

Managing your tax matters in an almost harmonized, transparent, post-BEPS era | *2019 sneak preview*

Harmonized anti-tax avoidance regulations, increased transparency, enhanced administrative cooperation and growing efficiency of cross-border dispute resolution mechanisms, are some of the things that 2019 brings to Greek taxpayers.

Deadlines for the implementation of parts of the EU tax avoidance package expire shortly, including the revised general anti-avoidance rule and CFC rule, all impacting corporate taxpayers. DAC6 on the mandatory disclosure of aggressive tax planning arrangements by intermediaries is also due to be transposed into domestic legislation within 2019, driving transparency within the EU at a next level. Application of Council Directive (EU) 2017/1852 should improve the Mutual Assistance Procedure and Arbitration mechanisms for tax treaty disputes, beyond transfer pricing and into all instances of double taxation.

Meanwhile, on the OECD front, bilateral tax treaties between Greece and other contracting states are expected to be gradually revised, once Greece ratifies the Multilateral Instrument, implementing Action 15 of the OECD BEPS project. The anti-abuse rule and the enhancement of MAP and Arbitration procedures are the key changes to impact tax disputes, not only for corporate taxpayers but also for individuals.

Zepos & Yannopoulos will be regularly releasing newsletters and organizing technical seminars over the year, to keep you up to date on changes in the EU and International Taxation front and the way that they may impact your business.

Stay tuned & Happy New Year!

EU Anti-Tax Avoidance Directive 2019 roadmap

Greece should transpose into domestic legislation the rules of the Anti-Tax Avoidance Directive (EU) 2016/1164, as modified by Council Directive (EU) 2017/952 ("**ATAD**"). ATAD introduces five anti-abuse measures against corporate tax avoidance. A separate deadline applies for the implementation of each of the five rules. The table below summarizes the rules, the action required from Greece and the respective deadline for implementation.

ATAD rule	Required action for Greece	Deadline
General anti avoidance rule (“GAAR”) to disregard non-genuine arrangements, if the main purpose or one of the main purposes is obtaining a tax benefit (“principal purpose test”)	Revision of domestic GAAR (art. 38 Law 4174/2013) to adopt principal purpose test	31.12.2018
Controlled foreign corporations rule (“CFC”) to reattribute certain non-distributed income of a low-taxed controlled subsidiary or permanent establishment to the parent company or head office	Revision of scope and conditions for application of domestic CFC rule (art. 66 ITC)	31.12.2018
Interest barrier rules to limit the amount of tax deductible net interest based on a fixed interest/EBITDA ratio	Domestic interest barrier rule (art. 49 ITC) has been assessed equally effective to the ATAD rule and may remain unchanged until 01.01.2024	N/A
Exit taxation rule to impose tax on assets moving out, including through corporate relocation	Introduction of new rule	31.12.2019
Rules on hybrid mismatches to neutralize mismatches resulting in a double deduction or a deduction without inclusion by ensuring that a payment is subject to tax at least once. [Covers also hybrid mismatches between EU member states and third countries]	Introduction of new rule [in addition to the existing rule for payments between EU parent and subsidiary companies]	31.12.2019 31.12.2021 for reverse hybrid mismatches

EU Transparency | Mandatory tax disclosure for taxpayers and intermediaries (DAC6)

Greece shall implement measures for intermediaries pursuant to EU Directive 2018/822 (indicatively advisors, lawyers, accountants) who inter alia design, organize or make available for implementation a reportable cross-border arrangement. Such persons will be required to report certain cross-border arrangements to the tax authorities.

First reporting will take place on 31.08.2020 and will refer to cross-border arrangements the first step of which was implemented on or after 25.06.2018. EU Member States’ tax authorities will exchange reported information automatically with the EU on a quarterly basis through a centralized database. The first exchange of reports will take place on 31.10.2020.

Improvement of tax treaty dispute resolution mechanisms between EU member states

Greece should transpose by 30.06.2019, Council Directive (EU) 2017/1852 on tax treaty dispute resolution mechanisms aiming to establish an effective and efficient procedure to resolve tax disputes.

The new rules aim to cover a broad range of tax treaty disputes, beyond transfer pricing disputes already covered by the EU Arbitration Convention (90/436/EEC). Mutual agreement procedure and arbitration will become subject to explicit deadlines for initiation and completion. Furthermore, taxpayers will be entitled to expedite the arbitration by requesting the set-up of an advisory committee, in the event of tax authority delay to reply on a taxpayer's complaint.

The revised dispute resolution mechanisms shall enhance taxpayers' defensive strategies to resolve tax treaty disputes, including disputes on withholding taxes on passive income, permanent establishment and state of tax residence.

OECD Multilateral Instrument implementation progress

Greece has already signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**MLI**").

MLI is a landmark for tax treaty law, which is expected to gradually impact cross-border tax disputes of individuals and legal entities, through anti-tax avoidance measures developed as a result of the OECD BEPS project, potentially moving well beyond the scope and reach of the EU anti-tax avoidance package.

Greece has expressed its intention to adopt measures relevant *inter alia* to the

- Prevention of treaty abuse (principal purpose test)
- Improvement of the mutual agreement procedure
- Introduction of measures related to the arbitration procedure

On the other hand, Greece has not opted in measures relevant *inter alia* to hybrid mismatches and permanent establishment status.

Modifications of existing bilateral treaties ("**DTCs**") is subject to Greece and each of its contracting states having ratified the MLI. The Greek parliament has not yet ratified the MLI, whilst MLI implementation progresses in other signatory States including also EU Member States.

Greece's DTC network following MLI ratification: A snapshot

MLI rule	Greece's draft position	DTCs to be impacted: Greece and ...							
		CY	DE	ES	LUX	NL	UK	US	CH
Principal purpose test: Tax treaty benefits may be denied if the arrangements are put in place with the principal purpose of obtaining a tax benefit	Adopted	✓	✗	✓	✓	✓	✓	✗	✗
Transfer of shares in property rich companies: Framework becomes stricter – Source state reinforces taxing rights	Adopted	✗	✗	✓	✗	✗	✗	✗	✗
Permanent establishment: Framework becomes stricter – Source state reinforces taxing rights	Not adopted	✗	✗	✗	✗	✗	✗	✗	✗
Mutual agreement procedure: Enhancement of the procedure	Adopted	✓	✗	✗	✓	✓	✓	✗	✗
Arbitration - Unresolved cases under the mutual agreement procedure to be solved through an arbitration procedure	Adopted	✗	✗	✓	✓	✓	✓	✗	✗

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