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# Taxation Newsflash

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# Greece

## European Commission Memo - September Infringements Package: Main Decisions

*by Dr. Katerina Perrou (Athens)*

In its monthly package of infringement decisions, the European Commission is pursuing legal action against Member States for failing to comply properly with their obligations under EU law. These decisions covering many sectors aim to ensure proper application of EU law for the benefit of citizens and businesses.

The Commission has taken 147 decisions, including 39 reasoned opinions and 4 referrals to the European Union's Court of Justice.

Specifically, Commission has issued 2 reasoned opinions for Greece regarding Tax Law issues.

- Commission asks GREECE to amend legislation on duty free service stations on land borders

The European Commission has formally requested Greece to modify its legislation which allows service stations at its land borders with Kipi (Turkey), Kakkayia (Albania) and Evzoni (FYROM) to sell fuel without excise duties. The Commission believes that when a vehicle is tanked, the fuel should be considered as having been sold for consumption, and therefore cannot remain under a duty suspension regime. Excise duties should therefore be charged on the sale of that fuel, in line with the European Directive on Excise Duties. The request is in the form of a Reasoned Opinion. In the absence of the necessary measures to comply within two months, the Commission may refer Greece to the EU's Court of Justice. (Ref.: 2013/2038)

- Commission asks GREECE to stop discriminatory taxation for ships flying foreign flags

The European Commission has officially asked Greece to amend its discriminatory taxation rules for foreign-flagged ships. Under Greek tax rules, Greek-flagged ships and certain vessels managed from Greece are exempt from income tax and instead subject to the simplified and lower special tonnage tax for maritime activities. Foreign-flagged ships, on the other hand, are subject to the less favourable income tax regime. Additionally, Greek legislation allows an income tax exemption for dividends from entities using Greek-flagged ships, but not for dividend from companies using foreign-flagged ships.

The Commission considers that such rules are contrary to EU rules on the freedom of establishment, the freedom to provide services and the free movement of capital. The Commission's request takes the form of a reasoned opinion. If Greece fails to comply within two months, the Commission may refer the matter to the European Court of Justice. (Ref.: 2012/4155)

Source: http://europa.eu/rapid/press-release_MEMO-14-537_en.htm?locale=en

## Tax Treatment of Benefits in Kind Under Article 13 of Law 4172/2013

*by Konstantinos Karetsos (Athens)*

The Ministry of Finance issued on 06/10/2014 Circular No. 1219/2014 regarding the benefits in kind. As employment income will be taxed in 2015, benefits in kind received by employees from their employers. Such benefits include:

1) gift vouchers,

2) the cost of mobile phones used by employees, directors and managers, for the part that exceeds the cost of the prepaid plan

3) The value of tablets, laptops and mobile phones even beyond the daily working time is not considered as benefit in kind for the recipient since this concession serves the operational needs of the business, increases its productivity and provides high quality services.

4) the use of company cars,

5) the employers' contributions for expenses regarding coaching centers, schools, kindergartens,

6) medical expenses covered by the employer,

7) the use of corporate credit cards for expenses not incurred in the company's interest but for personal, family or other expenses not related to the business

The benefits in kind received by an employee or relative of this person are regarded as taxable income at market value, if the total value of benefits in kind exceeds the amount of EUR 300 per fiscal year. However, the 300 EUR restrictions are not implemented in case of paragraphs 2, 3, 4 and 5 of Article 13 Law 4172/2013 (for cars, for loans, for stock option plans and for housing).

Benefits which are not considered as benefits in kind and therefore employment income include:

benefits in kind granted personally to beneficiaries, as such, not in money and which serve the enterprises' functional and productive needs, contribute to increase the productivity and quality of working conditions or constitute measures for workers' health and safety. Such benefits in kind, which are not considered as employment income, are the granting of special working clothes, the supply of milk, feeding in the workplace, the granting of parking at work.

### Corporate vehicles (para 2 Article 13 Law 4172/2013)

Benefit in kind is the market value of the vehicle granted by the company to an employee or partner or shareholder from a natural person or legal person or legal entity for any period within the fiscal year, which is calculated at 30% of vehicle's cost as derived from the entries in company's books in the form of depreciation, including road tax, the cost of repairs and the cost regarding car's purchase. These amounts are taxed as employment income. When these costs are zero, the benefit is valued at 30% of average cost or depreciation over the last three years. Furthermore, fuel and tolls are not taken into account for calculating the vehicle's market value. Finally, it is noted that in case of company's vehicle use for less than one year period, the benefit's value is calculated according to the actual time (months) of use.

