



G r e e c e

- Changes to Tax Provisions
- Alterations to Income Tax Code
- New online services by the General Secretary of Public Revenues
- Incorporation of Directive 2014/107/EU regarding the mandatory exchange of information in the field of taxation
- Incorporation of Directive 2014/86/EU and 2015/121/EU regarding the conditions for exemption from taxation on intra-group dividends
- The unjustified increase of property can be taxed, even if it appears before 30.9.2010, when law 3888/2010 came into force. The issue was solved by the No 884/2016 substantial preliminary ruling of the Council of State
- Certificate of incomes by dividends, interests and royalties

P o l a n d

- A General Anti-Avoidance Rule towards big tax optimisations

R o m a n i a

- Government Decree on the approval of the Methodological norms for the application of the New Romanian Fiscal Code

E U

- Proposal for Anti-Tax Avoidance Directive

I n t e r n a t i o n a l

- Country-by-Country Reporting Standard

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G r e e c e

by Konstantinos Karetzos (Athens)

Changes to Tax Provisions

On the 22nd of May 2016, the Greek Parliament voted the "Urgent provisions for the implementation of the Agreement for Financial Goals, Structural Reforms and other provisions". The said legislation includes changes of tax provisions, the most significant of them are the following:

1. New Independent Authority of Public Revenues

An Independent Administrative Authority without legal personality is established under the name Independent Authority of Public Revenues (A.A.D.E.) as the successor body of the repealed General Secretary of Public Revenue, for the identification, accounting and recovery of taxes, customs and other public revenues.

2. Increase of benefits in kind regarding vehicles

The market value of the vehicle granted by a natural or legal person or legal entity to the employee or partner or shareholder is increased from 30% to 80% of vehicle cost recorded as expenditure in the books of the employer in the form of depreciation including road taxes, repairs, maintenance and the related financing costs corresponding to the purchase of the vehicle or the rental costs of it. This applies for incomes obtained from fiscal year 2016 and onwards.

3. Dividends

The increase in the tax rate of withholding tax on dividends is increased from 10% to 15% and shall be applied for income from the 1st of January 2017.

4. Unified Ownership of Property Tax (EN.F.I.A)

Provisions of the Unified Ownership of Property Tax (EN.F.I.A) are amended. Specifically:

- a) The calculating rates of the main tax for natural and legal persons' ownership of land and property are increased.
- b) The calculating rates of the supplementary tax imposed on the total value of the rights of the property held from natural persons are also increased. In the total value of the rights the new provisions include for the first time the value of land outside a city or town plan.

Bracket (€)	Rate
0,01 – 200.000	0,0%
200.000,01 – 250.000	0,10%
250.000,01 – 300.000	0,15%
300.000,01 – 400.000	0,30%
400.000,01 – 500.000	0,50%
500.000,01 – 600.000	0,60%
600.000,01 – 700.000	0,80%
700.000,01 – 800.000	0,90%
800.000,01 – 900.000	1,00%
900.000,01 – 1.000.000	1,05%
1.000.000,01 – 2.000.000	1,10%
Exceeding	1,15%

- c) Regarding legal persons and legal entities the rate of supplementary EN.F.I.A increases from 5‰ to 5,5‰. For public entities, non – profit private entities and for S.A.s Investment Companies in Real Estate the rate is increased from 2,5‰ to 3,5‰.
The self used real estate property for carrying any type of business are no longer exempted from supplementary EN.F.I.A and are taxed at the rate of 1‰.
- d) The said rates are applied from the 1st of January 2016.

5. The increase of standard VAT rate and the abolition of the VAT reduction to the second group of islands

- a) The standard VAT rate increases from 23% to 24% from the 1st of June, 2016.
- b) The VAT Code repeats the list of islands (Santorini, Mykonos, Naxos, Paros, Rhodes and Skiathos) for which the reduction of VAT rates was abolished from 01.10.2015 in accordance with relevant joint ministerial decision (First group of islands). The new legislation defines the second group of islands for which the reduction of the VAT rates is abolished from the 1st of June, 2016 (Syros, Thassos, Andros, Tinos, Karpathos, Milos, Skyros, Alonissos, Kea, Antiparos and Sifnos).

6. Accommodation tax

The State introduces a new tax, named "Accommodation tax", for hotel accommodation and for furnished apartments and rooms to let. The amount of tax per day use of room, suite, apartment or single residence is set in the amount of 0,50 € for 1-2 star hotels, 1,5 € for 3-star hotels, in the amount of 3,00 € for 4 hotels star, in the amount of 4,00 € for 5 star hotels. For rooms and apartments it is set in the amount of 0,25 € for rooms – apartments of 1-2 keys, € 0,50 for rooms – apartments of total of 3 keys and in the amount of 1,00 € for room - apartments of 4 keys. This provision will come into force from the 1st of January 2018.

