M&P BERNITSAS
LAW OFFICES
briefing

Issue No **28** - January 2017

TAX BRIEFING: Monthly Insight

Law 4446/2016
Changes in the Tax Legislation

Law 4446/2016 published in the Government's Gazette on 22nd December 2016, provides for a new voluntary disclosure program pertaining to undeclared income, includes changes to the income tax, VAT and real estate tax legislation, regulates short-term leases entered into on digital platforms and reinstates a previous calculation method for the technical reserves of insurance companies.

A brief overview of the main changes to existing legislation which are introduced by Law 4446/2016 are set out below.

A. Voluntary Disclosure of Previous Years' Funds

A Voluntary Disclosure Program (VDP) is introduced aimed at encouraging taxpayers to disclose previous years' undeclared funds in order to benefit from reduced interest. Taxpayers entering the VDP are safeguarded from criminal prosecution for tax evasion and precautionary measures imposed by the State are relaxed. By way of Ministerial Circulars POL. 1006/2017 and 1009/2017, the Ministry of Finance provided implementation guidelines and clarified specific unsettled issues:

1. The taxes covered by the new law are provided for in the Greek Code of Tax Procedures (Law 4174/2013) and include income tax, VAT, stamp duty, real estate taxes, solidarity contribution tax, inheritance tax and gift tax.
2. The provisions of the law apply to taxpayers:
   a. who have not submitted tax returns or have submitted inaccurate tax returns relating to the taxes that fall within the scope of the law, as set out in 1. above, and for whom a tax audit mandate has not been issued; or
   b. for whom a preliminary tax report or audit mandate has been issued.

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3. The VDP applies to natural persons as well as legal persons or entities.
4. The main tax rate applicable depends on the rate applicable in the year that the liability for the disclosed funds was generated. Taxpayers must provide sufficient evidence of the year in which the tax liability arose.
5. The VDP does not apply:
   a. to specified types of natural persons, mainly politicians (such as the prime minister, ministers, secretaries of the Parliament or the Government, and certain specified relatives);
   b. to cases where a final tax assessment has been issued by 12th December 2016;
   c. to income tax returns which declare tax losses for the relevant year; or
   d. when the disclosed funds were generated from criminal activities, except for cases of tax evasion, such as money-laundering.
6. The following table sets out the main income tax rate and the interest calculated for the disclosed funds:

		a. An audit mandate has not been issued; b. notification of an audit mandate has not been made; c. notification of an audit mandate has been made after 21st December 2016 and before 31st May 2017 and a tax return has been submitted within 90 days of the notification; or d. a tax return has been filed before 31st March 2017.			a. Notification of an audit mandate has been made before 12th December 2016; or b. a tax return is due to be filed within 60 days of the publication of the law on 22nd December 2016.		
YEAR	ADJUSTMENT RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE
UP TO 2001	25%	8%	2,00%	10%	13%	3,25%	16%
2002	23%	8%	1,84%	10%	13%	2,99%	16%
2003	20%	8%	1,60%	10%	13%	2,60%	16%
2004	16%	8%	1,28%	9%	13%	2,08%	15%
2005	15%	8%	1,20%	9%	13%	1,95%	15%
2006	12%	8%	0,96%	9%	13%	1,56%	15%
2007	10%	8%	0,80%	9%	13%	1,30%	14%
2008	6%	8%	0,48%	8%	13%	0,78%	14%
2009	5%	8%	0,40%	8%	13%	0,65%	14%
2010	0%	8%	0,00%	8%	13%	0,00%	13%
2011	0%	8%	0,00%	8%	13%	0,00%	13%
2012	0%	8%	0,00%	8%	13%	0,00%	13%
2013	0%	8%	0,00%	8%	13%	0,00%	13%

