

# Tax - Breaking News

August 2020



Consistent with our commitment to keep you updated on the most significant tax developments, we outline below the main topics of the new law 4714/2020:

The **new law 4714/2020** with description "Tax measures for the enhancement of the development of the Greek economy, the implementation into Greek legislation of the E.U. Directives 2017/1852, 2018/822, 2020/876, 2016/1164, 2018/1910 and 2019/475, the contribution of the Greek State to the repayment of loans of affected borrowers from the adverse effects of COVID-19 and other provisions" has been recently published.

The main topics of the new law are listed below:

## Taxation of individuals

### *Foreign pensioners and alternative taxation of their foreign source income*

- In an effort to attract foreign pensioners, the **alternative taxation regime on foreign source income** earned by individuals who transfer their tax residence to Greece **is expanded**. In particular, the new provisions provide the option to foreign pensioners to benefit from the alternative taxation of their total foreign source income.
- Individuals who will utilize the alternative taxation method should **cumulatively meet** the below conditions:
  - a) The individual **was not a Greek tax resident for the five (5) out of the last six (6) years preceding** the transfer of his tax residence to Greece, and
  - b) The individual transfers his tax residence to Greece **from a country with which Greece has in force an agreement for administrative cooperation in tax matters**.
- Under the alternative taxation regime, the individual will be subject to an annual flat tax rate of 7% on his total foreign source income.
- The **tax is paid in lump sum for each tax year until the last business day of July** and it does not offset against any other tax liabilities or credit balances of the individual. The settlement of this tax exhausts any further tax liability for the individual on such income. Accordingly, based on the explanatory memorandum of the law, such income is exempt from solidarity contribution.
- Such provisions become effective from the following tax year of which the application for the alternative tax regime is filed and cease after fifteen (15) years. The said alternative tax regime is in force for the next fifteen (15) tax years.
- The individuals subject to the alternative taxation method **should report in their annual tax return both their Greek and foreign source income**.
- It is worth mentioning that based on the explanatory memorandum of the law, any **foreign tax paid by the individual** on the income subject to the alternative taxation, **may be claimed as a tax credit** against the tax due in Greece, however up to the amount of Greek tax due on such foreign source income.
- Furthermore, the said provisions **do not affect the application of the international agreements for the avoidance of double taxation** ratified by Greece.
- The **application process**, the competent authority, the accompanying documents as well as any other detail required for the implementation of respective provisions shall be determined amongst other by a common decision of the Minister of Finance and the Director of the Independent Authority for Public Revenue.
- The above provisions are in force for tax years commencing as of 1 of January 2020. Special provisions apply to individuals who submit an application within 2020, the deadline of which is on 30 September 2020. Furthermore, in case of individuals who qualify for the alternative taxation and have already transferred their tax residence to Greece during 2019, their 2019 Greek Income Tax Return may be submitted until the 31 October 2020.

### ***Employment income exemption of free shares and domestic tourism vouchers***

- Within the frame of expanding employment income exemptions, a new provision is introduced, according to which the benefit in kind in the form of free shares is exempt from the calculation of employment and pension income. Namely, such free shares in order to qualify for exemption shall be given within the framework of share plan which require the achievement of specific goals or the occurrence of a certain event.
- The above provisions are applicable on benefits in kind earned on tax years commencing as of 1 January 2020.
- In addition, for tax year 2020 domestic tourism vouchers up to three hundred (300) euros are exempt from the calculation of employment and pension income.

