



Consistent with our commitment to provide [updated information](#) on current tax issues, we outline below the main provisions of the newly introduced Circular E.2018/2022 in relation to Controlled Foreign Companies

By virtue of the newly introduced Ministerial Circular E.2018/2022, the Greek tax administration provides detailed clarifications supported by examples in relation to the implementation of article 66 of L.4172/2013 (ITC) as in force since its latest amendment in 2019 (by virtue of article 12 of L.4607/2019).

It is noted that article 66 ITC on Controlled Foreign Companies introduces a special anti-abuse rule for the prevention of tax avoidance attempted by Greek companies through the transfer of income to their subsidiaries that are established in jurisdictions with low taxation. Specifically, the abovementioned provisions impose the inclusion within a Greek company's taxable income of the non-distributed income of another legal person or entity, which is tax resident in another state, provided that certain conditions are cumulatively met.

The Circular clarifies that the provisions of article 66 ITC refer to legal persons/legal entities as well as to individuals that hold Controlled Foreign Companies.

Conditions for application of the provisions

Definition of Controlled Foreign Companies

It is highlighted that, based on the new provisions that are applicable to income earned and expenses effected for tax years from 1.1.2019 onwards, Controlled Foreign Companies (CFC) are considered not only foreign legal persons or legal entities but **also permanent establishments abroad, whose profits are not taxed or are exempted from taxation in Greece**, provided that the requirements set by article 66 ITC are met.

A. The participation requirement

The participation requirement, according to which the taxpayer, alone or jointly with his "related" companies, should hold directly or indirectly at least 50% of the

capital, voting rights or profits of the CFC, generally remains the same as introduced in the previously applicable provisions of article 66 ITC.

However, it should be pointed out that in case of indirect participation, for the determination of the holding percentage, it should first be examined what is the relation between the intermediate entities and the Greek company (as introduced by article 66 ITC). Subsequently, provided that intermediate companies are evidenced to be related, it should be confirmed whether the sum of the participation percentage of all such companies exceeds the respective 50% threshold.

B. The requirement that Corporate Income Tax is actually paid

It is highlighted that the new provisions introduce the requirement for **actual taxation**, in the sense that the provisions are enacted when the tax that is **actually paid** in the country of the CFC **is less than half the tax that would have been paid** according to the Greek tax legislation if the CFC was a Greek tax resident company (or if it had a permanent establishment in Greece). Thus, **it is not examined whether the CFC is established and subject to taxation in a non-cooperative state or in a state with preferential tax regime**, as was the case under the previous provisions.

C. Income requirement

More than 30% of the net income before taxes of the CFC should be derived by one or more of the income categories introduced in paragraph 3 of article 66 ITC. It is highlighted that by the new provisions, **the previously applicable exemption by which the CFC provisions were not enacted in case of foreign listed companies, is abolished**. Thus, **listed foreign companies also fall under the CFC provisions**, provided that the respective conditions are met.

Definition of “related” companies

It is highlighted that for the purposes of article 66 ITC, the definition of “related” persons, as introduced in paragraph 2 of the abovementioned article, is different from the definition provided for “affiliated” entities in article 2 of L.4172/2013 (indicatively, among others, a 25% participation is required for the purposes of article 66 ITC). By means of an example included in the Circular, it is clarified that for the examination of whether a foreign company is a CFC of a Greek company in case of participation of the latter in the foreign company through its subsidiaries, it should be initially examined whether the participation percentage of the Greek parent company in each of the different intermediate subsidiaries is higher than 25%, in order for the subsidiaries to be defined as “related” to the Greek parent company. Subsequently, and assuming the above relation is evidenced, in order to examine whether the foreign company is a CFC of the Greek company, it should be examined whether the participation percentage of all the “related” subsidiaries in the foreign company exceeds cumulatively 50%.

Income categories

It is clarified that, according to the new provisions applicable for tax years from 1.1.2019 onwards, the non-distributed income of the CFC is constituted by the profits that are derived by specific categories of income explicitly listed in paragraph 3 of article 66 ITC and **not the total non-distributed income of the CFC**.

Furthermore, it is highlighted that **income from immovable property is no longer included within** the abovementioned categories of income; on the other hand, **income received from invoicing companies is also included** (income category that was not included under the previously applicable provisions).

Moreover, under the newly introduced provisions, **there is no more the requirement that income pertained in at least one of the income categories of article 66 ITC should exceed 50% of the transactions between the taxpayer (or the related companies) and the CFC**. In this regard, the non-distributed passive income of the CFC is included within the taxable income of the Greek taxpayer without the examination of whether this passive income is derived by CFC’s actions or transactions with the taxpayer or CFC’s actions or transactions with persons related directly or indirectly with the taxpayer (operation of the CFC as a company that receives only passive income from other companies related to the taxpayer for the benefit of the latter).

Calculation of CFC’s taxable income

According to the new provisions, it is stipulated that the income included in the taxable basis of the taxpayer is taxed in accordance with the provisions of the ITC and with the tax rate applicable to business profits of individuals or the tax rate applicable to business profits

of legal entities respectively. Taking into account that the respective income is calculated proportionally to the participation of the taxpayer in the CFC, the Circular clarifies that **the final participation percentage that is applicable for the calculation of its non-distributed income for CFS purposes might be different from the participation threshold that needs to be exceeded for the CFC rules to apply**.

Finally, it is clarified that in case one of the intermediate companies is also Greek tax resident, then the income of the CFC will be included only within the taxable basis of the Greek company that holds direct and straight participation in the CFC (i.e. the first Greek company in the structure) and which would have gained income by means of dividends, if the CFC would have distributed any such dividends.

Distribution of profits by the CFC and sale of participation in the CFC

Clarifications (and examples) are provided in respect to the method of calculation of the amounts, that were included within the taxable basis of the taxpayers in previous tax years according to article 66 ITC, and the declaration of such amounts in the N Form of the income tax return. We note that such amounts are deducted while calculating the tax due by the taxpayer in case of distribution of profits by the CFC to the taxpayer and in case of sale of the taxpayer’s participation in the CFC.

Tax return of Individuals

Clarifications are provided in respect to the inclusion of the non-distributed income of the CFC within the taxable income of individuals as business income and in respect to the method of declaration of such income in the individual’s income tax return.

Cases where the provisions of article 66 ITC do not apply

Companies with substantial economic activity

If the CFC is a tax resident or has its permanent establishment in an EU/EEA Member State and exercises substantial economic activity supported by personnel, equipment, assets, facilities etc., as evidenced by actual facts, **the provisions of article 66 ITC are not applicable**. It is clarified that in such cases, **the Tax Authorities bear the burden of proof that the CFC does not perform substantial economic activity**. On the contrary, if the CFC is tax resident of a third country, the provisions of article 66 ITC are applicable even if the CFC exercises substantial economic activity and, thus, in such a case the Tax Authorities do not bear the burden of proof regarding the non-performance of substantial economic activity.

Shipping companies

The provisions of article 66 ITC are still not applicable to shipping companies of L. 27/1975 and L.D. 2687/1953. Furthermore, the provisions are not applicable to companies, legal persons or entities to the extent that their capital either derives from shipping activity or constitutes investment of funds arising from shipping activity, on condition that respective funds are owned by individuals related to companies of L.27/1975 and L.D. 2687/1953.

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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.