

TAX BRIEFING: Monthly Insight

## Recent Developments in Tax Legislation

### In This Issue

- A. New Tax Regime for Pensioners who Transfer their Tax Residence to Greece**
- B. Tax Treatment of Share Plans**
- C. Out-of-Court Settlement of Tax Disputes in the Context of Legal Proceedings**
- D. Retrospective Application of Advance Pricing Arrangements (APAs)**
- E. ATAD - Exit Taxation Rules**
- F. ATAD - Hybrid Mismatches**
- G. Tax Dispute Resolution Mechanism between EU Member States**
- H. Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements (DAC 6)**
- I. Registration Tax on Passenger Vehicles and Trucks**
- J. Gift Tax Exemption for Movable Assets Located Outside Greece**
- K. Gift Tax on Parental Gifts**
- L. VAT - Call-off Stock Arrangements**
- M. VAT - Place of Intracommunity Acquisition and Taxable Amount in the Delivery of Goods, Intracommunity Acquisition and Supply of Services**

The new tax Law 4714/31.7.2020 (the Law), introduces significant changes in tax legislation, providing tax incentives to individuals and transposing EU legislation to domestic law.

#### **A. New Tax Regime for Pensioners who Transfer their Tax Residence to Greece**

1. The Law introduces a new tax regime for pensioners who transfer their tax residence to Greece. Pursuant to the new provisions, non-Greek pensioners who decide to transfer their tax residence to Greece will be subject to a flat tax at 7% for income not generated in Greece.
2. Eligible for this tax incentive regime are pensioners who:
  - a. were not Greek tax residents for the previous 5 out of 6 years; and
  - b. have their tax residence in a jurisdiction with which Greece has signed an administrative cooperation agreement.
3. The tax incentive regime for pensioners does not exclude the application of the favourable provisions of Double Tax Treaties (DTT).

#### **B. Tax Treatment of Share Plans**

1. Pursuant to the new provisions, capital gains deriving from share plans are taxed at 15%, subject to a minimum 24 months holding period.

#### **C. Out-of-Court Settlement of Tax Disputes in the Context of Legal Proceedings**

1. A new committee (the Committee) is established for the settlement of cases before the Supreme Administrative Court and Ordinary Administrative Courts (the Courts). The application by the taxpayer may be filed electronically until 31 December 2020 and only for cases pending before the Courts which have not been heard by 30 October 2020. The Law

# BERNITSAS briefing

provides for progressive discount of interest and penalties in case a settlement is reached.

2. The following issues that are exhaustively listed in the Law may be settled before the Committee:
  - c. the time limit period that the Greek State has the right to impose taxes;
  - d. the time limit period that the Greek State has the right to impose taxes in the case of unreserved tax certificates issued by Certified Auditors;
  - e. the retroactive effect of a more favourable tax provision;
  - f. the erroneous imposition of taxes or penalties in the case of absence of tax liabilities; and
  - g. the reduction of taxes, interest and penalties.
3. The Committee has until 28 May 2021 to reach a decision.
4. Acceptance of the settlement results in the payment of 30% of the amount due within 5 working days of the settlement being reached.

## **D. Retrospective Application of Advance Pricing Arrangements (APAs)**

1. The new provisions provide for the retrospective effect of bilateral and multilateral APAs in cases where the facts and conditions are the same as in previous years. Taxpayers will have to apply for the application of the retrospective effect on condition that:
  - a. the respective years have not been time barred; and
  - b. no tax audit related to the respective fiscal years is in progress.
2. No interest or penalties will be imposed on taxpayers for the amendment of previous years' tax returns on condition that the filing of these tax returns takes place within 30 days from the notification of the APA decision to the taxpayer.
3. The APA decision should be issued within 18 months from the filing of the request.

## **E. ATAD - Exit Taxation Rules**

1. Greece incorporated the provisions of the ATAD

regarding the exit tax liability into domestic legislation.

2. The exit tax liability may arise in cases where a legal entity or branch transfers its residence, activities or assets to an EU or a non-EU country, and Greece does not have the right to tax the transferred assets because of such transfer.
3. The tax basis (gain) is the difference between the market value of the assets and their value for tax purposes and is subject to income tax at the tax rate applicable in the tax year of the exit. The market value may be assessed by independent valuers and certified auditors, and on the basis of the book value or transfer pricing principles.
4. Taxpayers that transfer their assets to EU or EEA countries have the right to pay the respective exit tax in 5 installments. However, the State may request a guarantee for the deferral of the tax payment.
5. Tax returns should be filed with the tax authorities at least three days before the exit.
6. In the case that Greece is the recipient country, it will have to accept the value of the assets as assessed by the country of origin.