The use of a company's vehicle by an employee for more than 15 calendar days will be taken as a month.

The provisions of the above paragraph do not include:

a) cars, which are provided to sellers, technicians and other workers. In contrast, it is perceived as benefit in kind the cars' value granted to employees because of their position

b) test – drive cars

c) mini buses

d) cars used by hotel enterprises

e) cars used by repair businesses

f) cars that serve the airports' and their passengers needs

Loan granting (para 3 Article 13 Law 4172/2013)

Benefit in kind constitutes a loan upon written agreement by a natural person or legal person or legal entity to employee or partner or shareholder. The benefit for the recipient of the benefit shall be determined by fiscal year, calculated during the month in which the supply has taken place and it is valued as the difference between the interest based on the average market rate and any interest paid by the employee under the relevant written agreement. If there is no written agreement the benefit in kind is the entire capital. Advance payment of salaries of more than three (3) months is also considered as loan.

The provision does not cover loans that have been agreed upon until 31/12/2013. This applies irrespective of the loan amount or the time of its repayment.

Stock Option Plans (para 4 Article 13 Law 4172/2013)

Benefit in kind is the benefit received by employee or partner or shareholder of a legal person or legal entity in the form of option rights to acquire shares. As employment income is considered the benefit obtained at the time the option right is excercised, regardless of whether or not there is an employment relationship with the recipient at that time. The benefit is valued at the closing price of the share on the stock market as reduced by the subscription price of the option rights.

The provision covers the rights exercised by the time the Law 4172/2013 came into force (i.e. from January 1, 2014) regardless of the time that right was granted and also includes options to acquire shares traded in foreign stock markets.

Granting of residence (para 5 Article 13 Law 4172/2013)

Benefit in kind is the market value of the residence granted to employee or partner or shareholder by a natural person or legal person or legal entity for any period during the tax year. The benefit is measured at the amount of rent paid directly by the employer to the landlord of the above home, while if the granted house belongs to the employer; the benefit in kind is valued at 3% of property's objective value.

The above provision does not extend to the following cases:

a) The accommodation provided by the State and public authorities to public employees (e.g. Uniformed), since their moving to another place is a statutory obligation.

b) The accommodation provided to employee, partner or shareholder by a natural person or legal person or legal entity due to temporary moving to employer's worksites or branches or other business premises as part of their work.

- The Article's 13 Law 4172/2013 provisions shall apply to incomes acquired in tax years which started from 1.1.2014 onwards.
- Regarding the benefits, are NOT taxable the benefits up to EUR 300 per year per employee, even if the total value of the benefit exceeds EUR 300. The limit of EUR 300 is a tax-free threshold and only the excess value will be taxed.
- EXCEPTION: the tax free threshold does not apply to executives' cars, to loans granted by the employer, to stock option plans and to the use of residence.

# Poland

*by Izabela Jurek (Warsaw)*

## New Rules on Income Taxation Generated by the Controlled Foreign Companies

The new regulation regarding the income taxation generated by the so called Controlled Foreign Company has been passed on 17 September 2014. This is a new solution in Poland as until now such income was not subject to taxation.

Under the regulation the Controlled Foreign Companies are obliged to pay19% income tax for their incomes and have to follow a number of administrative and reporting requirements.

Under the new Act, Controlled Foreign Company is one of the following entities (where a foreign company is a company not having its registered seat or management board at the territory of Poland and in which taxpayer has a share in the share capital, voting rights in the control or governing bodies or the right to participate in profits):

- a foreign company with its registered seat or management board in the countries applying harmful tax competition (so called tax heavens) or with which Poland has not concluded double taxation agreement,
- a foreign company which (i) holds through a continuous period of not less than 30 days, directly or indirectly, at least 25% of the share capital or 25% of the voting rights in the control or governing bodies or 25% of the shares related to the right to participate in profits, and (ii) at least 50% of the earned revenues of the company is derived from such revenues as dividends, interests, as well as income from the sale of shares, and (iii) at least one type of such revenues, obtained by the company, is subject to taxation in the country where a foreign company's registered seat or management board is situated, based on the income tax rate lower by at least 25% of the Polish income tax rate i.e. 19 % (i.e. the limit rate is 14,25%).

The Controlled Foreign Company's revenues not exceeding PLN 250,000 in one fiscal year are exempt from the income tax.

The issues of the above Regulation's publication and the timeframe within the new Act will enter into force remain unsolved and are subject to further developments. It is expected that the answer to these questions will take place either on January 2015 or on January 2016.

