

## Greek Law 4549/2018 | Key tax provisions

**The Greek Parliament ratified Law 4549/2018 on 14 June 2018. The new law introduces, among others, a number of tax provisions, the most important of which are highlighted in this newsletter.**

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## Corporate taxation

### Tax losses forfeiture in case of change of ownership

The new law introduces amendments to the rules on tax loss forfeiture in case of change of ownership, with retroactive effect as of 01.01.2014. The rule in question aims to tackle cases of abusive tax loss trafficking.

According to the previously applicable provision, if direct or indirect ownership of a Greek company's capital or voting rights changes within one fiscal year by more than 33%, tax losses of that fiscal year and of the preceding five fiscal years, which may otherwise be carried forward and offset against profits of the company according to generally applicable rules, are forfeited. This is unless the taxpayer evidences that the change in ownership took place exclusively for business or commercial reasons and not with the aim of tax avoidance or tax evasion.

The revised provision is restricted exclusively to cases where (a) the minimum 33% direct/indirect transfer of ownership of the company's capital or voting rights is followed by (b) a change of the company's business activities by more than 50% of its turnover, occurring in the same or next fiscal year from the transfer of ownership. According to the wording of the new provision, the possibility to claim in such cases business or commercial reasons has been abolished.

### **Determination of taxable vs accounting profits**

According to the revised wording of article 21 ITC, the starting point to define taxable profits from business activities are the profits defined based on the Greek Accounting Standards. The amendment shall have effect from fiscal year 2018 onwards.

The previously applicable ITC provision referred for purposes of determination of taxable profits from business activities to the income statement drafted in accordance with the Greek Accounting Standards and Code of Tax Reporting of Transactions as applicable, which however had both been abolished.

Different rules apply for the determination of taxable profits in the event that the financial statements are drafted based on IFRS, which are not affected by the new law.

### **Changes of tax depreciation rules**

The new law introduces changes with respect to applicable tax depreciation rules, effective from fiscal year 2018. Main changes are summarised as follows:

- (a) The definition of finance leasing for purposes of tax depreciation is harmonised with Greek Accounting Standards rules aiming to smooth out any practical and interpretative mismatches between accounting and tax treatment of leases.
- (b) The depreciation rate applicable to commodity transportation means is set at 12% both for local and cross-border transports, while a flat depreciation rate of 16% is introduced for passenger transportation means, with the exception of aircrafts, railway trains, boats and vessels.

### **Withholding tax upon shifting from double-entry to single-entry accounting books**

According to a new provision introduced into the ITC, in case a legal person or legal entity changes category of fiscal books from double-entry to single-entry, any non-distributed profits as at the time of such conversion are subject to withholding tax at a 15% rate (which is the rate applicable to profit

distributions). Under the previous framework, such non-distributed profits would in these cases of change of fiscal records not have been captured for tax purposes.

The new provision is effective as of the publication of the Law in the Government Gazette, i.e. as of 14 June 2018.

## **Definition of non-cooperative jurisdictions**

The definition of non-cooperative jurisdictions provided in the ITC is amended with effect as of fiscal year 2018, in response to international developments regarding transparency and exchange of information, as well as in order to be aligned with the criteria for compliance with transparency in tax matters set forth in the Council Conclusions of 5 December 2017 (15429/17) FISC 345 ECOFIN 1088 on the EU list of non-cooperative jurisdictions for tax matters.

According to the new definition, jurisdictions shall be considered as non-cooperative for tax purposes, if they are non-EU member States, their position as regards transparency and exchange of information in tax matters has been assessed by the OECD and has not been rated as “largely compliant” and which:

- (a) have not concluded and do not implement vis-à-vis Greece an agreement for administrative assistance in tax matters or have not signed the Convention on Mutual Administrative Assistance in Tax Matters concluded by the Council of Europe and the OECD, and
- (b) have not committed to automatic exchange of financial account information, the latest by 2018.

## **Credit of underlying tax in case of profit distributions from EU entities**

The rule on credit of underlying tax in case of profit distributions from EU entities that do not qualify for participation exemption has been amended by virtue of the new law.