## **F. ATAD - Hybrid Mismatches**

1. The Law transposed into national legislation Article 9 of Directive 2016/1164/EU as amended by Article 1 of Directive 2017/952 and introduced new Article 66B into the Income Tax Code (ITC).
2. To the extent that a hybrid mismatch results in a double deduction:
  - a. the deduction shall be denied to the investor in Greece; and
  - b. where the deduction is not denied in Greece (as the investor's jurisdiction), the deduction shall be denied in the payer's jurisdiction.Nevertheless, any such deduction shall be eligible to be set off against dual inclusion income whether arising in a current or subsequent tax period.
3. To the extent that a hybrid mismatch results in a deduction without inclusion:
  - a. the deduction shall be denied in Greece if

# BERNITSAS briefing

- Greece is the payer's jurisdiction; and
- b. where the deduction is not denied in the payer's jurisdiction, the amount of the payment that would otherwise give rise to a mismatch outcome shall be included as income in the payee's jurisdiction.
4. From the scope of the provisions of paragraph 3, hybrid mismatches which result from payment of interest under a financial instrument to an associated enterprise are excluded until 31 December 2022 where:
    - a. the financial instrument has conversion, bail-in or write down features;
    - b. the financial instrument has been issued with the sole purpose of satisfying loss absorbing capacity requirements applicable to the banking sector and is recognised as such in the taxpayer's loss absorbing capacity requirements;
    - c. the financial instrument has been issued:
      - i. in connection with financial instruments with conversion, bail-in or write down features at the level of a parent undertaking;
      - ii. at a level necessary to satisfy applicable loss absorbing capacity requirements;
      - iii. not as part of a structured arrangement; and
      - iv. in cases where the overall net deduction for the consolidated group under the arrangement does not exceed the amount that it would have been had the taxpayer issued such financial instrument directly to the market.
  5. Greece shall deny a deduction for any payment by a taxpayer to the extent that such payment:
    - a. directly or indirectly funds deductible expenditure giving rise to a hybrid mismatch through a transaction or series of transactions between associated enterprises; or
    - b. is entered into as part of a structured arrangement except to the extent that one of the jurisdictions involved in the transaction or series of transactions has made an equivalent adjustment in respect of such hybrid mismatch.
  6. To the extent that a hybrid mismatch involves disregarded permanent establishment income which is not subject to tax in Greece where the taxpayer is resident for tax purposes, Greece shall require the taxpayer to include the income that would otherwise be attributed to the disregarded permanent establishment. This applies unless Greece is required to exempt the income under a Double Taxation Treaty entered into by Greece with a third country.
  7. To the extent that a hybrid transfer is designed to produce a relief for tax withheld at source on a payment derived from a transferred financial instrument to more than one of the parties involved, Greece as the jurisdiction of the taxpayer shall limit the benefit of such relief in proportion to the net taxable income regarding such payment.
  8. To the extent that a deduction for payment, expenses or losses of a taxpayer who is resident for tax purposes in two or more jurisdictions is deductible from the tax base in both jurisdictions, Greece shall deny the deduction to the extent that the other jurisdiction allows the duplicate deduction to be set off against income that is not dual-inclusion income. If both jurisdictions are Member States, and the taxpayer is not deemed to be a resident of Greece according to the Double Taxation Treaty between Greece and the other Member State, then Greece shall deny the deduction.
- ## G. Tax Dispute Resolution Mechanism between EU Member States
1. The Law transposed into national legislation the provisions of Directive 2017/1852/EU on tax dispute resolution mechanisms in the European Union.
  2. The procedure and timeframe for the dispute resolution mechanism is as follows:
    - a. the taxpayer whose taxation is directly affected by the matter in dispute must file a complaint

# BERNITSAS briefing

before each of the competent authorities of each of the Member States concerned, requesting the resolution thereof;

- b. where the complaint is accepted by one of the tax authorities, the mutual agreement procedure is initiated and must be concluded within two years;
  - c. in the event that the tax authorities do not reach an agreement, the affected taxpayer may file a request for setting up an Advisory Commission or the tax authorities of the Member States may set up an Alternative Dispute Resolution Commission (the Commission);
  - d. the Commission must be set up within 120 days from the date of the request and must decide on the complaint within 6 months from the date that it was set up;
  - e. the Commission's decision is binding on the tax authorities, who must reach an agreement on the complaint within 6 months of being notified of the decision of the Committee; and
  - f. the final decision shall be binding on Greece but shall not constitute a precedent.
3. It must be implemented subject to the affected taxpayer accepting the final decision and renouncing the right to any domestic remedy within 60 days from the date when the final decision was notified.
  4. The new tax dispute resolution mechanism applies to complaints filed after the publication of the Law in the Government's Gazette (31 July 2020) for disputes related to income or capital obtained on or after 1 January 2018.

