

TAX BRIEFING: Monthly Insight

## Recent Developments in Tax Legislation

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#### A. Circular E.2009/2019 on the Legal Nature of Solidarity Contributions Within the Framework of Double Tax Treaties

1. Following the Council of State's Decision No. 2465/2018, the Independent Authority of Public Revenues (ΑΑΔΕ) issued Circular E. 2009/2019.
2. According to the Council of State's Decision, the solidarity contribution of Article 29 of Law 3986/2011 constitutes tax which, in respect of the 2015 Tax Year, falls within the scope of Article I of the Convention for the Avoidance of Double Taxation (DTT) between Greece and the United Kingdom of Great Britain and Northern Ireland.
3. The Council of State also ruled that the solidarity contribution, which has been imposed on the income of individuals for six consecutive tax years (2010, 2011, 2012, 2013, 2014 and 2015), cannot be regarded as extraordinary or temporary due to its repeated application and is to be considered ordinary tax. This approach is also confirmed by its inclusion in the Income Tax Code (Article 43A of Law 4172/2013) and its imposition without any time limitations.

4. Consequently, individual Greek tax residents acquiring non-Greek sourced income which is not taxable in Greece are not liable to pay solidarity contributions for the 2015 tax year onwards. Greek sourced income obtained by a foreign tax resident and not taxable in Greece under the existing DTTs, is also not subject to solidarity contributions.
5. In view of the above, Ministerial Circular POL. 1099/2018 has been repealed.

#### B. Directorate of Dispute Resolution (ΔΕΔ) Decision No. 1736/2018 on the Safeguarding of Unused Certified Tax Records

1. The Directorate of Dispute Resolution, in applying Ministerial Decision POL. 1026/2018, held that the loss of unused certified tax records or failure to safeguard them does not constitute a violation of Law 4174/2013 (Code of Tax Procedure), or any other law, and therefore does not give rise to an administrative penalty.
2. The Directorate of Dispute Resolution also stated that in cases of suspension of business activities, taxpayers are not under an obligation to present unused certified records to competent tax offices.

#### C. Circular E.2011/2019 on the Application of EU Regulations 2018/1541 and 2017/2454 Amending EU Regulation 904/2010 on Administrative Cooperation and Combatting VAT Fraud

1. EU Council Regulation No. 2017/2454 amends EU Regulation No. 904/2010 on administrative cooperation and combatting fraud in the field of value added tax with effect from 1 January 2021.
2. EU Council Regulation No. 904/2010 of 7 October 2010 on administrative cooperation and combatting fraud in the field of value added tax, sets out the rules and procedures allowing the competent authorities of Member States to cooperate with each other and exchange all the information necessary to ensure and control the correct application of VAT, in particular to intra-Community trade, and to combat VAT fraud.

3. With effect from 1 January 2021, the special schemes provided for by Chapter 6 of Title XII of Council Directive 2006/112/EC (“*Special Scheme for Non-Established Taxable Persons Supplying Electronic Services to Non-Taxable Persons*”) will also include distance sale of goods and services, other than telecommunications, broadcasting or electronically supplied services.
4. Taxable persons using such special schemes may be subject to requests for records from, and administrative enquiries by, the Member State of identification and all Member States of consumption where goods or services are supplied to.
5. EU Regulation No. 2018/1541 amends certain provisions of EU Regulation Nos. 904/2010 and 2017/2454 with a view to combatting cross-border VAT fraud, with effect from 5 November 2018. This Regulation provides that, where the competent authorities of at least two Member States consider that administrative enquiries are required for amounts declared by a taxable person who is not established in their territory but is taxed in one of them, the Member State in which the taxpayer is established must conduct an administrative enquiry, encompassing indications or evidence of risks of VAT evasion or fraud.
6. In order to increase the ability of tax authorities to control cross-border deliveries, joint administrative investigations can be carried out to allow officials of two or more Member States to form a single team and actively participate in an administrative enquiry conducted jointly.
7. Member States shall conduct and coordinate the multilateral exchange and joint processing and analysis of targeted information on cross-border fraud in the areas in which EUROFISC liaison operates. The Regulation also allows the EUROFISC liaison working field coordinators to seek targeted information from EUROPOL and the European Anti-Fraud Office OLAF.
8. Member States may also communicate relevant information to OLAF if deemed appropriate.
9. From 1 January 2020:
  - a. National customs officers will have access to VIES (VAT and VAT identification number recapitulative tables) when examining whether the conditions for the application of VAT exemptions on imports of goods are met.
  - b. In order to combat fraud resulting from the double VAT system applicable to cars, EUROFISC officers will automatically have access to data on the registration of vehicles. This access will be made available through the software application of the EUCARIS.
  - c. If the Member State of establishment becomes aware that a taxpayer applying for VAT reimbursement in another Member State has tax liabilities in the Member State of establishment, it may request the taxpayer’s consent for the transfer of the VAT refund directly to the Member State of establishment from the Member State of refund, in order to settle its outstanding tax liabilities.

## Contacts



**Panayotis Bernitsas**  
Managing Partner  
E [pbernitsas@bernitsaslaw.com](mailto:pbernitsas@bernitsaslaw.com)



**Fotodotis Malamas**  
Senior Associate  
E [fmalamas@bernitsaslaw.com](mailto:fmalamas@bernitsaslaw.com)

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