

## TAX BRIEFING: Monthly Insight

### Recent Developments in Tax Legislation

Council Directive 2016/881/EU on mandatory automatic exchange of information is transposed, Circulars provide guidelines on the tax treatment of foreign trusts and foundations and the proper implementation of the Voluntary Disclosure Program and the Council of State opines on the tax liability of natural persons in cases of mergers by absorption.

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#### A. Council Directive 2016/881 Transposed into National Law

Law 4484/2017 (A' 110/1-8-2017) transposed Council Directive 2016/881 on mandatory automatic exchange of information in the field of taxation. In order to minimize costs and administrative burdens both for tax administrations and Multinational Enterprise (MNE) Groups, Directive 2016/881 provides rules that are in line with Action 13 of the BEPS Action Plan and the standards set by the OECD on country-by-country reports (CbC Reports). MNE Groups that include:

1. two or more enterprises, the tax residence for which are in different jurisdictions; or

2. an enterprise that is subject to tax with respect to business carried out through a permanent establishment in another jurisdiction,

and with total consolidated group revenues of more than €750m, must submit a CbC Report on an annual basis. This should include information on allocation of income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis.

The communication between Member States will take place within 15 months of the last day of the fiscal year of the MNE Group to which the CbC Report relates. Exceptionally, for the fiscal year commencing on or after 1 January 2016, the first CbC Report will take place within 18 months of the last day of the fiscal year.

Greek tax resident legal entities required to file CbC Reports should file it with the Greek tax authorities within 12 months of the last day of the reporting fiscal year.

On condition that specific criteria are met, Greek tax resident legal entities which are constituents within the meaning of Directive 2016/881 and are not an ultimate parent entity, have to file a CbC Report to the Greek tax authorities.

Greek tax resident legal entities not required to file a CbC Report must notify the Greek tax authorities

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of the identity and tax residence of the reporting entity.

The Annex of the Directive providing guidelines for the CbC Report templates and definitions is also included in Law 4484/2017.

## **B. Ministerial Circular POL. 1114/2017 Provides Guidelines on the Tax Treatment of Foreign Trusts and Foundations**

By way of Ministerial Circular POL. 1114/2017, the Ministry of Finance provided guidelines with regard to the tax treatment of foreign trusts and foundations.

In the income tax field, the Circular examines the period after the introduction of the new Income Tax Code (the Code) and the period before it (the Old Code).

After the introduction of the Code, trusts and foundations are recognized as legal entities but not legal persons. As a result, withholding tax applies for passive income, such as dividends, interest and royalties. Real estate income is considered business income subject to the corporate income tax rate, currently 29%.

The Circular clarifies that the provisions of Double Tax Treaties also apply to trusts and foundations unless otherwise provided for by the respective Double Tax Treaty.

For the period to which the Old Code applies, the Circular makes a distinction between trusts and foundations, with trusts not considered as legal entities. In this respect, the tax treatment of trusts differs from that of foundations.

Furthermore, the Circular provides guidelines for the tax treatment of trusts and foundations from an inheritance and donation tax perspective. It appears that the Ministry of Finance has adopted the look-through approach, considering beneficiaries subject to inheritance or donation tax.

## **C. Circular POL. 1115/2017 Provides Additional Guidelines for the Voluntary Disclosure Programme (VDP)**

In view of the homogenous implementation of the provisions of Law 4446/2016 in relation to the VDP, the Ministry of Finance issued Circular POL. 1115/2017 providing clarifications on the proper filing of tax returns under the VDP:

1. In the field of Income Tax, the Circular stipulates that the VDP applies to taxes included in the Code of Tax Procedures (Law 4474/2013), as well as to tax information returns, on condition that the filing period for the initial tax return expired by 30 September 2016. Furthermore, various restrictions apply to tax returns reporting tax losses.
2. In general, it is clarified that tax issues settled by accession to the VDP do not remedy other violations of tax legislation that relate to the settled issues.
3. In the field of capital tax, the Circular clarifies that taxpayers cannot withdraw tax returns when this withdrawal results in a tax refund or reduction of the value of the tax items.
4. Finally, clarifications are provided on the VDP and pending cases before the tax authorities or the Administrative Courts.

## **D. Legal Council of State Opinion No 181/2017 on Natural Persons Liable for Taxes Due in Cases of Mergers by Absorption**

The Legal Council of State opined that, in the case of mergers by absorption under Law 2166/1993, the natural persons designated to the management of the absorbing legal person before or after the completion of the merger, are not jointly and severally liable with it for taxes assessed to the absorbed legal person after the absorption.

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Although the Opinion pertains to natural persons acting in one of the capacities set out in Article 115 of the previous Income Tax Code, including managing directors, administrators and liquidators,

it can be argued that it also applies to the similar provisions of Article 50 of the Code of Tax Procedures (Law 4174/2013).

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