## **H. Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements (DAC 6)**

1. The Law transposed into national legislation the provisions of Directive 2018/822/EU which amended Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-

border arrangements (DAC 6).

2. Pursuant to the new provisions, intermediaries and taxpayers are required to file information on reportable cross-border arrangements with the competent authority within 30 days beginning:
  - a. on the day after the reportable cross-border arrangement is made available for implementation; or
  - b. on the day after the reportable cross-border arrangement is ready for implementation; or
  - c. when the first step in the implementation of the reportable cross-border arrangement has been made,whichever occurs first.
3. In the case of marketable arrangements, intermediaries are required to file a periodic report every three months providing an update which contains new reportable information that has become available since the last report was filed. The first periodic report must be filed by 30 April 2021.
4. Where there is a multiple reporting obligation, intermediaries are exempt from filing the information if they have proof, in accordance with national law, that the same information has been filed in another Member State.
5. Lawyers operating within the limits of Greek legislation are excluded from filing information on a reportable cross-border arrangement where the reporting obligation would breach legal professional privilege. In such circumstances, lawyers are required to notify without delay any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations.
6. The general time limit period for reporting cross-border arrangements is 30 days.
7. For reportable cross-border arrangements available for implementation or ready for implementation or for which the first step of implementation has been concluded between 1 July 2020 and 31 December 2020, the 30 days' time period commences from 1 January 2021.
8. The 30 days' time period commences from 1

# BERNITSAS briefing

January 2021 for intermediaries that directly or indirectly provide assistance, advice or contribute to cross-border arrangements between 1 July 2020 and 31 December 2020.

9. Intermediaries and taxpayers are obliged to file the required information on cross-border arrangements for which the first step was implemented between 25 June 2018 and 30 June 2020 by 28 February 2021.
10. Marketable arrangements subject to periodic reports should be filed by 30 April 2021.
11. Automatic exchange of information by Greek tax authorities takes place within one month from the end of the quarter that the information was filed. The first information should be communicated by the Greek authorities by 30 April 2021.
12. Failure to file reportable information results in the imposition of a penalty of €5,000 for legal entities keeping revenues-expenses books and €10,000 for legal entities keeping double-entry books.
13. Failure by an intermediary to notify another intermediary or the taxpayer to file information results in the imposition of a penalty of €5,000 for legal entities keeping revenues-expenses books and €10,000 for legal entities keeping double-entry books. This provision applies only in the event that the intermediary is exempted from filing information due to legal professional privilege.
14. Filing of inaccurate information results in the imposition of a penalty of €2,500 for legal entities keeping revenues-expenses books and €5,000 for legal entities keeping double-entry books.
15. Late filing of information results in the imposition of a penalty of €250 that may be increased up to a maximum €2,500 for legal entities keeping revenues-expenses books and €500 that may be increased up to a maximum of €5,000 for legal entities keeping double-entry books.
16. With the exception of the above limits, penalties are capped at 10 times the respective penalty.

## I. Registration Tax on Passenger Vehicles and Trucks

1. The Law amended Articles 121 and 123 of the

National Customs Code with regard to the calculation of registration tax on conventional passenger vehicles, hybrids and electric vehicles.

## J. Gift Tax Exemption for Movable Assets Located Outside Greece

1. The Law introduces a new gift tax exemption pertaining to movable assets located outside Greece.
2. Pursuant to the new provision, movable assets located outside Greece may be donated free of gift tax on condition that:
  - a. they have not been acquired in Greece by a Greek national;
  - b. the Greek national must have resided outside Greece for at least 10 consecutive years;
  - c. the Greek national relocated to Greece for a time period not exceeding 5 years.

## K. Gift Tax on Parental Gifts

1. The Law amended the flat tax regime applied on parental gifts in cash (10% tax rate). Under the new provisions, a progressive scale (ranging from 0% - 10%) on parental gifts in cash applies on condition that the respective amount will be used for the purchase of a primary residence subject to the restrictions of Article 1 of Law 1078/1980.