According to the framework that was already in force, a Greek entity receiving profit distributions from another EU (including Greek) entity, which were subject to corporate income tax, because the conditions for exemption were not met, could credit against the corporate income tax due thereon, any corporate income tax paid by the distributing entity.

According to the amended provision, the receiving entity shall be henceforth entitled to credit, instead of the amount of income tax paid, the amount of corresponding income tax concerning the distributed profits. The revision, which is set to apply from fiscal year 2018 onwards, aims to resolve practical difficulties with obtaining information on corporate income tax paid at the source state.

## **Super-deduction of social security contributions for the creation of new employment**

In an attempt to tackle youth unemployment, the new law incentivises certain cases of employment by way of granting a 50% super deduction of social security contributions, under conditions. The

super deduction may apply, in cases of full time employment of persons under 30 years old and long-term unemployed, as well as in cases of conversion of part-time or rotation employment contracts or of service or work contracts into full time employment contracts. The incentive may be extended beyond the year of employment or contract conversion also to the next four years, under conditions. Further guidelines shall be published in a joint decision of the Ministry of Finance and the Independent Authority for Public Revenue.

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## Taxation of individuals

### **Restricted scope of transactions generating business income for individuals**

The new law limits the definition of transactions that may generate taxable business income for individuals. According to the revised provision (article 21 ITC), gains from the following transactions are not treated as taxable business income:

- sale of assets which have been acquired by way of inheritance or gift from first or second degree relatives;
- sale of assets which have been retained for at least five years prior to the sale;
- one-off transfer of immovable property or securities.

Any other one-off transaction aiming at profits may be treated as a business transaction. Gains arising from such a transaction are taxed as ordinary business income at a rate of up to 45%.

### **Rationalised taxable basis upon sale of securities acquired by gift or inheritance**

Capital gains earned by individuals from the sale of securities are generally equal to their sale price reduced by their acquisition cost. However, the Greek Ministry of Finance has taken the position that the acquisition cost of securities acquired by gift or inheritance should be deemed as equal only to the amount of gift or inheritance tax paid at that time (Circular POL 1032/2015).

The new law however, introduces a revised wording of article 42 ITC, indicating that the acquisition cost in such circumstances is equal to the taxable value of the securities at the time of gift or inheritance.

### **Payments to investment linked insurance policies as a reportable capital expenditure**

Payments made by individuals in the context of investment linked insurance policies qualify as capital expenditure to the extent that they concern investment products. Thus, the taxpayers will be obliged to report them in their annual income tax returns and substantiate the source of the funds

accordingly. Based on the wording of the newly introduced provision, it seems that only the contribution in cash will be considered as a capital expenditure.

## Revised definition of tax residence of individuals

According to the ITC, an individual is considered as a Greek tax resident, among others, in the event that the *center of his vital interests* is located in Greece.

The new rule reformulates the definition of "*the center of vital interests*" as the place of an individual's personal, economic and social ties. The revised wording is in line with Decision 1445/2016 of the Greek Supreme Administrative Court, ruling that the place of residence of an individual should be determined by taking into account all relevant facts and in particular, the existence of a house, the physical presence of the individual and his/her family members (including relatives other than the spouse and children), the place of employment/professional activity, of property interests, of administrative links with public authorities and institutions (social security, professional, social), of development of political, cultural or other activities.

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## VAT

### Transfer pricing adjustment for VAT purposes; new rules introduced

The new law introduces the option provided by article 80 of the VAT Directive 2006/112/EC for the adjustment of the VAT taxable base in case of transactions between affiliated entities. More specifically, in the event of supplies of goods and services between affiliated entities, as these are defined in the ITC, against a consideration that is lower than the open market value, the taxable base for VAT purposes shall be the latter. This rule applies provided that, either the supplier or the recipient does not have a full right of deduction of input VAT. The same adjustment is made for supplies of goods and services which are exempt from VAT, in the event that the supplier does not have a full right of deduction of input VAT. To be noted that open market value is basically the amount a customer would have to pay to an independent supplier at arm's length, under conditions of fair competition.

