July 2020

TAX ALERT

EMPOWERING
TRUSTED
DECISIONS

Greece incorporates EU rules on mandatory disclosure of cross-border tax planning structures, exit taxation, hybrid mismatches, alternative tax dispute resolution and the VAT quick fixes directive

Executive Summary

On July 29 the Greek Pariament enacted a comprehensive tax bill, which incorporates into national law certain international tax and VAT related EU directives. These are aimed at promoting tax transparency, by establishing the mandatory disclosure of potentially tax aggressive cross-border structures, helping to level the playing field on international taxation matters, by discouraging certain international operation structures that enable double non-taxation, and improving tax certainty and fairness, by introducing a thorough framework of alternative dispute resolution proceedings as well as simplifying certain VAT rules concering the intra-EU trade.

Specifically, the following directives are incorporated into Greek tax law with the introduction of the following new rules:

1. DAC6 (EU Council Directive 2018/822) **on mandatory disclosure of cross-border arrangements presenting features that indicate a potential risk of tax avoidance** and the related directive 2020/876 on the deferral of the disclosure deadlines due to the COVID-19 pandemic:

Pursuant to the new rules, those who promote or advise or assist a taxpayer with respect to making available for or managing the implementation of cross-border arrangements that present one of the indications of a potential risk of tax avoidance, as such indications are listed in the same bill (under Annex IV

titled: "Hallmarks"), are all considered as intermediaries.All these intermediaries become obliged to report to the tax authorities the details of the specific cross-border arrangement and the taxpayers involved and any associated enterprises who are part of it. Any person assisting with its implementation has the right to prove that she did not know and could not reasonably be expected to know, in view of the expertise and level of understanding required, that the cross-border scheme at issue was reportable and thereby avoid the sanctions for failing to report it.
In addition, an intermediary shall be exempt from the reporting obligation when it proves that the same reportable arrangement has already been reported by another intermediary.

Where the same arrangement is reportable in more than one Member States, it is sufficient to prove that the same information has been filed in another Member State.

Exempt from the disclosure obligation are lawyers, to the extent their involvement is protected under the attorney-client privilege of confidential relationship. This attorney-client privilege is enshrined in the Greek lawyers code and is highly protected. In that case liable to report is any other existing intermediary or in absence thereof the client. The lawyer is obliged to inform the client about his reporting obligations, when no other intermediary is known to exist whom the lawyer should first contact about his disclosure obligation.

Indeed, ultimately, it is the taxpayer who is obliged to disclose to the tax authorities the necessary information about the reportable scheme when he cannot prove that the same information has been already filed by an intermediary or another taxpayer in another Member State. Hence, the absence of intermediaries or their negligence to report the potentially aggressive tax planning scheme to the authorities or lack of evidence that they have reported it, have an impact on the client, who must report the details of the scheme, unless he has ensured that an intermediary has already done so in Greece or another Member State.

Indicatively, subject to reporting are, among other, cross-border payments made between associated enterprises when the recipient of the payment benefits from a preferential tax regime and one of the main benefits which, having regard to all facts and circumstances, a person may reasonably expect to derive from the relevant arrangement is the obtaining of a tax advantage. On the other hand, when the country of the recipient of that payment is included in a third-country black list of the EU or the OECD, the relevant arrangement is in any case reportable.

Same reporting obligation exists for an intra-group cross-border business restructuring if the projected earnings before interest and taxes (EBIT) of the transferor of functions, risks or assets, during the three-year period afer the transfer, are less than 50% of his projected EBIT in case the business restructuring had not been made. Hence, not only are these intercompany transactions subject to the domestic transfer pricing documentation requirements, but become also reportable under these new mandatory disclosure rules.

Reportable cross-border structures must be reported by a promoter, an advisor, the relevant accounting service provider or, ultimately, by the taxpayer within 30 days from the moment they become available for implementation or a related advice or assistance is offered or the first step is made for its implementation.
Exceptionally, reportable structures that started being implemented in the period July 1st – December 31st, 2020 must be reported by January 31st, 2021.