Notification of an audit mandate has been made before 12th December 2016 and a tax return filed after the lapse of 60 days from the publication of the law on 22nd December 2016:						Notification of a preliminary audit report has been made before 12th December 2016 and a tax return filed within 30 days of the publication of the law on 22nd December 2016			Notification of an audit mandate has been made after 12th December 2016 and a tax return filed within 90 days or before 31st May 2017:					
before notification of a preliminary audit report			after notification of a preliminary audit report						before the notification of a preliminary audit report			after the notification of a preliminary audit report		
INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE
15%	3,75%	19%	30%	7,50%	38%	25%	6,25%	31%	15%	3,75%	19%	30%	7,50%	38%
15%	3,45%	18%	30%	6,90%	37%	25%	5,75%	31%	15%	3,45%	18%	30%	6,90%	37%
15%	3,00%	18%	30%	6,00%	36%	25%	5,00%	30%	15%	3,00%	18%	30%	6,00%	36%
15%	2,40%	17%	30%	4,80%	35%	25%	4,00%	29%	15%	2,40%	17%	30%	4,80%	35%

INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE	INTEREST RATE	% OF ADJUSTMENT	FINAL INTEREST RATE
15%	2,25%	17%	30%	4,50%	35%	25%	3,75%	29%	15%	2,25%	17%	30%	4,50%	35%
15%	1,80%	17%	30%	3,60%	34%	25%	3,00%	28%	15%	1,80%	17%	30%	3,60%	34%
15%	1,50%	17%	30%	3,00%	33%	25%	2,50%	28%	15%	1,50%	17%	30%	3,00%	33%
15%	0,90%	16%	30%	1,80%	32%	25%	1,50%	27%	15%	0,90%	16%	30%	1,80%	32%
15%	0,75%	16%	30%	1,50%	32%	25%	1,25%	26%	15%	75,00%	16%	30%	1,50%	32%
15%	0,00%	15%	30%	0,00%	30%	25%	0,00%	25%	15%	0,00%	15%	30%	0,00%	30%
15%	0,00%	15%	30%	0,00%	30%	25%	0,00%	25%	15%	0,00%	15%	30%	0,00%	30%
15%	0,00%	15%	30%	0,00%	30%	25%	0,00%	25%	15%	0,00%	15%	30%	0,00%	30%
15%	0,00%	15%	30%	0,00%	30%	25%	0,00%	25%	15%	0,00%	15%	30%	0,00%	30%

B. Capitalization or Distribution of Profits

Further to opinion 178/2016 of the Legal Council of State, the law stipulates that, as of the 2017 tax year, the capitalization or distribution of tax free reserves triggers corporate income tax for legal persons or entities, even where tax losses are reported for the same tax year.

C. Deductibility of Foreign Tax Losses

The new law stipulates that tax losses arising from business activities enacted by way of a permanent establishment in another EU/EEA Member State cannot be set-off against taxable profits in Greece or carried forward. This rule does not apply in cases where the permanent establishment is in an EU/EEA Member State that has entered into a Double Tax Treaty pursuant to which business profits are not tax exempt in Greece.

D. Payroll Expenses and Electronic Payments

Payroll expenses generated by legal persons or entities are tax deductible only if they are paid electronically in part or whole.

E. Benefits in Kind - Vehicles

The new law changes the calculation method of the taxable value of cars provided by legal persons or entities or individuals to employees, partners or shareholders (either owned or leased by the legal persons or entities or individuals), applicable as of 1st January 2016. Vehicles which retail at below €12,000 provided to employees, partners or shareholders for business use are not treated as a benefit in kind which is subject to income tax. The taxable value of vehicles is their retail price before taxes and is calculated as follows:

RETAIL PRICE BEFORE TAXES (AMOUNTS IN €)	RATE
0 - 12,000	4%
12,001 - 17,000	7%
17,001 - 20,000	14%
20,001 - 25,000	18%
retail price exceeding 25,000	22%

Depending on the age of the vehicle, the taxable value is reduced as follows:

AGE OF THE VEHICLE (YEARS)	RATE
0-2	0%
3-5	10%
6-9	25%
above 10	50%

F. Transfer Pricing - Intragroup Transactions

Penalties pertaining to transfer pricing violations which have taken place after 1st January 2012 and before 1st January 2014, apply also to tax years before that period. These penalties are provided for in Article 4 par. 5 and par. 6 of Law 2523/1997 and apply to unaudited years and pending cases before the tax authorities, the Administrative Courts and the Council of State. The new law also provides that the more lenient of the provisions set out in Law 2523/1997 and Law 4174/2013 (in force after 1st January 2014) apply, irrespective of the time that the transfer pricing violation took place.

