do not render the lessor an entrepreneur for this activity and they are exempt from VAT. The Ministry of Finance may request from the digital platforms which are interposed in the leases in question any necessary information for the identification of the lessor.

Suspension of capital gains tax from the transfer of real estate property

Once more, taxation of the capital gains to arise upon the disposal of real estate property has been postponed, until 31 December 2017. To be noted that, the imposition of real estate capital gains tax had already been suspended up to 31 December 2016.

Transfer Pricing

Transfer pricing documentation penalties relaxed and aligned through the years

Pursuant to the new law, transfer pricing documentation penalties are relaxed through the years. The new law provides that penalties for transfer pricing documentation infringements that have taken place during fiscal years starting after 1 January 2012 and up to 31 December 2013 will apply also for fiscal years that have started before that date. Penalties in question are set out in art. 4 par. 5&6 of L. 2523/1997. The revised penalties apply also to disputes which are pending before the tax authorities or the courts at the time that the new law will be gazetted. Furthermore, according to the new law, if the transfer pricing penalties set out in art. 56 of L. 4174/2013 are more favorable, they will prevail, irrespective of the time when the relevant infringement took place.

The table below summarizes the transfer pricing penalties among which the most favorable would prevail, according to the new rules:

Infringement	Penalties under L. 2523 (ar. 4 par. 5&6)	Penalties under art. 56 L. 4174
Late filing of initial or revised TP Summary table	Euro 1,000-Euro 10,000 (calculated as 1/1000 over the company's gross revenue)	Euro 500-Euro 2,000 calculated as 1/1000 over the value of the reported transactions; in the event of a revised filing, the penalty applies only if the revision is of an amount exceeding Euro 200,000
Filing of an inaccurate TP Summary table	Same as above	Same as above, provided that the inaccuracy refers to at least 10% of the I/C transactions subject to substantiation
Non-filing of the TP Summary table	Euro 10,000-Euro 100,000, calculated at 1/100 over the company's gross revenues	Euro 2,500-Euro 10,000, calculated at 1/1000 over the value of the reported I/C transactions
Delayed submission of TP File	Euro 1,000-Euro 10,000, calculated at 1/1000 over the company's gross revenues	Euro 5,000-Euro 20,000, depending on extent of delay

Infringement	Penalties under L. 2523 (ar. 4 par. 5&6)	Penalties under art. 56 L. 4174
Non-filing of the TP File	Euro 10,000-Euro 100,000 calculated as 1/100 over the company's gross revenues	Euro 20,000

Tax procedure

Introduction of new Voluntary Disclosure Program

The new law introduces a long awaited program for the voluntary disclosure of undeclared funds (the "VD program"). The VD program applies to individuals as well as corporate taxpayers, whereas the deadline for participating in the program expires on 31 May 2017.

Key features

Pursuant to the law, taxpayers have the chance to disclose to the tax authorities taxable items that had not been declared in previous years and file initial or amending tax returns, while benefiting from the imposition of reduced penalties. The main tax will be assessed based on the tax rate applicable at the time, when the tax obligation arose.

For tax returns until 31 March 2017, penalties for late filing will be calculated at a rate of 8% on the amount of the main tax due. After that date and until 31 March 2017, the applicable rate will be 10%.

Depending on the year when the tax obligation arose, penalty rates for late filing will be readjusted, as follows (decimal rates have been rounded up, in line with the provision of the law):

Year	Applicable penalty rate (on main tax due), if filing until 31.03.2017	Applicable penalty rate (on main tax due) if filing until 31.05.2017
up to 2001	10%	13%
2002	10%	12%
2003	10%	12%
2004	9%	12%

Year	Applicable penalty rate (on main tax due), if filing until 31.03.2017	Applicable penalty rate (on main tax due) if filing until 31.05.2017
2005	9%	12%
2006	9%	11%
2007	9%	11%
2008	8%	11%
2009	8%	11%
2010-2013	8%	10%
2014-2015	N/A	N/A

Different rates and rules apply for taxpayers who are currently under tax audit.

Taxes covered

The VD program applies for all tax returns that should have been filed up to 30 September 2016 concerning all taxes covered by the Greek Code of Tax Procedures (L.4174/2013), including i.a. income tax, VAT, stamp tax, inheritance and gift tax, real estate taxes and special solidarity contribution tax. The program also applies for taxes for which a preliminary tax audit report has been issued.

Benefits of the new VD program

Under the proposed program, taxpayers will have the opportunity to:

- (i) Benefit from significantly reduced penalties for the delayed filing of tax returns referring to years up to 2013 (based on the currently applicable rules, such penalties would be calculated at rates reaching 120% of the main tax due following tax audit).
- (ii) Be relieved from future penalties for inaccurate filing or non-filing of tax returns concerning years 2014 and 2015.
- (iii) Shield themselves from additional fines or penalties, as well as from potential criminal prosecution for tax evasion and money laundering related to tax evasion.

Unresolved Matters

Based on the wording of the law and its explanatory memorandum, the following issues remain unclear:

- (i) For fiscal years 2014 and 2015, late interest seems to be assessed on the amount of tax due (currently calculated at an 8.76% annual rate).
- (ii) The law does not set any limitation on which years may be subject to the VD program, taking into account statute of limitation rules.
- (iii) It is not clarified, whether non-Greek entities with Greek Ultimate Beneficial Owners (UBOs) are entitled to participate in the VD program.

The Ministry of Finance is expected to provide implementation guidelines and tax forms clarifying unsettled matters.

Changes in tax litigation procedure

The new law introduces a number of changes in the Code of Administrative Procedure. In general, changes seem to relax the procedural steps impacting the admissibility of cases before competent tax courts, particularly in relation to low value tax disputes. Key changes are highlighted below:

- Disputes for tax assessments up to the amount of Euro 60,000 shall be heard before the single member Administrative Court of First Instance, whereas disputes exceeding the Euro 60,000 threshold and up to the amount of Euro 150,000 shall be heard before the three-member Administrative Court of First Instance. No changes are introduced in relation to disputes for assessments exceeding the amount of Euro 150,000, which are heard before the Court of Appeals.
- The plaintiff is released from the obligation to serve the judicial appeal to the competent tax authority, at the time of filing. The procedure will be handled by the Court secretariat, without impacting the admissibility of the appeal in court.
- The minimum amount payable prior to hearing of a tax litigation case before the appellate court is reduced to 20% of the tax assessment under dispute, instead of the previously applicable 50% rate.
- The method of calculation of the court duty payable prior to hearing is revised. The duty shall be calculated at a 1% rate over the disputed amount of tax assessment, capped at Euro 15,000. The previously applicable rate was 2%, capped at Euro 10,000. Under the new rules the cap applies on the total amount of tax assessments challenged in the context of an appeal (e.g. income tax assessment for more than one fiscal years), whereas previously, the cap would apply separately for each tax assessment.
- Disputes concerning the imposition of safeguarding measures shall be directly heard in Court, without going through the preliminary stage of hearing before the Dispute Resolution Directorate of the Ministry of Finance.

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