### ***Favorable tax treatment of the capital gain arising from stock options and free shares***

- Aiming to attract skilled employees and to create a rewarding and incentivized employment environment, a tax reform is introduced on the basis of which capital gain arising from the sale of free shares given by companies to their employees within the framework of a share plan, is classified as capital gain taxed at a flat tax rate of 15%.
- Specifically, a favorable tax treatment is introduced on the distribution of company's free shares to its employees within the framework of a share plan, which requires the achievement of specific goals or the occurrence of a certain event.
- In particular, the income arising from the sale of shares, which were acquired via such free share plans, is treated as capital gain and is taxed with a flat tax rate of 15%.
- For listed shares, the capital gain is equal to the closing price of the share in the stock exchange on the vesting date, assuming the sale price is equal or lower than that. If the sale price is higher than the closing price on the vesting date, any excess amount is taxed based on the general provisions applicable to capital gains from listed shares (i.e. exempt from income tax, assuming conditions are met) but subject to solidarity contribution.
- For non-listed shares, the capital gain is equal to the sale price, assuming it exceeds the share value, as this was calculated on the day the free shares were given. However, if it is lower, it is equal to the share value of the day they were given.
- The above provisions are applicable to income earned on tax years commencing as of 1 January 2020.

### ***Special taxation of coaches***

- The special taxation regime of athletes under certain conditions is being extended to coaches as well.
- Namely, income earned by coaches in lump sum or

in installments for the signature of a transfer contract, the renewal or termination of their contracts is taxed at a flat tax rate of 22% exhausting any further tax liability provided that the amounts received lump sum or in installments exceed EUR 40 000 within the respective tax year.

### ***Annual income tax returns filing extension deadline***

- The deadline for the submission of the income tax returns is extended up to 28<sup>th</sup> of August 2020.
- The payment of the tax due can be settled in eight (8) equal monthly installments, the first two of which should be settled by the last business day of August 2020, while each of the rest installments should be settled by the last business days of the following six (6) months.
- A tax credit of two percent (2%) is granted if the tax assessed is paid in lump sum by the 31<sup>st</sup> of August 2020 (assuming timely filing of the personal income tax return).

### ***Taxation of donations and parental donations***

#### ***Tax exemption of donations of movable property located abroad***

- Donations of movable property located and acquired outside Greece by Greek citizens residing abroad are exempted from donation tax. This exemption was introduced aiming to the uniform treatment of transfers of moveable property both in case of inheritance and in case of donation when such moveable property is located abroad and owned by Greek citizens residing outside Greece for at least ten (10) consecutive years (and in case of relocation to Greece, less than five years have passed from their relocation date). The exemption applies on condition that the moveable property has not been acquired in Greece during the last twelve (12) years.

#### ***Abolition of the flat taxation of parental donations of cash when used for the purchase of "first" residence***

- The flat taxation of parental donations of cash to children is abolished, under conditions, as long as the donated amounts will be used by the beneficiaries for the purchase of their "first" residence. As a result, in the above cases, there will be no flat tax rate imposed on the total donated amount, but, instead, the tax will be assessed based on the corresponding tax brackets taking into consideration the relevant tax-free threshold.

## Taxation of legal entities

### Reduction of income tax advance

| For the tax year 2019, the amount of income tax advance is proportionally reduced on the basis of the reduction percentage of the turnover reported for VAT purposes (in code 312 of the periodic VAT return) of the 1st semester of 2020 against the 1st semester of 2019 according to the following table. Turnover reduction of 1st semester of 2020 against the 1st semester of 2019 | Reduction of income tax advance |
|--|---------------------------------|
| From 5% to 15%   | 30%                             |
| From 15.01% to 25%   | 50%                             |
| From 25.01% to 35%   | 70%                             |
| Above 35%  | 100%                            |

- For legal entities not liable to file periodic VAT returns during the aforesaid semesters, the tax advance is reduced by 50%.
- Specifically, the income tax advance is reduced to zero for legal entities and freelancers which:
  - Are subject to VAT, operate in the tertiary sector of the economy and reported within the 3<sup>rd</sup> quarter of 2019 above 50% of their annual turnover of the same year, or
  - Fall within the sectors of airline and maritime transports.
- The above provisions are not applicable to the new legal entities for the first 3 tax years from the commencement of their operations.
- In case an individual or legal entity takes advantage of the aforesaid beneficial provisions without being entitled to do so, a penalty equal to the double amount of such reduced advance tax is imposed by the tax authorities.

### Extension of filing deadline for the income tax returns

- The filing deadline for the submission of income tax returns for tax year 2019 for individuals and legal entities whose tax year ends at 31 December 2019, is extended to 28 August 2020.
- The payment of such tax is paid in 8 equal monthly installments, from which the first 2 are payable until 31 August 2020, and the subsequent 6 until the last working day of the next 6 months.