In alignment with the directive, the bill introduces the mandatory disclosure regime with retroactive effect from June 25, 2018, to coincide with the entry into force of the directive. For that reason it also obliges intermediaries and ultimately the taxpayer to report any reportable cross-border arrangements that started being implemented between June 25, 2018 and June 30, 2020. These arrangements must be reported by February 28, 2021.

Considering that pursuant to the Greek tax law, an entity is considered to be located in a jurisdiction with a preferential tax regime when it is subject to a corporate tax rate that is by at least 60% lower than the corporate tax rate of Greece and that the Greek corporate tax rate in 2018 was 29% and in 2019 24%, the implementation in the period between June 25 to December 31, 2018 of new structures involving payments to associated enterpises in Bulgaria or other countries featuring a corporate tax rate that is by 60% or more lower than the 29% corporate tax rate applicable at that time of Greece, makes the relevant structure reportable when one of the main benefits reasonably expected from that structure is the obtainment of tax advantage. By contrast, if the relevant structure is implemented in 2019 or later, then, to the extent these intra-group payments involve Bulgaria or other countries with a corporate tax rate above 9%, thus less than 60% below the 24% Greek rate, no reporting obligation exists on the basis of the criterion relating to countries with preferential tax regime.

Excluded from these reporting deadlines are the so called: "marketable (cross-border) arrangements". Marketable arrangements are those that are marketed by their promoters for implementation without the need for substantial customization. These are due for reporting quarterly, with the first of them being due on April 30, 2021, as opposed to bespoke arrangements, for which the above mentioned disclosure deadlines apply.

The information obtained by the Member States is exchanged among them on a quarterly basis, starting from April 30, 2021.

The features of potentially aggressive tax planning schemes, triggering their mandatory disclosure and the penalties for non-compliance are discussed in detail below, in pages 7 et seq.

2. ATAD I, as regards its **exit taxation rules** for an entity's transferred assets outside a Member State's jurisdiction (in specific article 5 of EU Council Directive

2016/1164. The other provisions of this directive have already been transposed into Greek law with Law 4607 of 2019):

The bill adds new article 66A to the Income Tax Code, which is dedicated to the exit taxation. Subject of this new provision are legal entities that are tax resident and permanent establishments of foreign entities in Greece. The exit taxation rules are triggered when assets of the local business activity are transferred to the business activity of the entity abroad in a way that these assets are no longer reflected in the local accounting books.Hence, in case it is only the use of the asset that is temporarily assigned to another permanent establishment or the head office of the same entity abroad, the exit taxation rules are not triggered. In that case the part of the business remaining in Greece may have to charge, in accordance with the applicable transfer pricing rules, a fee for the temporary use of the asset in the business of the entity abroad. By contrast, when the assets are transferred in a way that they will no longer be reflected in the local accounting books, then the exit taxation rules are triggered. Same rules are triggered when the entity ceases to be tax resident of Greece and the assets in question do not remain effectively connected with a permanent establishment of the entity in Greece that is potentially left behind.

The calculation of the exit tax, the possibility to pay the tax due in five annual instalments, the determination of the tax book value of assets in the reverse case, namely for assets brought from another Member State to the business of the entity in Greece, and the exceptions to the exit taxation are discussed below, in pages 10 et seq.

The exit taxation rule of new article 66 A becomes effective on 01.01.2020. The tax returns for the exit of assets that took place in the period 01.01.2020 until the promulgation of the new law on the Government's Gazette can be filed without penalties until the last working day of the third month following the promulgation of the law on the Government's Gazette.

3. ATAD II (EU Council Directive 2017/952) regarding **hybrid mismatches**):

Another new article which the bill adds to the Income Tax Code is article 66 B, which deals with the treatment of hybrid mismatches.

In line with the provisions of the directive, this new rule shall apply to payments that are made from 01.01.2020 onwards.It relates to legal entites established in Greece and to permanent establishments of foreign entities situated in Greece. It triggers the add-back to the taxable profits of cross-border payments between associated entities when such payments are not included for taxation in the country of the payee due to differences in the characterization (hybrid mismatch) of the payment, the tax treatment of the entity receiving the payment or the allocation of the related income. Moreover, where the mismatch outcome is priced into the terms of an arrangement or when an arrangement has been designed to produce a hybrid mismatch outcome (structured arrangement), the payment can be subject to taxation without being required that the participants are associated.