G. Reporting to the General Secretariat of Public Revenues and Payment of Invoices by Individuals

The new law stipulates that entrepreneurs and legal entities or persons are obliged to electronically transmit supporting documentation to the invoices they issue to the General Secretariat of Public Revenues. Invoices issued for the sale of goods or supply of services with a value exceeding €500 must be settled electronically.

H. Tax Deductible Expenses - Electronic Payments by Individuals

In an effort to counter tax evasion, the new law provides that in order for a taxpayer to deduct expenses relating to invoices for the purchase of goods or supply of services, payment for all such goods and services must be made electronically. The minimum amount of expenses that must be settled electronically is dependent on the amount of annual taxable income of the taxpayer, as set out in the following table:

TAXABLE INCOME (IN €)	AMOUNT OF EXPENSES THAT MUST BE SETTLED ELECTRONICALLY
1- 10,000	10%
10,001 - 30,000	15%
above the amount of 30,000	20% (maximum amount of expenses €30,000)

Failure by the taxpayer to meet the above requirement gives rise to income tax at 22%.
By way of Ministerial Circular POL. 1005/2017, the Ministry of Finance provided implementation guidelines and detailed the expenses that must be settled electronically and specified certain groups of taxpayers who are exempt from this obligation.

I. Electronic Payment of Medical Expenses

Medical expenses, such as the payment of doctors' fees, are deductible expenses for the purposes of income tax, on condition that their payment has been effected electronically.

J. Statute of Limitations

The limitation period is extended to 31st December 2017 for audit mandates which were due to expire on 31st December 2016, as long as an audit mandate, prosecution order or criminal investigation have been issued or initiated by 31st December 2016.

K. Calculation of Technical Reserves by Insurance Companies

Insurance companies must make provisions for insurance and reinsurance liabilities and record these as technical reserves in their books. For tax purposes only, the calculation of technical reserves is made in accordance with the previously applicable provisions of Article 7 of P.D. 400/1970 for the tax years from 1st January 2016 onwards.

L. Suspension of Capital Gains Tax on Real Estate Property Disposals

Capital gains tax arising from disposals of real estate property has been further suspended until 31st December 2017.

M. VAT Issues

1. The reduced VAT rates provided for the islands of Lesbos, Limnos, Agios Efstratios, Chios, Oinousses, Samos, Ikaria, Psara, Fournoi, Samothraki and the complex of Dodecanese (with the exemption of Rhodes and Karpathos), will continue to apply for the 2017 tax year.
2. The threshold for accession by entrepreneurs to the VAT cash system, whereby VAT is payable upon collection and not on an accrual basis, is increased by the new law to €2,000,000 from €500,000.

N. Extended Exemption for Special Real Estate Tax (SRET)

The new law extends the SRET exemptions, stipulating that:

1. the disclosure exemption applies to EEA companies subject to the following requirements:
   a. the company's ultimate beneficial owners are tax residents of an EU or EEA country (with the exception of non-cooperative countries) and holders of a Tax Registration Number (TRN) in this country or will obtain a TRN in Greece within one month of the publication of the law in the Government Gazette;
   b. the company is registered in an EEA country (with the exception of non-cooperative countries); and
   c. the real estate property in Greece has been acquired before 31st December 2009.
2. The exemption also applies to cases pending before the Tax Authorities or the Administrative Courts at the time the law was submitted to the Hellenic Parliament.
3. A fine of €2,500 is payable in order to take advantage of this exemption.

O. New Framework for Short-Term Leases

1. The new law regulates the operation of short-term leases and is applicable from 1st January 2017 and encompasses leases entered into by individuals on digital platforms.
2. In order for short-term leases to operate legitimately, various requirements must be met, failing which administrative penalties are imposed.
3. Short-term lease income is treated as income from real estate property subject to income tax at a rate ranging from 15% to 45%.
4. No VAT is payable.