### Advance Pricing Agreements

Article 22 of Law 4174/2013 is amended in order to be in compliance with the Minimum Standard of OECD BEPS Action 14, relating to the roll back of Advance Pricing

Agreements (APA). The new provisions apply as of 1 January 2014. More specifically:

- The application for a bilateral or multilateral APA may include a request for a roll back of the APA to previous tax years, as long as the actual facts of the APA are identical with the actual facts of the previous years for which the statute of limitation has not expired and no tax audit mandate has been provided to the taxpayer.
- A request for a roll back of the APA may also be requested in cases of pending applications for the issuance of a bilateral or multilateral APAs.
- Amending tax returns that must be submitted for previous years as a result of an APA are treated as filed in time, if they are submitted within 30 days from the date of notification of the taxpayer in relation to the issuance of the APA.

### Exit tax rules (incorporation of Anti Tax Avoidance EU Directive – ATAD 2)

Article 5 of the Directive 2016/1164/EE of the EU Council relating to exit taxation is incorporated in Greek tax legislation. More specifically:

- Exit tax in Greece applies to:
  - The transfer of assets from the head office of the taxpayer in Greece to his permanent establishment in another member state or third country,
  - The transfer of assets from a permanent establishment in Greece to his head office or to another permanent establishment in another member state or third country,
  - The transfer of the taxpayer's tax residence from Greece to another member state or to a third country, except from those assets which remain effectively connected with the permanent establishment in Greece,
  - The transfer of the business carried on by its permanent establishment in Greece to another member state or to a third country,on the basis that Greece no longer has the right to tax the transferred assets due to the transfer.

- The income tax is calculated on the basis of the current tax rate and is applied on the market value of the assets at the time of the exit, less their value for tax purposes.
- The payment of the exit tax exhausts any income tax liability of the taxpayer, of the partners, the shareholders and its members relating to the transfer of assets.
- Exit tax does not apply to the transfer of assets relating to the financing of securities, to assets posted as collateral, to assets transferred in order to meet prudential capital requirements or for the purpose of liquidity management, if assets are set to revert to Greece within twelve months.

- The determination of the market value of the assets is carried out as follows:
  - By virtue of a valuation report of two Certified Auditors or by an Auditing Firm or by two independent certified valuers.
  - On the basis of the book value of the transferred assets, as long as the measurement of the assets is performed at fair value.
  - On the basis of the value of the transferred assets, as this is determined for transfer pricing purposes.
- The exit tax is paid in a lump sum with the submission of a tax return three days before the exit of the assets takes place and upon specific conditions payment may be deferred in five equal yearly installments

### **Confrontation of hybrid mismatches resulting from payments under financial instruments (incorporation of Anti Tax Avoidance EU Directive – ATAD 2)**

Aiming to the introduction of rules for the confrontation of tax avoidance practices, Greek legislation incorporated the provisions of ATAD 2 introducing rules against hybrid mismatches arising from payments under financial instruments; such hybrid mismatches may result either from differences in the legal characterization of either the payments (financial instruments) or the legal entities involved (hybrid entities) between two different jurisdictions. The consequence of hybrid mismatches that the above mentioned provisions aim to confront is mainly the double deduction of the payment (in both countries involved) or deduction of the payment in one country whereas such payment is not included in the taxable basis in the other country. The above mentioned provisions are not applicable where such mismatches are handled by other provisions of other Directives (e.g. anti-abuse rules of the Parent-Subsidiary Directive etc.).

### **Indirect taxation**

#### **VAT**

##### **General provisions**

- To support musical education, music books are classified to the super-reduced VAT rate of 6% (as is the case for other types of books).
- Furthermore, as of 1 September 2020 and until 30 June 2021, tickets for sports events are subject to the reduced VAT rate of 13%, in an attempt to increase their demand by reducing their final price or maintaining it at a low level.