The scope of the new rule and its exceptions are further discussed below, in pages 12 et seq.

4. The EU Dispute Resolution Directive (EU Council Directive 2017/1852 on tax dispute resolution mechanisms in the European Union):

Most articles of the bill (articles 21-48) regulate the functioning of the new tax dispute resolution mechanism, which is made available to taxpayers as alternative to national legal remedies (without excluding access to them).

Taxpayers are entiled to resort to this mechanism when their dispute relates to tax assessments or decisions of the tax administration or the administrative courts which are perceived to violate the taxation boundaries set upon Greece either by an applicable tax treaty which it has concluded with another Member State or by the EU Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/1994/EU, ratified with law 2216/1994). Hence, this mechanism does not apply in the context of tax assessments relating to transactions of the taxpayer with third countries. In those cases the taxpayer may either resort to national legal remedies or to the Mutual Agreement Procedure (MAP) provided in 63 A of the Tax Procedures Code.

Contrary to the existing MAP framework of the Tax Procedures Code, the new mechanism is more comprehensive and, given that same shall aply also in the other Member States, seems better equipped to lead to an effective resolution of the dispute across the Member States concerned.

Another feature of the new dispute resolution framework is that it contains a detailed time schedule, with interim deadlines, aiming that the whole process, i.e. until either the Mutual Agreement Procedure is successfully concluded between the Competent Authorities of the Member States concerned (which alone can be the longest part of the process, lasting up to 3 years) or, upon its failure, until an independent advisory or arbitration body is set up, deliberates and delivers its opinion and a final decision is subsequently adopted by the Member States and communicated to the taxpayer, in order for him to choose to agree with its content or continue with national legal remedies, does not get stalled; however, the whole process described above may as well last 5 years. During that time the path to national legal remedies is open. Indeed, the taxpayer is free to appeal in parallel to the domestic dispute resolution institutions or abandon domestic legal remedies and resort directly to the new proceedings (although, until it proves in practice very effective and efficient, it is hard to imagine why to forego keeping domestic legal remedies available).

If domestic appeal proceedings, at administrative or court level, have already started, the complaint shall relate to the content of the relevant decision. Alternatively, if the hearing at court is still pending, the applicant must provide evidence that the court hearing has not taken place yet. In the opposite case the complaint can refer to the court's response on the appeal.

The only limitations to the admissibility of the complaint is that it is filed within 3 years from the notification of the tax assessment notice - even if it is filed following the issue of the decision on the administrative or court appeal - and before a national court has irrevocably ruled on that matter. In addition, according to the bill, the question in dispute must have the effect of double taxation that is contrary to an applicable tax treaty with a Member State or the EU Convention on the adjustment of profits of associated enterprises.

On the other hand, the taxpayer can set in motion the alternative dispute resolution mechanism regardless of whether he can still appeal against the tax assessment domestically.

It is worth mentioning that the new dispute resolution framework provides for additional legal remedies as safeguards that the dispute resolution proceedings shall move on. Specifically, it provides for the filing of:

(i) application before the Supreme Administrative Court for the annulment of the decision on the rejection of the complaint, when all Member States concerned notify the affected person in Greece that they have rejected her complaint - by contrast, when any of the Member States concerned has the view that the complaint must be sustained, proceedings may continue, at the affected peron's request, before the independent advisory commission;

(ii) application before the Administrative Court of First Instance for the annulment of the State's ommission to set up an independent advisory commission or to communicate to the affected person on time the rules of its functioning.

The new dispute resolution mechanism applies to disputes relating to fiscal years starting January 1st, 2018 onwards. With the filing of a complaint on the basis of this new mechanism any relevant Mutual Agreement Procedure which has already been initiated, on the basis of the existing rules of the tax procedures code, and relates to the same question in dispute is automatically terminated.