7. Pay TV services / Fixed telephony fee

- a) From the 1st of June 2016, a. a fee of 10% is imposed to pay tv, and
- b) From the 1st of January, 2017 a fee of 5% is imposed to fixed telephony subscribers (including internet services).

The said fees are calculated on the total amount of the monthly bill including the fixed fee in favour of the company before VAT. Exemptions from taxes and fees provided in the other provisions for certain persons are not applicable here.

8. New classification rates for passenger motors

- a) The provision introduces new rates for the imposition of a classification fee on passenger cars for private use, which ranges from 4% to 32%, depending on the taxable value of cars and repeals the cylinder criterion.

Taxable value of cars (€)	Rate
≤ 14.000	4%
14.000 – 17.000	8%
17.000 – 20.000	16%
20.000 – 25.000	24%
≥ 25.000	32%

b) The above rates further vary depending on the mass of emitted carbon dioxide (CO₂). In particular for passenger cars of private use whose mass of emitted carbon dioxide (CO₂) are:

- less than or equal to 100 g. / km, the rates will be reduced by 5%,
- greater than 120 and less than or equal to 140 g. / km, the rates increased by 10%,
- greater than 140 and less than or equal to 160 g. / km, the rates increased by 20%,
- greater than 160 and less than or equal to 180 g. / km, the rates increased by 30%,
- greater than 180 and less than or equal to 200 g. / km, the rates increase by 40%,
- greater than 200 and less than or equal to 250 g. / km, the rates increase by 60%,
- greater than 250 g. / km, the rates increased by 100%.

Along with the changes to the classification fee, the luxury tax in passengers' motors is repealed. The latter tax is indirectly incorporated in the classification fee, which shall be calculated with rates, depending on the taxable value.

The above apply from the 1st of June, 2016.

9. Tax treatment of the benefits that legal persons, legal entities and individuals acquired by the deletion of part or all of their debt

The benefit of a legal person, legal entity and natural person, who derives income from business activities, resulting from the deletion of some or all of the debt to a credit or financial institution or company law 4354/2015 under court settlement or enforcement of the judgment, etc., is not considered as a donation and is exempted from income taxation.

10. Tax provisions for Investment Holding Companies/ Investment Companies in Real Estate/Real Estate Funds/Undertakings of Collective Investment in Transferable Securities

The payable tax by the investment holding companies, according to par. 3 of article 39 of law 3371/2005, each semester may not be less than 0,375% of the six-month average of their investments, plus available capitals at current prices. The same minimum tax liability arises for investment companies in the real estate market, which are not exempted from the withholding taxation on domestic dividends. The tax on the profits of real estate funds may not be less than 0,375% of the six-month average of the net assets of the fund. For Undertakings of Collective Investment in Transferable Securities (O.S.E.K.A.), the minimum tax shall range from 0,025% to 0,375% of the six-month average of their net assets, according to the category of those. Specifically:

Rate (% per semester)	Net asset (specific types of O.S.E.K.A.s)
0,025%	Financial Market
0,175%	Bond
0,25%	Gross
0,375%	Shareholding and other

The above apply from the 1st of June, 2016.

11. Other taxation

- The said legislation also increases the consumption tax on:
 - a) the consumable spares of electronic cigarettes,
 - b) specific types of coffee (roasted, non-roasted, instant),
 - c) packs of cigarettes,
 - d) fuel (diesel, petrol etc),
 - e) heating oil.
- Special provisions apply for natural gas depending on its use.

The above apply from the 1st of January, 2017.

Alterations to Income Tax Code

On the 8th of May 2016, the Greek Parliament voted the “Unified Social Security System – Reform of insurance and pension system – Income taxation and gaming taxation regulations”. The Law 4387/2016 brings into force significant alterations especially in the way individuals’ income will be taxed and also a radical reform in the pension system.

1. Tax scales – Tax rates to individuals income

The new income taxation model presents a unified income tax scale that applies to employment income, business profits and pensions (table below). An important modification was the termination of the tax scale at the rate of 26% and 33% to business profits that mainly applied to free-lancers and individual entrepreneurs. Therefore, with the new law, there is no tax reduction on said income as it is enforced for employment income. A tax reduction applies depending on the taxable income and the dependent children, but this tax-free scale granted differs depending on each case.