# Romania

*by Corina Badiceanu (Bucharest)*

## Law Amending the Fiscal Code

The 123/2014 Law as provided by the Fiscal Code was published on 19 September 2014 in the Official Gazette. The above Law, which came into force on 22 September 2014, amends the quanta of the social insurance contributions (i.e. pension contributions). The law provides that the quanta of the social insurance contributions that must be paid by the employer are reduced 5% (5 percent). Thus, the new quantum of social insurance contributions owned by the employer is of 15.8% for normal work conditions (as opposed to the a priori quantum of 20.8%), of 20.8% for distinct work conditions (as opposed to the a priori quantum of 25.8%) and of 25.8% for special work conditions (as opposed to the a priori quantum of 30.8%).

Although the law came into force on 22 September 2014, the new quanta will be applicable to the earnings gained on October, thus it will be applicable on 1 October 2014. It is expected that the new amendments will encourage foreign investors to invest in domain business, make it more attractive and as a result to support loyal competition.

# Serbia

*by Ivan Ugrinović (Belgrade)*

## Serbian Tax Law: Important Changes on Tax Returns, Tax Payments and Tax Audit Procedures for both Taxpayers and Tax Authority

The Law amendments on tax procedure and tax administration (hereinafter referred to as the Law) that the National assembly of the Republic of Serbia has adopted on July 3rd, 2014 have come into force and the most important changes that they introduce are as follows:

- During an audit performed on a taxpayer, the Serbian Business Registry Agency (hereinafter referred to as the SBRA) cannot erase the taxpayer nor can it register any status change concerning the taxpayer. The said restriction remains into force until the Tax authority (hereinafter referred to as the TA) delivers an official notice to the SBRA regarding the tax audit completion.
- Fulfillment of tax liability can be made by the taxpayer but also by another legal entity or natural person not legally liable for such acting.
- The list of tax debtors containing companies having overdue tax liability in the minimal amount of 20 million dinars (RSD), as well as the entrepreneurs having overdue their tax liability in the minimal amount of 5 million dinars (RSD), shall be published on the TA's official website at the end of each quarter.
- If the taxpayer submits the appropriate documents to the TA in the language and script that are not in the official use in the Republic of Serbia, it will be provided with an additional delay of at least 5 days to deliver certified translation of the said documents to the TA whereas in the event of failure to present such translation, it shall be deemed that documents were never submitted.

Furthermore, Law provisions regarding tax documentation delivery were changed in such way that the tax documentation shall be deemed delivered to a taxpayer by the TA if

- the documentation is handed over to any employee of a taxpayer which is either legal entity or an entrepreneur;
- the documentation is handed over to any adult member of the taxpayer's family which is a natural person,

If the persons listed above refuse to accept the relevant documents, the documentation shall be considered delivered, in such a way that the person who carried out the delivery issues an official note on the failure to deliver the documentation it was entrusted with.

Regarding the TA's audits, the amendments introduce the TA's obligation to issue the tax audit minutes within 5 days after completion of such audit (previously 3 days) whereas the taxpayers have the right to appeal the minutes' conclusion within 8 days after receiving them (previously 5 days).

The following tax returns, along with withholding tax returns (for paid personal income tax and mandatory social security contributions) and VAT returns, shall be submitted electronically:

1) Corporate income tax return - starting from October 1st, 2014;
2) Excise duties and tax returns of income generated by an entrepreneur - starting from January 1st, 2015;
3) Annual personal income tax returns - starting from April 1st, 2015;
4) Other tax returns - starting from October 1st, 2015.

Provisions regarding collection of tax debt have been changed so that the collection will be exercised in the following order:

- cost of tax debt collection,
- penalty interest and
- principal tax liability.

The Law amendments also provide that a taxpayer is allowed to apply for rescheduling of the tax liability payment, irrespective of the tax liability maturity date. This means that the tax liability amount is proven to be significant tax burden for the taxpayer and may inflict substantial financial damage to the taxpayer. The tax liability payment rescheduling may be granted fully or partially, as follows:

- Rescheduling of payment may be granted at once or in installments, up to 24 months period, with 12 months grace period whereas the minimal payment installments cannot be below 50% of the highest installment amount due.
- The TA shall not require a collateral for the tax liability which does not exceed amount of :
  a) 1 000 000, 00 dinars (RSD) (for legal entities),
  b) 200 000, 00 dinars (RSD) (for entrepreneurs) and
  c) 100 000, 00 dinars (RSD) (for individual natural persons).
- Initiation of forced collection procedure over a taxpayer shall result in increasing the overall tax liability of a taxpayer for 5%
- The amount will become due on the day when the forced collection procedure had been initiated.

*for further information, please contact…*

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