5. The VAT quick fixes (EU Council Directive 2018/1910) and **improvements to the taxable amount provision relating to supplies between related parties**:

The bill transposes the EU VAT quick fixes rules of EU directive 2018/1910 into domestic law. As a result, following rules are introduced:

- No obligation of a non-established taxable person to register for VAT purposes in Greece for goods dispatched under a call-off stock provided the conditions stipulated in the new rules are met;

- Rules about how the intra-EU delivery/acquisition rules shall be applied in cases of chain transactions;

- The application of the zero-rated intra-EU delivery status to a supply is made conditional on the recipient of the supply providing to the supplier a valid VAT registration number in a different Member State than the one in which the dispatch begins and the supplier a racapilatutive statement with the correct information of the supply.

Their details are further discussed below, in pages 14 et seq.

In addition, the bill amends article 19-taxable amount-of the Greek VAT Code, in order that the conditions of the determination in accordance with the marke value of the taxable amount of a supply between related persons to be aligned with article 80 of the Recast VAT Directive.

Discussion

1. Mandatory disclosure of cross-border arrangements

The bill amends Law 4170/2013 (the Greek law implementing directive 2011/16 on administrative cooperation in the field of taxation) so as to include the mandatory disclosure of cross-border arrangements that are put in place and present any of the features of potential risk of tax avoidance. These features are set out in a new annex: "Annex IV - Hallmarks".
The reporting obligation of the intermediary and ultimately the taxpayer extends to the details of the arrangement, including the identities of the relevant taxpayers and, where appropriate, their affiliates, the value of the arrangement and its content, the identification of the Member States that are likely to be concerned by that arrangement and the identification of any other person in a Member State who is likely to be affected.

1.1. The hallmarks (indications of a potentially tax aggressive scheme, rendering it reportable)

The features that render a cross-border arrangement reportable are distinguished in annex IV between, on the one hand, generic and specific features linked with the main benefit test defined below and, on the other, specific features that are not necessarily linked with the main benefit test.

Specifically, the following generic features (or hallmarks, according to the term used by the directive) render a cross-border arrangement reportable only when the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from that arrangement is the obtaining of a tax advantage:

- A confidentiality obligation is imposed upon a relevant taxpayer, requiring from him not

to disclose how the arrangement could secure a tax advantage.
- The fee agreed is contigent on the tax advantage actually derived.
- Marketable arrangements that are available to more than one relevant taxpayer without a need to be substantially customized.

Furthermore, the occurrence of the specific features of the following categories render a cross-border arrangement reportable only when one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from its implementation is the obtainement of a tax advantage:

- An arrangement whereby a participant acquires a loss-making company, discontinues the main activity of such company and uses its losses in order to reduce its tax liability.
- An arrangement that has the effect of converting income into capital or another category of revenue taxed at a lower rate.
- An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other.
- The recipient of a deductible cross-border payment made between associated enterprises is tax resident in a country that either does not impose any corporate tax or imposes a corporate tax at almost a zero rate. Thus, even though the payee is tax resident in such a country, that fact alone does not render the relevant payment arrangement reportable, but only insofar as the main benefit test, with particular regard to all relevant specific facts and circumstances of the case, is satisfied.
- The payment from the associated enterprise benefits from a full exemption from tax in the jurisdiction where the recipient is tax resident. Again same "main benefit test" must be satisfied in order for the payment to qualify for reporting.
- The payment benefits from a preferential tax regime combined with the fact that the aforementioned benefit test is satisfied.

By contrast, the occurrence of the specific features of the following categories render a cross-border arrangement in any case reportable, which means that the specific facts and circumstances of the case are not examined as to whether they can lead to a different conclusion than the obtainment of a tax advantage as main benefit derived from the arrangement:

- The recipient of a deductible cross-border payment made between associated enterprises is not tax resident in any tax jurisdiction.

- Or he is resident for tax purposes in a jurisdiction which is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the OECD framework as being non-cooperative jurisdictions.
- Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
- Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.
- There is a material difference in the amount being treated as payable in consideration for the cross-border transfer of assets among the jurisdictions involved.
- An arrangement which involves the use of unilateral safe harbour rules in respect of transfer prices.
- Transfers between associated enterprises of hard-to-value intangibles, considered to be those for which no reliable comparable data exist and the valuation assumptions used in connection with the level of success of the intangible are highly uncertain.
- An arrangement involving an intra-group cross-border business restructuring if the projected earnings before interest and taxes (EBIT) of the transferor of functions, risks or assets, during the three-year period afer the transfer, are less than 50% of his projected EBIT in case the business restructuring had not been made.
- An arrangement which may have the effect of undermining the legislation on the exchange of Financial Account Information through the use of schemes that prevent the disclosure of otherwise relevant information or the transfer of financial accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information.
- An arrangement aimed at concealing the ultimate beneficial owners of an entity.