Income Bracket (in €)	Tax Rate
0 – 20.000	22%
20.001 – 30.000	29%
30.001 – 40.000	37%
>40.001	45%

2. Income tax scale regarding income derived from real estate

The new legislation also brought an expanded tax basis and new tax rates for income gained from real estate. The following table presents the rates:

Income Bracket (in €)	Tax Rate
0 – 12.000	15%
12.001 – 35.000	35%
>35.001	45%

3. Income derived from distributed dividends

A noteworthy amendment is the increase of tax rate on dividends from 10% to 15%.

4. Special Solidarity Contribution for individuals

In the previous years a Special Solidarity Contribution was legislated for individuals as an exceptional tax but with the new law, it is integrated in the Income Tax Code, hence its special character is terminated. The Contribution will be adjusted on a graduate tax scale (table below) and will apply to income and revenues of tax year 2016. Moreover, in regards with salaries and pensions, the following tax rates (table below) for the Contribution will apply to withholdings of the respective income commencing on the date this Law comes into force.

Income in (€)	Special Solidarity Contribution Tax Rate
0 – 12.000	0%
12.001 – 20.000	2,2%
20.001 – 30.000	5%
30.001 – 40.000	6,5%
40.001 – 65.000	7,5%
65.001 – 220.000	9%
> 220.001	10%

5. Entities keeping single entry books

From the 1st of January 2016, a unified tax rate of 29% has come into force in regards with business income of legal entities holding single entry accounting books.

New online services by the General Secretary of Public Revenues

On the 31st of March 2016, the General Secretary of public revenues issued the actions and the new online services, which are included in the operational plan 2016 in order to strengthen the public revenues, to provide better services to the citizens and to create tax compliance behavior. Specifically, the most significant actions are the following:

- i) the design and the implementation of the electronic application for the submission of declarations regarding changes to the real estate property (E9) by the public notaries,
- ii) the development of applications of electronic submission of income tax return regarding ship-owners,
- iii) the electronic submission of donation/parental contribution/real estate transfer tax returns,
- iv) electronic services for the submission of requests regarding refund and VAT exemption via TAXISnet,
- v) electronic interconnection of the information that comes from the issuance of tax residence certificates,
- vi) interconnection with the electronic system of "National Cadastre S.A." in order to obtain ownership information regarding audit and collection cases,

- vii) electronic application for the submission of withholding tax returns regarding interests, dividends and royalties,
- viii) creation of a data base to monitor the balance sheet of parent/subsidiary companies in order to improve the risk analysis criteria for their intra group transactions,
- ix) sending e-mails to taxpayers to remind doses based on their tax returns' before they fall due,
- x) the automation of the debt offsetting procedure to the Public with receivable refunds' by the Tax Administration,
- xi) creation of a register of foreign natural and legal persons that obtain income in Greece and from Greece,
- xii) indication in the tax registry's subsystem of companies with business activity via internet.

Incorporation of Directive 2014/107/EU regarding the mandatory exchange of information in the field of taxation

The Law 4378/2016, incorporating into the Greek legislation the provisions of Council Directive 2014/107/EU regarding the mandatory automatic exchange of information on tax matters, was published in the Government Gazette. The most significant provisions of the above law are described below:

- i) The 2014/107/EU regulates the exchange of information only between the E.U. member states. However, it also considers the rules determined by the Common Reporting Standard of the OECD regarding the uniform application of its provisions between member states. Therefore, the competent authorities shall use the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard of OECD as example of the application of the automatic exchange of information between member states.
- ii) The current applicable Greek Law (4170/2013) requires the automatic exchange of information for non-financial sources of income and capital, specifically:
 - real estate,
 - income realized from real estate,
 - employment income,
 - pensions,
 - products of life insurance contracts which are not covered by any other European taxation,
 - director's fees.
- iii) By the recent law, the automatic exchange of information is extended to the following sources of income and property:
 - interest,
 - dividend,
 - account balances,
 - sale proceeds from financial assets (e.g. insurance contract, securities etc.)
- iv) The local financial institutions (e.g. custodial institutions, depository institutions, specific insurance companies, etc.) and local branches of foreign financial institutions are liable to provide information with respect to reportable accounts to the competent Greek Authorities.

- v) Several accounts (e.g. personal pension accounts) and several entities (e.g. listed entities, affiliated entities, etc.) fall, under specified conditions, out of the scope of the automatic exchange of information.
- vi) The reportable persons are the following:
 - individuals,
 - legal entities,
 - controlling individual persons.
- vii) The provisions of Law 4378/2016 apply from 1.1.2016. For incomes regulated by Law 4170/2013, the obligation for mandatory exchange of information exists from 1.1.2015.