##### **Quick Fixes**

- The provisions of EU VAT Directive 2018/1910 (“Quick Fixes” are incorporated in the Greek VAT Code.
- In this context, the transfer of goods by a VATable person to another Member-State under call-off stock arrangements shall not be treated as a supply of goods against consideration, provided that:

- Said goods are transported with a view to being supplied to a VATable person identified for VAT purposes in the other Member State, in accordance with an existing agreement between the involved parties;
  - The VATable person dispatching the goods does not maintain a fixed establishment in the other Member State; and
  - The VATable person dispatching the goods records their transfer in a special register and includes the VAT identification number of its counterparty in its recapitulative statement of the period of dispatch
- Where the above conditions are met and as long as the underlying goods are supplied within 12 months from their arrival in the other Member State, it is considered that the VATable person dispatching the goods carries out an intra-community supply, while the VATable person to whom those goods are supplied carries out an intra-community acquisition.
  - In addition, the treatment of certain special cases is stipulated, including the substitution of the VATable person to whom the goods are supplied, the return of the goods in the Member State of dispatch, the goods’ destruction, loss, or theft etc., as well as the timing that the relevant details should be recorded in the special register and the corresponding recapitulative statement.
  - Further instructions regarding the manner in which the special register should be kept and its content are expected to be provided at a later stage by virtue of a Ministerial Decision.
  - Moreover, the treatment of chain transactions between three or more parties is clarified.
  - In particular, the supply of goods which are successively sold and transported directly from the initial supplier to the last customer in the relevant chain shall be ascribed only to the supply made to the intermediary operator, unless the latter has communicated to his supplier the VAT identification number issued to him by the Member-State from which the goods are dispatched, in which case the relevant supply shall be ascribed only to the supply carried out by the intermediary operator.
  - It is noted that the aforementioned provisions apply in parallel with those covering triangular supplies.
  - In addition, it is stipulated that the submission of the relevant recapitulative statement and the communication by the purchaser to respective supplier of the VAT identification number issued to him by the Member State to which the goods are dispatched constitute necessary typical conditions in order for a sale of goods to qualify as intra-community supply.

##### **Other VAT amendments**

- Furthermore, the provisions covering the VAT triangulation simplification are amended. In this regard, a transaction with a Greek final customer may

not qualify as triangular only where the intermediary operator maintains a fixed establishment in Greece, and not a mere Greek VAT registration number as it was the case beforehand.

- Moreover, it is considered that an intermediary operator carries out an intra-community acquisition in Greece, as long as it does not substantiate that the underlying goods were taxed in another EU Member-State, even where such intermediary operator obtains a mere Greek VAT identification number, and not a fixed establishment in Greece as it was the case beforehand.
- Finally, the cases where the market value is taken into consideration for VAT purposes with regards to transactions between related parties are clarified.

### **Vehicles registration duty**

- The taxation of private passenger vehicles and trucks is adjusted and rationalized, with the purpose to renew the types of vehicles circulating in Greece and promote the use of non-polluting vehicles.
- In particular, a new progressive tax bracket is implemented in relation to the calculation of the corresponding vehicles registration duty, along with the amendment of the relevant tax brackets, which is expected to reduce the cumulative price paid by a purchaser for the acquisition of a private passenger car.
- Furthermore, the applicable rates continue to be adjusted based on the CO2 emissions of the underlying vehicle, so that low-emission vehicles are benefited. However, for the first time it is stipulated that said rates will be increased according to a vehicle's EURO emission standards (EURO 5 and 6) and the date of first registration.
- Finally, hybrid cars with CO2 emissions equal to or lower than fifty (50) gram/km are exempted by 75% from vehicles registration duty, increased by 25% from the previous exemption of 50%.

### **Customs duties and Special Consumption Tax**

- The exemption from customs duties, Special Consumption Tax and other consumption taxes is extended to cover the sale of all goods destined to be supplied to professional vessels, and not only the sale of food supplies, fuel, and lubricants, provided that said goods will be used for the navigation and maintenance of the vessel or generally for the carrying out of its professional purposes, as well as for fulfillment of its passengers' needs.