1.2. Definition of the term "associated enterprises"

In line with the directive, the new provision on mandatory disclosure contains its own definition of the term "associated enterprises", as regards reportable cross-border arrangements in which associated enterprises are involved. The relevant definition is different than the one contained in the Greek Income Tax Code. It basically requires a 25% stake in the capital, voting rights or profits of another person, as opposed to the 33% threshold of the Greek Income Tax Code definition.

1.3. Penalties for non-compliance

According to the directive, failure to comply with the reporting obligation should be sanctioned by the Member

States with effective, proportionate and dissuasive penalties.

In this regard, the bill adds a new article 56A in the Tax Procedures Code (Law 4174/2013).

With this article the penalties already foreseen for the non-filing or late or inaccurate filing of the Country-by-Country Report (CbCR) for MNEs exceeding the CbCR group revenue threshold, when in particular the relevant obligation rests with the Greek entity, are removed from Law 4170/2013 on the administrative tax cooperation and are inserted as paragraph 1 into this new article of the Tax Procedures Code, obviously for reasons of consistency; thus, in that far, no new penalty is introduced.

New are paragraphs 2-5, which deal with the penalties for failing to disclose information on any of the aforementioned potentially tax aggressive cross-border arrangements.

Specifically, failure to report a reportable cross-border arrangement is sanctioned with a penalty of Euro 10,000 per infringement (reduced to Euro 5,000 when the person in breach carries on a small business that is subject to single entry and not double entry accounting). In that regard, the maximum penalty in the context of the same tax audit can not exceed 10 times the penalty for one reporting violation.

In case of inaccurate or inadequate information relating to a reportable arrangement, the penalty is set to Euro 5,000 (Euro 2,500 in case of single entry accounting) for every reportable arrangement with inaccurate or missing information. Again, there is a cap of 10 times this amount per each tax audit.

In case of late reporting and for up to 3 months delay the penalty amounts to Euro 500 (Euro 250 for persons with single entry accounting books) for every delayed reporting. In case the reporting is delayed for more than 3 months, the penalty imposed is Euro 5,000 (Euro 2,500 for single entry accounting). The maximum penalty for delayed reporting per year can not exceed double this amount.

For intermediaries who are lawyers and fail to notify every other intermediary and, when no such other intermediaries exist, the taxpayer about his obligation to report an arrangement the penalty imposed is Euro 10,000 (Euro 5,000) per reportable arrangement which he should have alerted the other intermediaries and ultimately the client about their obligation to report it. The penalty cap applied is 10 times per every tax audit.Hence lawyers can only be exempt from this penalty when they can prove that they have notified the other intermediaries for the same arrangement and ultimately the client who started implementing it, about their own reporting obligation.

2. Exit taxation

2.1. Calculation and payment of the exit tax

In case an asset or the assets of the business of an entity exit Greece in a way that they shall not be reflected any more in the local accounting books as part of its domestic business (either because it discontinues its local business or because the specific asset shall no longer be allocated to it), such exit shall be subject to Greek corporate income tax. The taxable amount equals the market value of the asset minus its value for tax reporting purposes at the moment of its exit from Greece. The market value shall constitute the amount for which that asset can be exchanged between unrelated buyers and sellers in a direct transaction. The bill stipulates that the determination of the market value of the asset can be performed with any of the following three ways:

- An audit firm or two certified auditors or appraisers (as the case may be) draft a valuation report. The auditors involved must be independent, as if they had been conducting the statutory audit.
- In case the entity values its assets at fair value, the market value of that asset can be the same.
- To follow the valuation made for transfer pricing documentation purposes.