## L. VAT - Call-off Stock Arrangements

1. The transfer by a taxable person of goods forming part of their business assets to another Member State under call-off stock arrangements shall not be treated as a supply of goods.
2. Call-off stock arrangements shall be deemed to exist where the following conditions are met:
  - a. goods are dispatched or transported by a taxable person, or by a third party on their behalf, to another Member State with a view to those goods being supplied there, at a later stage and after arrival, to another taxable person entitled to take ownership of those goods in accordance with an existing agreement between both taxable persons;

## BERNITSAS briefing

- b. the taxable person dispatching or transporting the goods has not established his business and does not have a fixed establishment in the Member State to which the goods are dispatched or transported;
  - c. the taxable person to whom the goods are intended to be supplied is identified for VAT purposes in the Member State to which the goods are dispatched or transported and both their identity and the VAT identification number assigned to them by that Member State are known to the taxable person at the time when the dispatch or transport begins; and
  - d. the taxable person dispatching or transporting the goods records the transfer of the goods in the register and includes the identity of the taxable person acquiring the goods and the VAT identification number assigned to them by the Member State to which the goods are dispatched or transported in a recapitulative statement.
3. Where the above conditions are met, the following rules shall apply at the time of the transfer of the right to dispose of the goods as owner to the taxable person:
    - a. supply of goods shall be deemed to be made by the taxable person that dispatched or transported the goods either by themselves or by a third party on their behalf in the Member State from which the goods were dispatched or transported; and
    - b. an intra-Community acquisition of goods shall be deemed to be made by the taxable person to whom those goods are supplied in the Member State to which the goods were dispatched or transported.
  4. If, within 12 months after the arrival of the goods in the Member State to which they were dispatched or transported, the goods have not been supplied to the taxable person for whom they were intended, and none of the necessary circumstances have occurred, a transfer shall be deemed to take place on the day following the expiry of the 12 month period.
  5. No transfer shall be deemed to take place where the following conditions are met:
    - a. the right to dispose of the goods has not been transferred, and those goods are returned to the Member State from which they were dispatched or transported within 12 months; and
    - b. the taxable person who dispatched or transported the goods records their return in a specific register.
  6. Where, within the 12 months' time period, the taxable person is substituted by another taxable person, no transfer shall be deemed to take place at the time of the substitution, provided that:
    - a. all other applicable conditions are met; and
    - b. the substitution is recorded by the taxable person in a specific register.
  7. Where any of the required conditions ceases to be fulfilled within the 12 months' time limit, a transfer of goods shall be deemed to take place at the time that the relevant condition is no longer fulfilled.
  8. If the goods are supplied to a person other than the taxable person, it shall be deemed that the specific conditions cease to be fulfilled immediately before such supply.
  9. If the goods are dispatched or transported to a country other than the Member State from which they were initially moved, it shall be deemed that the conditions set out in paragraphs 2 and 6 cease to be fulfilled immediately before such dispatch or transport starts.
  10. In the event of the destruction, loss or theft of the goods, it shall be deemed that the specific conditions cease to be fulfilled on the date that the goods were actually removed or destroyed, or if it is impossible to determine this date, the date on which the goods were found to be destroyed or missing.
  11. Where the same goods are supplied successively and those goods are dispatched or transported from one Member State to another Member State

## BERNITSAS briefing

directly from the first supplier to the last customer in the chain, the dispatch or transport shall be ascribed only to the supply made to the intermediary operator.

12. By way of exception, the dispatch or transport shall be ascribed only to the supply of goods by the intermediary operator where the intermediary operator has communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported.

13. A VAT exemption is provided in the case that the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met:

- a. the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins; and
- b. the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier.

14. The VAT exemption shall not apply where the supplier has not complied with the obligation to submit a recapitulative statement or the recapitulative statement submitted does not set out the correct information concerning this supply, unless the supplier can duly justify this insufficiency to the satisfaction of the competent authorities.

15. Every taxable person who transfers goods under the call-off stock arrangements is obliged to keep a register that permits the tax authorities to verify the correct application of the above-mentioned procedure.

16. Every taxable person to whom goods are supplied under the call-off stock arrangements is also obliged to keep a register of those goods.

### **M. VAT - Place of Intracommunity Acquisition and Taxable Amount in the Delivery of Goods, Intracommunity Acquisition and Supply of Services**

1. For the delivery of goods or the supply of services between affiliates or related legal entities as defined by the Greek Income Tax Code, the taxable amount is to be the open market value:

- a. where the consideration is lower than the open market value and the recipient of the supply does not have a full right of deduction;
- b. where the consideration is lower than the open market value and the supplier does not have a full right of deduction and the supply is subject to an exemption in Greece; or
- c. where the consideration is higher than the open market value and the supplier does not have a full right of deduction.

2. The place of an intra-Community acquisition of goods shall be deemed to be within the territory of Greece which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied by another Member State.

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