### **Committee for tax dispute out-of-court resolution**

- A committee for tax dispute out-of-court resolution is established to settle disputes arising from tax assessments or penalties which are pending by 30 October 2020 before the Council of State and the Administrative Courts, as well as before the Directorate for Dispute Resolution (DDR) provided that a court appeal shall be filed by 30 December 2020.

- For the out-of-court settlement, the taxpayer is required to submit until 31 December 2020 an electronic application to the committee, which suspends the trial before the courts. In order for the application to be examined, specific legal grounds should be claimed which are restrictively defined by law and should be also included into the pending court appeal.
- The examination of the applications shall be completed by 28 May 2021 at the latest, whereas those applications that will not be examined by that date shall be referred to the competent court.
- In case the applicant accepts the committee's proposal, the dispute is irrevocably resolved upon the recorded settlement, whereas in case the proposal is rejected, the suspended trial continues.

### **Tax dispute resolution mechanisms**

- Council Directive (EU) 2017/1852 is incorporated into the national legislation introducing a new mechanism as special administrative procedure to resolve tax disputes arising from the interpretation and implementation of the bilateral agreements and conventions between Greece and one or more Member States with regards to the elimination of double taxation.
- The new mechanism applies to disputes relating to double taxation of income or capital earned in tax years as of 1 January 2018 onwards, whereas it is possible to also apply to disputes of previous years upon an agreement between the Independent Authority for Public Revenue (IAPR) and the competent authorities of the other Member States concerned.
- The procedure initiates with a complaint which is submitted by the affected person simultaneously to the IAPR and to the competent authority of the other Member State concerned. The IAPR shall take a decision on the acceptance or rejection of the complaint within six months of the receipt thereof. In case the complaint is accepted by the IAPR, the dispute resolution procedure should be completed within two years with the possibility to be further extended for one more year upon relevant justification.
- Any other mutual agreement procedures shall be terminated automatically. In order for the complaint to be examined, all pending administrative appeals before the DDR must be completed. Pending court appeals do not affect the dispute resolution procedure, provided that a relevant court decision has not been issued. Moreover, the procedure shall not prevent administrative and criminal penalties imposed by the Greek authorities.
- Once the Member States concerned reach an agreement, the dispute is resolved upon a mutual agreement decision which is binding and enforceable, provided that the affected person accepts the decision and resigns from the right to appeal by other court or out-of-court remedies.

- The law provides for the possibility of the IAPR to resolve the dispute on a unilateral basis or, in case of failure to reach an agreement, the dispute can be also resolved by the Advisory Commission or the Alternative Dispute Resolution Commission.

### **Mandatory Automatic Exchange of Information on Reportable Cross-Border Arrangements**

- Council Directive (EU) 2018/822 (known as “DAC6”) is implemented into the national legislation, introducing Mandatory Disclosure Rules for intermediaries and, in certain cases, the taxpayers with regards to reportable cross-border arrangements, i.e. arrangements between at least two Member States or a Member State and a third country, which contain at least one of the “**hallmarks**” provided by the law. For certain “hallmarks”, it is required that the “Main Benefit Test” is also fulfilled.
- The new rules apply as of 1 July 2020 and establishes a reporting obligation to the IAPR which shall further exchange the information with the competent authorities of the EU Member States periodically via automatic exchange. The first automatic exchange will take place by 30 April 2021.

Failure to comply with the reporting obligations incurs **penalties** defined by the law.

- Any reportable arrangement should be reported to IAPR within 30 days which begin on the day after the arrangement is made available or ready for implementation, or when the first step in the implementation has been made (whichever occurs first). The 30 days deadline begins to run **from 1 January 2021**. As a retroactive effect, reportable arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020, should be also reported **by 28 February 2021**. The primary reporting obligation rests with the **intermediaries** who meet specific criteria provided by the law. Lawyers are exempted from reporting obligation due to legal professional privilege. Intermediaries have also the right to a waiver from reporting obligation if they prove by any appropriate means that the same information has been filed by another intermediary.
- Reporting obligation lies with the **taxpayers** provided that they meet specific criteria set out in the law, and in case there is no intermediary involved or when the intermediary is a lawyer who is exempted due to legal professional privilege.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.

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