The corresponding tax, which is calculated on the deemed capital gain, at the moment of the asset's exit, with the application of the standard corporate tax rate is paid to the Greek State coffers 3 working days before the exit of the asset. With the payment of this tax, any income tax liability of the entity and its shareholders in respect of that asset in Greece is definitely exhausted, hence the amount so taxed is not included in the annual taxable profits of the entity.

The entity is entitled to pay the tax in 5 annual instalments, provided the asset is transferred to another Member State or to an EEA (European Economic Area) country, and not to another third country. However, this possibility is waived and the entire amount of the outstanding tax becomes due when the assets or business activity transferred outside Greece are subsequently sold or otherwise disposed of or further transferred to a third country or when the taxpayer goes bankrupt or is wound up or fails to honour its instalment payment obligations within 3 months from the due date. Moreover, if there is a demonstrable and actual risk of non-recovery, the tax administration may require that a guarantee is provided as a condition for the payment of the tax in 5 annual instalments.

2.2. Exceptions to the exit taxation

Provided the business assets transferred outside Greece relate to the financing of securities or the transfers are conducted in order that the assets are posted as collateral or can serve capital requirements or liquidity management purposes and are returned within 12 months to Greece, the exit taxation shall not apply.

2.3. Tax book value of assets transferred to Greece

To the extent a business asset is transferred from abroad to the business unit of the same entity in Greece and upon the transfer there has been established its exit value in another Member State, the starting tax book value of that asset in Greece shall coincide with this value, unless such value does not reflect its market value.

2.4. Asset transfers in the context of business restructurings

We consider that the application of the new exit taxation rules does not relieve the entity from its transfer pricing documentation obligation in respect of these asset transfers. Moreover, when the asset is transferred outside Greece in the context of a business restructuring, the valuation should continue following the rules established in article 51 of the Greek Income Tax Code.

3. Taxation of payments in hybrid mismatch situations

3.1. Scope of the new rule for Greece

The new hybrid mismatch rule is aimed at combating the double non-taxation or double tax relief in the following situations. It is driven by the principle that a tax deduction of a payment is matched with its taxation by its recipient.

More specifically, the hybrid mismatch taxation rule is applied provided a cross-border payment is made between associated enterprises, between the head office and the permanent establishment, between two or more permanent establishments of the same entity or under a structured arrangement (i.e. an arrangement involving a hybrid mismatch where the mismatch outcome is priced into the terms of the arrangement or when an arrangement has been designed to produce a hybrid mismatch outcome unless the taxpayer under review could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from that mismatch):

- A **payment under a financial instrument**, to the extent it would normally give rise to a deduction for tax purposes in Greece, that is, however, not included, within a reasonable period of time, as taxable income in the payee's country due to differences in the characterization between the two countries of the instrument or the payment made under it (i.e. payment in connection with debt in Greece Vs. payment in connection with equity in the payee's country); in that case Greece shall not allow the tax deduction of the payment, unless it is included in the taxable income of the payee within a period of 12 months from the relevant fiscal year's end of the payer in Greece or it is reasonable to expect that the payment will be included by the jurisdiction of the payee in a future tax period and the terms of the payment are those that would be expected to be agreed between independent enterprises.

- The **payment** made **to a hybrid entity** abroad (i.e. an entity or arrangement that is regarded as transparent in the country it is established or registered, in the sense that its income is allocated for tax purposes to the persons participating in that entity, as opposed to its tax treatment as opaque, i.e.as a separate taxable entity, in the country of the participants in that entity), to the extent it would normally give rise to a deduction for tax purposes in Greece, that is, however, not included as taxable income under the laws of the jurisdictions of the entity or any participant in that entity); in that case Greece shall not allow insofar the tax deduction of the payment, as it is not included for taxation in the country of the entity or its participants.

- The payment to an entity with permanent establishment(s), to the extent it would normally give rise to a deduction for tax purposes in Greece, that is, however, not included in the taxable income of that entity due to differences between the jurisdictions of the head office and its permanent establishment(s) as to where the respective income should be allocated.