Incorporation of Directive 2014/86/EU and 2015/121/EU regarding the conditions for exemption from taxation on intra-group dividends

The Law 4378/2016, incorporating into the Greek legislation the provisions of Council Directive 2014/86/EU and 2015/121/EU regarding the conditions for exemption from taxation on intra-group dividends, was published in the Government Gazette.

- i) In order for intra-group dividends received by Greek legal entities or Greek permanent establishments of EU legal entities to be exempt from taxation, a new condition is introduced; intra-group dividends are exempt from taxation to the extent that the dividends have not been deducted by the subsidiary.
- ii) A general anti-abuse rule is introduced by virtue of which the tax exemption in case of collection and payment of dividends (articles of 48 and 63 of Income Tax Code) is alleviated in case it is considered that a "non genuine arrangement" exists. A "non genuine arrangement" is an arrangement which has not been put into place for valid commercial reasons reflecting economic reality.
- iii) The above provisions apply as of 1.1.2016.

The unjustified increase of property can be taxed, even if it appears before 30.9.2010, when law 3888/2010 came into force. The issue was solved by the No 884/2016 substantial preliminary ruling of the Council of State.

The main considerations of the Court are:

- An amount of a Bank account and a corresponding remittance can be counted and taxed as income from liberal profession of the account holder, even if the increase arose before 30.9.2010. The above amounts however, should not be covered by the declared income of the taxpayer and not by other specific and documented sources or causes.
- The provision for taxation of unjustified increase of property (law 3888/2010) applies to pre-existing deposits of 30.9.2010, since the right of the government to impose a tax has not been lapsed. This provision does not impose tax. In contrary, taxing the unjustified increase could be inferred, in a clear and predictable way, through the previous legal framework. It does not appear retroactive taxation of income in violation of the Constitution.
- The unjustified increase is taxable as income in the period in which the amount was introduced in the property of the account holder. Therefore, it is crucial, in principle, the time when the amount was deposited in the account through which the transfer took place and

not the time of the later transfer. Crucial may be considered the time of an earlier deposited amount to another account of the same person, from which there were latter transferred the funds to the disputed account.

- The amount of presumptions is deducted from the income and the capital towards consumption that can justify the capital increase. This applies to the extent that these expenditures have not been successfully challenged by the taxpayer.

Certificate of incomes by dividends, interests and royalties

On the 30th of December 2015, the General Secretary of Public Revenues issued the No 1274/30.12.2015 Circular for the form and the content of the certificate of incomes deriving by dividends, interests and royalties. Specifically, the persons that are obliged to withholding taxation for payments, subject to the said tax, made either to natural or legal persons are entitled to grant to them a single certificate. This certificate includes the total amount of incomes by dividends, interests and royalties paid within the fiscal year and the tax withheld. The same obligation exists and to cases where no withholding taxation arises. Moreover, the persons that are obliged to withholding taxation must submit the single certificate of incomes from distributed dividends from non-listed in the Stock Exchange market legal persons, interests (except the interests on deposits), and the royalties via TAXISnet or via magnetic tool to the Tax Authority regardless of keeping single or double entry books and the way they update them (by the computerized system or handwritten). For the fiscal year 2015 the said certificate must be submitted until 31st of December 2016.

P o l a n d

by Piotr Kloc (Warsaw)

A General Anti-Avoidance Rule towards big tax optimisations

On the 15th of March 2016, a final draft of amendment act to Tax Law Act was accepted by Polish government. The amendment act is expected now to be presented and voted within the Polish Parliament. The main content of this act refers to General Anti-Avoidance Rule ("GAAR"). This is how the government reacts to inconsistent tax system which generates substantial losses on the level of € 5-10 billion due to the tax optimisations.

GAAR will be applied if a tax activity was conducted in order to achieve some tax benefits, incompliant with the subject and purpose of the provisions of law and the activity was conducted in an illusory way. Ministry of Finance will assess if an optimisation violated the GAAR especially taking into account: unjustifiable division of operations, involvement of some intermediary entities, elements which are mutually compensating each other, elements which lead to achieve similar effect as it was before the optimisation, economical risk which exceeds the potential benefits of such activity (excluding tax benefits) so that a reasonable entrepreneur would not take such a risk.

A definition of tax benefit consists of typical elements which are results of optimisation such as: no tax obligation, postponement of tax obligation, decrease of tax obligation, increase of tax loss, etc.

GAAR will not be applied in some specific situations: if the tax benefits do not exceed € 25.000, if an entrepreneur obtained an protective, individual opinion issued by the Ministry of Finance or the opinion was not issued on time, if it is admissible by law (i.e. agreements on avoidance of double taxation). The opinion will be issued in 6 month time and will cost € 5.000.

