

## Law 4512/2018; overview of tax provisions

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**Law 4512/2018, gazetted on 17 January 2018, introduces a broad set of measures, forming part of Greece's third economic adjustment program and relevant obligations towards the State's creditors. Certain tax provisions are included in the new law, the most significant of which are highlighted below.**

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### Capitalisation of untaxed reserves; corporate taxation

Under the new provisions, AEs (Societes Anonymes) whose shares are listed on the Athens Stock Exchange are provided with a time limit within which they have the option to capitalise, and pay tax at preferential rates, on reserves formed out of previously untaxed profits under various growth incentive laws. The new provisions, by virtue of which the relevant pre-existing rules are amended and codified into the Income Tax Code, do not generally alter the perimeter and exceptions of the reserves which are subject to a special tax treatment upon capitalization, except that they provide that reserves formed under art. 10 par. 4 of Law 148/1967 out of capital gains from sale of securities are also in scope. Under the new provisions the - previously applicable - rate of five per cent applies only in respect of reserves capitalised until 31.12.2018, whereas reserves capitalised between 1.1.2019 and 31.12.2019 will be subject to a ten per cent tax and reserves capitalised between 1.1.2020 and 31.12.2020 will be subject to twenty per cent tax. Said tax exhausts any further tax liability of the relevant company and its shareholders in respect of such profits.

As regards AEs (Societes Anonymes) and EPEs (Limited Liability Companies) whose shares are not listed, such companies are provided with a similar time limit. Under the new provisions the - previously applicable - rate of ten per cent in respect of such companies will continue to apply until 31.12.2019, whereas reserves capitalised between 1.1.2020 and 31.12.2020 will be subject to a twenty per cent tax. Effectively, non-listed companies will still be subject to a higher rate than listed companies, but only for the year 2018. The new rules also retain the additional prerequisite which was in place for non-listed companies as a condition for application of the reduced capitalisation rates, namely that capital of an amount equaling the amount of the capitalised reserves must be injected in cash into the company from existing or new shareholders.

As also under the previously applicable rules, the above treatment is effectively provided with the condition of retention of the amounts capitalised. If, before the lapse of ten years from capitalisation, the relevant company is dissolved or its share capital is reduced with the purpose of returning the reserves capitalized to shareholders, the reserves will be subject to the generally applicable tax

treatment with a possibility to credit the tax previously paid upon capitalisation. There is an exception to such treatment in cases of mergers.

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## New leniency rules in case of voluntary payment of taxes

Until now, the Tax Procedure Code (Law 4174/2013) allowed for the late filing of initial or corrective tax returns up to the time of issuance of a tax audit order for the fiscal year of reference.

The new law extends the right to file late initial or corrective tax returns even following a tax audit order and up to the date of the preliminary tax assessment. In such case, apart from 8.76% default interest, penalties ranging between 10%-50% over the amount of tax due will be assessed. However, it is not possible to file these returns with reservation, as they have to be filed irrevocably. The penalties will be reduced by 40%, provided that the full amount assessed is paid within 30 days from filing. The revised provision applies also for tax liabilities referring to fiscal years prior to 2013 (i.e. prior to the entry into force of the Tax Procedure Code). However, it does not apply for payroll withholding tax.

The 40% discount on penalties may apply also on finalised tax assessments which had not been served to the taxpayer on the date of publication of the new law, as well as on assessments pending before the Dispute Resolution Directorate or the Administrative Courts (including the Supreme Administrative Court). This is again under the condition that the taxpayer irrevocably waives the right to challenge the tax assessment.

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## Registration of new taxpayers - obligation for guarantee

When a newly established legal entity registers with the tax authorities, the new law allows tax authorities to request a guarantee. This is only due in the event that during the past five years, a shareholder of the newly established entity served as a BoD member or legal representative or was otherwise related with a legal entity, which has gone bankrupt or is in default. This is assuming that such legal entity bears tax debts of at least Euro 15,000, which are in jeopardy.

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## Suspension/deactivation of tax registration number

As part of the continuous effort to combat tax evasion, the new law provides that the Tax Administration has the right to suspend the use or deactivate the tax registration number of a taxpayer, in case it can objectively be inferred that the taxpayer has (i) ceased his economic activity, (ii) commits tax evasion, or (iii) has declared false information in order to obtain the tax registration number. Any such decision is rebuttable by the taxpayer.

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## Performance of intra-community transactions - obligation for guarantee

VAT registered legal entities that intend to perform intra-community transactions (concerning goods or services) should make a relevant declaration to the tax authorities. The new law provides that, in order to proceed with such declaration, the above legal entities have the obligation to submit a guarantee. This is to the extent that a shareholder or BoD member of the entity (i) served during the past five years as a BoD member or legal representative of another legal entity or was otherwise related to such entity and in both cases the tax registration number of that other entity has been suspended or (ii) performed a business activity in relation to which his own tax registration number has been suspended.

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## New audit unit formed against tax evasion & financial crime

The new law envisages the establishment of a new audit unit for investigating serious cases of tax evasion and related financial crime (“Financial Crime Investigation Unit”). The investigation will be initiated following an order of the Public Prosecutor for Financial Crime. The personnel of the new unit will have broad powers to audit all taxpayers’ books and records, perform physical audits on their premises and access tax returns and bank account information. They may also request and obtain information from any other public authority in Greece and abroad.

If the Financial Crime Investigation Unit concludes that there are indications that tax evasion has been committed, they will submit their report to the Public Prosecutor for Financial Crime. Subsequently, they will forward their report to the Independent Authority of Public Revenue to initiate a tax audit at a priority basis.

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