- A deemed charge in the context of supplies between the head office located in Greece and a permanent establishment located elsewhere or vice-versa or between two permanent establishments of the same entity, to the the extent it would normally give rise to a deduction for tax purposes in Greece, that, is, however, disregarded for tax purposes in the jurisdtion in favor of which the charge is booked in the local business' accounts; in that case Greece shall not allow the tax deduction of the charge unless Greece is required to exempt the relevant income under a double taxation treaty that it has concluded with a third country.

- To the extent an **entity** is considered tax resident not only in Greece but also in another country **(dual tax resident)** and, as a result, a payment made by it can be claimed for tax deduction in both States, Greece shall not allow the tax deduction to the extent the other country allows the deduction to be set off against income that is not dual-inclusion income (income that is included for taxation in both jurisdictions where a mismatch outcome has arisen). If the other country is also a Member State, then Greece shall deny the tax deduction only when the entity is not considered for the purposes of the application of the tax treaty of Greece with that Member State as tax resident of Greece.

3.2. Exceptions of certain hybrid payments from taxation

The new hybrid mismatch taxation rules shall not apply, until December 31, 2022, to mismatch outcomes resulting from a payment of interest under a financial instrument to an associated enterprise where:

(a) the financial instrument has conversion, bail-in or write down features, or:

(b) the financial instrument has been issued with the sole purpose of satisfying loss absorbing capacity requirements applicable to the banking sector and it is recognized as such in the taxpayer's loss absorbing capacity requirements,

The above exceptions apply to the extent the financial instrument has been issued not as part of a structured arrangement and 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.

3.3. Definiion of the term "associated enterprises" under the hybrid mismatch rule

New article 66 B contains its own definition of the term "associated enterprises". Hence, with the exception of payments under structured arrangements, the mismatch outcome should be produced in situations involving associated enterprises, whereby the participation threshold in the capital, voting rights or profits of another person is set to 50%, as opposed to 33% under the general definition of associated persons of the Greek Income Tax Code. The bill has failed to set forth the level of participation required for the characterization of entities as associated when it comes to hybrid mismatches involving payments under a financial instrument. From the wording of the directive, the participation threshold required in that case seems to be 25%. Hiowever, the bill does not specify whether in this case the 25% threshold should apply.

4. The VAT quick fixes rules

The bill introduces the VAT quick fixes rules as follows:

- ***Call-off stock:*** A taxable person who is not established nor has a fixed establishment in Greece and tranports goods from another Member State to Greece which goods will not be directly supplied to another taxable person, but only at a later stage will no longer be obliged to register for VAT purposes in Greece on the following conditions:
    - The intended acquirer of the goods is known to the person who dispatched the goods to Greece (the supplier) when the dispatch started from another Member State, because there is an

agreement between the two persons in place, which entitles that person to take ownership of these goods at a later stage after arrival in Greece.

- The intended acquirer is identified for VAT purposes in Greece and his relevant VAT number is provided to the supplier.

- The supplier records the transport of the goods in a newly introduced and mandatorily kept call-off stock register and includes the Greek VAT number of the intended acquirer in the recapitulative statement (EC listing)-without value, since no supply takes place yet-submitted for the period in which the transport takes place.

- The transfer of ownership on the goods to the intended acquirer is made within 12 months after the arrival of the goods in Greece. Alternatively, during this 12-month period the goods can return to the Member State from which they were dispatched and this fact is recorded in the call-off stock register of the suppier or the intended acquirer is replaced by another taxable person who is identified for VAT purposes in Greece and this replacement is recorded in the call-off stock register of the supplier.

Once any of these conditions ceases to be fulfilled, a transfer of goods shall be deemed to take place at the time any of the conditions is no longer fulfilled and the supplier shall be obliged to become VAT registered for the stock which he had transported to Greece. The obligation to become VAT registered in Greece is triggered only at that moment, because according to the directive and the bill, the eligibility to this regime stops immediately before any of these conditions ceases to be fulfilled. Hence at that moment the supplier becomes obliged to report the intra-EU acquisition for the goods transported to Greece, followed by their supply to a different person or their dispatch to a third Member State or export.