R o m a n i a

by Corina Badiceanu (Bucharest)

Government Decree on the approval of the Methodological norms for the application of the New Romanian Fiscal Code

On the 13th of January 2016, a Government Decree on the approval of the Methodological norms for the application of the New Romanian Fiscal Code was published in the Official Gazette under the no. 1/2016.

The Government Decree provides important clarifications on several legal dispositions included in the New Romanian Fiscal Code. Thus, clarifications on the criteria used to classify an activity as an independent activity are provided in the Government Decree, as well as clarifications on the definition of affiliated person or permanent headquarters.

Furthermore, along with clarifications on personal income tax, corporate income tax and VAT, other important clarifications are the ones given on the fiscal regime of non-residents (natural and legal persons). According to some of these clarifications, the tax rate of 5% will be applicable to the income obtained by non-residents from distributed dividends starting with the 1st of January 2016. Concerning the legal non-residents acting through means of a representative office established in Romania, it must be said that such entities cannot perform production activities, services and trade activities, as such representative offices are not legal persons.

The issuance of such Government Decree comes as a necessity after the entering into force on the 1st of January 2016, of the New Romanian Fiscal Code.

E U

by Konstantinos Karetzos (Athens)

Proposal for Anti-Tax Avoidance Directive

On the 28th of January 2016, the E.U. Commission presented the E.U. "Anti-Tax Avoidance Package". One of its parts is a proposed Anti-Tax Avoidance Directive ("draft ATA Directive").

Main parts of the draft ATA Directive:

- a) **Interest limitation rule:** the net borrowing costs shall be deductible in the tax year in the tax year they are incurred only up to 30% of the taxpayer's earnings before interest, tax,

depreciation and amortization (EBITDA) or up to an amount of € 1.000.000. It is also proposed the taxpayer to fully deduct the borrowing costs if certain conditions are met. It is also suggested an exclusion from the above rule for financial undertakings (i.e. financial institutions, insurance undertakings).

- b) **Exit taxation rule:** the taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit, less their value for tax purposes, where the taxpayer transfers assets (between a head office and its PE, or between PE's) out of a Member State to another Member State or to a third country, or transfers its tax residence to another Member State or to a third country or transfers its PE out of a Member State.
- c) **Switch-over clause:** the Member States shall not exempt a taxpayer from tax on foreign income (dividends, capital gains) in respect of companies or PE's in third countries with low taxation rates. The test for law tax – third country has been set at 40% of the statutory tax rate in the Member State of the taxpayer. Therefore, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes.
- d) **General anti-abuse rule (GAAR):** the tax authorities are allowed to ignore non-genuine arrangements where the essential purpose is to obtain a tax advantage that defeats the object or the purpose of the applicable tax provisions.
- e) **Controlled Foreign Companies rules:** the tax base of a taxpayer shall include the non-distributed income of an entity subject to a low level of taxation (40% of the parent's tax rate) if more than 50% of the entity's income falls within certain categories (interest, royalties, dividend, income from financial leasing, income from immovable property, income from insurance, banking and other financial activities etc.). Moreover, if the Controlled Foreign Company is resident in E.U. or E.E.A., the rules only apply in case the entity's establishment is wholly artificial or the entity engages non-genuine arrangements with the essential purpose of obtaining a tax advantage.
- f) **Rules for hybrid mismatches:** these rules address mismatches that are raised between Member States due to hybrid entities or hybrid instruments, whereby the legal characterization of the entity or instrument in the Member State where the payment has its source shall be followed by the other Member State.

International

by Konstantinos Karetzos (Athens)

Country-by-Country Reporting Standard

On the 27th of January 2016, 31 countries¹ signed the Multilateral Competent Authority Agreement (M.C.C.A.) for the automatic exchange of Country-by-country reports as part of the continuing efforts to promote transparency by multinational enterprises (MNE's). The Country-by-Country Reporting will have a considerable impact in boosting the MNE's to co-operate with the tax authorities and will ensure that tax administrations acquire a full understanding of the

¹ Australia, Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and United Kingdom

way the said enterprises form their operations. Therefore, the tax authorities will have a very significant tool to ensure that companies pay their fair share of tax in all countries they operate.

The tax administrations by the Country-by-Country reporting will obtain annually information where a company operates, starting with 2016 accounts, relating to the international allocation of income and taxes paid. Moreover, the above reporting standard will cover information regarding which entities make business in a specific country and the kind the business activities every entity engages in. The information will be collected by the country of residence of the multinational enterprises group and will then be exchanged through the exchange of information according to agreements like the Multilateral Competent Authority Agreement. First exchanges will start in 2017-2018 for the information collected within 2016.

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