### Changes of the special VAT scheme for small enterprises

Under the currently applicable framework taxable persons, whose annual turnover does not exceed the amount of Euro 10.000, are exempt from any VAT obligations. The new law extends the exemption to new entrepreneurs, upon initiation of their business activity. Under the current regime, new entrepreneurs are eligible to apply for the exemption, following completion of their first year of operations. Furthermore, entrepreneurs who opted for the regime were required to apply it for the next two years, before being allowed to opt out. This restriction is now abolished. It is also clarified that for the determination of the above threshold, revenues from the sale of fixed assets and VAT exempt transactions are not taken into account. Finally, in the event that the entrepreneur exceeds

within the year the threshold of Euro 10.000, he is required to immediately start applying VAT, whereas until now the obligation applied as of the next year.

The above changes will come into effect as of 01.01.2019.

## Real estate taxation

### ENFIA amendments & new statutory values

The new law introduces changes to the Annual Property Tax ("ENFIA") regime, that has been applied from 01.01.2018, which impact both ENFIA components (main tax & supplementary tax).

- The ENFIA for year 2018 will be calculated taking into account the new price zones as they have been amended by the recent ministerial decision, instead of the ones applicable on 01.01.2018.
- The low basic tax scales serving as basis for the calculation of main ENFIA have been amended as follows:

Previous regime		New regime	
Price zone (€/m2)	Basic tax (€/m2)	Price zone (€/m2)	Basic tax (€/m2)
0-550	2.00	0-500	2.00
551- 750	2.80	501- 750	2.80
751 - 1050	2.90	751 - 1.000	2.90
1051 - 1.500	3.70	1,001 – 1,500	3.70

- The supplementary tax free bracket for individuals has been increased to Euro 250,000 from Euro 200,000.
- Payment of the ENFIA will be made in monthly instalments, beginning from the month following the one during which the assessment was made and the last one by the end of January. Especially for ENFIA of year 2018, the first instalment will be paid by the end of September.

To be noted that earlier in June, Ministerial decision (POL. 1113/12.06.2018) adjusted the price zones on the basis of which the statutory value of real estate is calculated. The new price zones will apply for all areas of taxation as of 01.01.2019 whereas for ENFIA purposes they will apply as of 01.01.2018.

As per the Ministry of Finance a total of 10.216 price zones have been adjusted to reflect market values in areas within town planning. The values of 2,122 price zones were reduced, the values of 3,792 price zones were increased, whereas 4,302 remained stable.

Besides the above, a new department of valuations and statutory values is established within the Ministry of Finance in order to observe and adjust the statutory values on an ongoing basis.

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## Customs

### Objective liability for smuggling of industrialised tobacco products

On the basis of the new law, tobacco companies have an objective liability in case of confiscation of more than 50,000 pieces of their genuine industrialised tobacco products, by the competent authorities. More specifically, in such case the competent customs office shall impose an obligatory payment of 100% of the amount of taxes and customs duties that would be paid if the confiscated tobacco products were released for consumption in Greece. In the event that the quantity of the aforementioned products that is confiscated during a calendar year exceeds 20,000,000 pieces, an additional payment of 200% of the amount of taxes and duties that correspond to the total quantity of such products shall be imposed. Furthermore, in the event that the aforementioned quantity exceeds 40,000,000 pieces, the above additional payment shall be increased to 400% of the amount of taxes and duties that correspond to the total quantity of the confiscated tobacco products.

The payments to be imposed according to the above shall qualify as a form of compensation, in the context of objective liability of tobacco companies for the disposal of their tobacco products in illegal trade, irrespective of their liability. However, a relief from the liability for payment of the aforementioned amounts can be provided, to the extent the tobacco products in question are stolen, or the tobacco company loses their possession as a result of force majeure.

For further information, please contact:

**Alex Karopoulos**

Partner

T (+30) 210 69 67 000

E a.karopoulos@zeya.com

**Elina Filippou**

Partner

T (+30) 210 69 67 000

E e.filippou@zeya.com

**Katerina Vagia**

Senior Associate

T (+30) 210 69 67 000

E k.vagia@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.  
152 32 Halandri  
Athens, Greece

newsletters@zeya.com  
Tel.: (+30) 210 69 67 000  
Fax: (+30) 210 69 94 640  
[www.zeya.com](http://www.zeya.com)

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