

TAX BRIEFING: Monthly Insight

## Recent Developments in Tax Legislation

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#### **A. Ministerial Decision No. 39937/2021 Sets Out the Terms and Conditions for the Designation of a Natural Person as an 'Angel Investor' in Start-Ups**

1. By way of Ministerial Decision No. 39937/2021, the terms and conditions for the designation of a natural person as an 'angel investor' in a start-up, as well as the manner, time and characteristics of the capital contribution, the process of assessment of the angel investors' taxable income and any other relevant issue for the application of Article 70A of Law 4172/2013 (Income Tax Code) are defined.
  2. It is clarified that the right of deduction from taxable income is defined as an amount equal to 50% of the amount of the angel investor's capital contribution to a start-up or start-ups, deducted proportionally per category of the declared income of the tax year in which the contribution is realized.
  3. The angel investor may be entitled to a deduction from their taxable income for capital contributions to start-ups up to a total amount of €300,000 per tax year in up to 3 different start-ups and up to €100,000 per company.
  4. The payment of the capital contribution to a start-up is realized through an increase in its share or corporate capital, and by way of a transfer from the angel investor's bank account maintained in Greece or abroad, to a corporate account of the start-up in a Greek banking institution.
5. The capital contribution must be declared by the start-up on the Elevate Greece electronic platform by submitting the following data relating to the realization of the capital contribution:
    - a. a certificate from the legal representative of the start-up regarding *inter alia* the completion of the capital increase;
    - b. a resolution of the competent body of the start-up to increase the capital, which also states the purpose of such resolution;
    - c. a certificate from the General Commercial Registry (*ΓΕΜΗ*) confirming the registration of the capital increase resolution;
    - d. a document from the banking institution evidencing the deposit of the contributed capital;
    - e. a Certificate from the General Commercial Registry (*ΓΕΜΗ*) regarding the payment of the capital increase; and
    - f. in the case of capital refund, the respective supporting documents proving the amount of the capital refund corresponding to each angel investor.
  6. The declaration to the Elevate Greece platform is submitted by the end of the following month from the date of registration of the certification of the capital increase payment in the General Commercial Registry (*ΓΕΜΗ*).
  7. The deduction from the angel investor's taxable income is made by indicating the amount of the capital contribution in the income tax declaration of the tax year in which it was paid, provided that the capital contribution has been completed by the closing date for the submission of the income tax declaration for that year. In the case that the capital contribution is completed after this deadline, the deduction from the taxable income is made in the tax year in which it was completed.
  8. Where the capital paid by the angel investor is fully or partially refunded and not used for the general development of the company, the angel investor must submit a relevant amendment declaration deleting part or all, as the case may be, of the capital contribution amount.

# BERNITSAS briefing

## **B. Ministerial Decision No. A1082/2021 Provides for the Indicative Cases Where Persons Included in Article 50 of Law 4174/2013 are not Liable for the Non-Payment of Debts of a Legal Person or Entity**

1. By virtue of Article 50 of Law 4174/2013 (Tax Procedure Code) the executive presidents, directors, general managers, managers, managing directors, persons appointed to the administration of legal persons and entities and liquidators, as well as persons who actually exercise the management or administration of a legal person or entity, have joint and several personal liability for the payment of income tax, withholding tax, any attributable tax, Value Added Tax (VAT) and the Unified Real Estate Tax (URET), regardless of the time these were assessed, as well as for interest, fines, surcharges and any administrative penalties of these legal persons and entities.
2. The above persons should not be liable for the payment or reimbursement to the State of the above tax debts.
3. Ministerial Decision No. A1082/2021 provides for indicative cases in which the abovementioned persons are not liable for the failure to pay debts to the State, which include:
  - a. persons with a proven and prolonged inability to exercise administrative duties due to a serious illness that prevents them from exercising their duties at the time their joint and several liability arises;
  - b. in the case of liquidation of the legal person or entity, liquidators shall be liable only for the debts incurred during their term of office;
  - c. persons with a proven exclusive assignment of specific duties that do not relate to the tax liabilities of the legal person or entity, provided that they do not fully represent the legal person or entity;
  - d. the existence of an irrevocable acquittal from a criminal court or an irrevocable decision not to proceed to trial or a court decision by virtue of which it is held that there the relevant persons are not at fault for the debts;
  - e. persons who have resigned before the critical period for which the publicity formalities were observed, or persons that did not accept their appointment or did not assume the administration and management duties;
  - f. non-payment of debts to the State by non-profit legal persons or entities of public or private law, financed by the Greek State for more than 70% of their annual income, which income is not sufficient for the payment of their tax liabilities;
  - g. persons that undertake the management of general government bodies with the sole purpose of facilitating and/or completing an audit ordered by prosecutors, management audit authorities or independent authorities;

- h. the designation of an individual as legal representative of a foreign legal entity which does not have a permanent establishment in Greece, provided that the legal representative is given a specific mandate or authorization by the persons who manage the foreign legal person or entity; and
- i. persons who do not have any actual involvement in the administration/management of the legal person or entity.

## **C. Decision A.1087/2021 Provides Guidelines on the Application Process for Individuals who Wish to Relocate to Greece Under the Special Tax Regime of Article 5Γ of Law 4172/2013 for Employees, Entrepreneurs and Freelancers**

1. By virtue of Decision A.1087/2021, the Independent Authority of Public Revenues (ΑΑΔΕ) provides guidelines on the application process for individuals wishing to relocate to Greece under the special tax regime of Article 5Γ of Law 4172/2013 (Income Tax Code) for employees, entrepreneurs and freelancers.
2. In order to transfer their tax residence to Greece, taxpayers must submit an application to the competent tax authority within the year they assumed their position or within the year of commencement of business activities and until the 31 July of that year.
3. Individuals whose application is accepted are exempt from income tax and solidarity contribution for 50% of their Greek sourced income from employment and business activities over a 7 years period.
4. The exemption also applies to deemed income from private vehicles and main residences.
5. A tax assessment act is issued for taxpayers on their Greek and foreign income.
6. For taxpayers to transfer their tax residence they:
  - a. must not have been a tax resident of Greece for the previous 5 of the 6 years prior to the transfer of their tax residence to Greece;
  - b. must transfer their tax residence from an EU Member State, the Single European Area or a State with which an administrative cooperation agreement is in force in the sector of taxation with Greece;
  - c. must provide services in Greece under an employment agreement with a Greek legal entity or a non-Greek legal entity with a permanent establishment in Greece or in the context of business activities; and
  - d. must declare that they will remain in Greece for at least 2 years.
7. Any individuals earning income from both employment and business activities arising in Greece may be subject to the special taxation provided for by Article 5Γ of the Income Tax

Code for all their income, provided that the conditions for each of the categories are met. Otherwise, the tax exemption will apply only to the type of income that satisfies the requirements of Article 5Γ.

8. The limitation period for filing the application is the 31 July.

For the 2021 tax year specifically, this is extended to 31 September 2021.

9. Individuals who commence employment or business activities in the 2020 tax year may also qualify for the tax exemption.

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