- *Chain transactions:* The relevant new rule is aimed at harmonizing the treatment, across the EU Member States, of successive supplies of the same goods that are subject to the same intra-EU transport between Member States. According to this rule, where the same goods are supplied successively and those goods are dispatched from one Member State to another Member State directly from the first supplier to the last customer in this chain, the dispatch, for intra-EU delivery/acquisition purposes shall be ascribed to the supply made from the first supplier to the intermediary operator in the chain (who will subsequently dispatch the goods in his name). However, when the intermediary operator provides to the supplier with a VAT registration number issued by the Member State from which the goods are dispatched then the intra-EU status shall be ascribed to the supply made from the intermediary operator, whilst the supply from the first supplier to him shall be deemed a local supply in the Member State from where the goods are dispatched.

- *Additional conditions for the qualification of a a supply as a zero-rated EU-delivery:* In accordance with this directive, it will be henceforth additionally required for a supply of goods to qualify as an intra-EU delivery that: (i) 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 of the goods begins and has indicated such number to the supplier and (ii) the supplier complies with his obligation to file a recapitulative statement, which must contain the correct information about the supply, unless he can duly justify his shortcoming to the satisfaction of the competent authorities.

Points for action

Mandatory disclosure: In view of the deadlines end of January/February 2021 to disclose any reportable cross-border potentially aggressive tax planning schemes, following action should be undertaken:

- The taxpayer should check wherher in the period from June 25, 2018 onwards he has implemented any reportable cross-border arrangement that presents the features-hallmarks of annex IV discussed above. If that's the case, he should check whether any advisor or other intermediary who has been involved in its implementation shall report the arrangement enough time before the due dates end of January/February 2021 and make that this happens. If the taxpayer is part of a group, he can check and receive evidence from the parent company abroad that the same arrangement shall be reported well in advance of these. For schemes thsat start being implemented from January 1st, 2021 onwards, he should be monitoring on a frequent basis whether they are reported by any intermediary or other taxpayer involved in the sceme, given that the deadline to report them is 30 days after they started being implemented.

Exit taxation: In case an entity in the period from 01.01.2020 transported assets of its local business outside Greece, without an underlying sale transaction, it should check whether the conditions for the application of the hew exit taxation rules are met. In that case and provided the transfer outside Greece took place before the promulgation of the new law in the Government's Gazette (expected end of July), it should file the relevant tax return for the exit of the asset within 3 months from the promulgation of the new law in the Government's Gazette.

Any exit of business assets of an entity outside Greece's tax jurisdiction implemented after the promulgation of the new law in the Government's Gazette must be preceded by the filing of the exit tax return.

Hybrid mismatches: International group entities operating in Greece should screen their transaction in 2020 onwards to determine whether any of them could potentially qualify, under the criteria set out in the discussion section above as hybrid payment or payment made to a hybrid entity or payment potentially producing a mismatch outcome regarding its inclusion for taxation in the payee country, since payment producing such hybrid mismatches are not tax deductible any more.

EU tax alternative dispute resolution: For any tax disputes relating to income items derived from January 1st, 2018 onwards and referring to the allocation of that income in Greece Vs another Member State, the taxpayer may consider as an adfditional option of the dispute resolution the filing of a complaint under the new EU alternative dispute resolution mechanism, which option does not prevent him from also filing a court appeal

VAT quick fixes: Taxable persons involved in intra-EU trade should consider the changes introduced by the VAT quick fixes rules to the extent they affect their reporting obligations and whether the new rules on the intra-EU cross-border call-off stock are something that could be of interest to them or can make them consider adjusting their operations accordingly.

About KARAKITIS TAX & LAW

KARAKITIS TAX & LAW is a law firm located in Athens, Greece. We specialize in tax law. Our services are aimed at empowering trusted decisions on transactions, investments, operations and disputes. With our expertise and enthusiasm we focus on effectively and holistically addressing the client's issues and we follow through to ensure that the relevant decisions are seamlessly implemented. For more information about our services, you may visit our site: www.ktl.gr

For more information on this alert you may contact:
Alexandros Karakitis at:
+30 210 36 444 88
Alexandros.Karakitis@ktl.gr

This alert is intended for information purposes only. It does not constitute nor should it be construed as constituting tax or legal advice. Before making any decisions based on this alert's update you should consult first either with our firm or with another technical expert.