

Tax Flash *Law 4378/2016*

April 2016

Law 4378/2016, incorporating into the domestic legislation the provisions of Council Directives (a) 2014/107/EU regarding the mandatory automatic exchange of information on tax matters and (b) 2014/86/EU and 2015/121/EU regarding the conditions for exemption from taxation on intra-group dividends, was published in the Government Gazette. The most important provisions of said law are summarized below.

Introductory remarks

A. Incorporation of Directive 2014/107/EU regarding the mandatory exchange of information in the field of taxation

- Directive 2014/107/EU regulates the exchange of information only between the member states. However, it takes into account the rules determined by the Common Reporting Standard (CRS) of the OECD regarding both the uniform application of said rules between the member states and the execution of other agreements for the application of the global standard.
- It explicitly urges the competent authorities to use the Commentaries on the Model Competent Authority Agreement and Common Reporting Standard of OECD as a source of examples and interpretation, taking into account the future developments at the level of OECD in this respect, in order to ensure the consistency of the application of the automatic exchange of information between member states.
- The reporting and due diligence rules, which shall be implemented by the Reporting Greek Financial Institutions upon the exchange of information regarding EU residents, are regulated.
- It is noted that under the currently applicable legislative framework (L.4170/2013), the automatic exchange of information is required for certain non-financial sources of income and capital, namely:
 - Real estate
 - Income realized from real estate
 - Employment income
 - Pensions
 - Products of life insurance contracts which are not covered by any other European taxation
 - Directors' fees
- By virtue of the enacted law, the automatic exchange of information is extended to the following sources of income or property:
 - Interest
 - Dividend
 - Accounts (e.g. account balances at the respective year-end or before the year-end at the time of closing of the account, the beneficiary's name, the address, the VAT identification number and the member state of the beneficiary's residence)
 - Sale proceeds from financial assets (e.g. securities, exchange contracts, insurance contract, etc.).

Extension of the scope of the mandatory exchange of information to include also financial income ("Reportable Accounts")

**Reportable
Persons**

- Reportable persons are:
 - Individuals
 - Legal entities
 - Controlling individual persons

**Controlling
Persons**

- In case where the beneficiary of a Reportable Account is an entity which qualifies as “passive”, the Reporting Financial Institution has the obligation to identify the individuals who control the entity and to exchange the information for said controlling persons. For the purposes of determining the Controlling Persons of a Reportable Account, a financial institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

An entity is characterized as passive, in case that, inter alia, the percentage of passive income of the previous calendar year is higher than 50% of the entity's gross income and the percentage of assets that generate passive income or are held for the generation of passive income during the previous calendar year is less than 50% of the assets of the entity.

Said provision introduces the notion of the beneficial owner of an account contrary to the nominal holder of the account. Consequently, income realized by legal entities shall be declared, under conditions, at the level of the individuals.

**Reporting
Financial
Institutions**

- Domestic financial institutions (e.g. custodial institutions, depository institutions, specified insurance companies, etc.) as well as domestic branches of foreign financial institutions are liable to provide information with respect to the Reportable Accounts to the competent Greek Authorities.

**Exceptions from
the framework
of the automatic
exchange of
information**

- Several accounts (such as personal pension accounts, accounts which have been established in connection with any court order or judgment etc.) as well as several entities (such as listed entities, affiliated entities with the above mentioned entities, financial institutions, etc.) fall, under certain conditions, out of the scope of the automatic exchange of information.

Entry into force

- The above provisions apply as of 1st January 2016, with the exemption of income already regulated by L.4170/2013, for which the obligation for mandatory exchange of information already exists as of 1st January 2015.

For calendar year 2016, the automatic exchange of information shall be effected up to 30.9.2017.

**Abolition of
Directive
2003/48/EU**

- Directive 2003/48/EU as regards the taxation of savings income in the form of interest income and the mandatory exchange of information regarding the beneficial owner of interest along with L.3312/2015, which incorporated the provisions of the aforementioned Directive into domestic legislation, is abolished as of 1.1.2016, since the provisions of the new law apply also to interest income.

To the extent that the new framework aims to ensure the exchange of information, as under the previous one of L.3312/2005, the tax treatment of the relevant interest income should remain the same. It would be appropriate to confirm that the Greek financial institutions will not have to withhold tax upon the payment of interest to individual EU residents.

B. Directive 2014/86/EU and 2015/121/EU – New conditions regarding the exemption from taxation on intra-group dividends

Tax exemption of intra-group dividends to the extent that they have not been recognized as deductible by the subsidiary

- In order for intra-group dividends received by Greek legal entities or Greek permanent establishments of EU legal entities to be exempt from taxation, apart from the current applicable conditions (inter alia, 10% minimum participation percentage in the capital of the distributing entity and maintenance of the participation for at least 24 months, etc.) a new condition is introduced, by virtue of which, intra-group dividends are exempt from taxation to the extent that the respective dividends have not been deducted by the subsidiary.

The above mentioned provision aims at preventing cases of double non-taxation of distributed earnings between member-states. Indicatively, this would be the case of hybrid instruments (e.g. profit participating loans) concluded between affiliated entities, which provide for a deduction of the corresponding interest at the level of the EU subsidiary and the exemption from taxation of the corresponding income at the level of the EU parent company.

General anti-avoidance rule

- A general anti-abuse rule is introduced by virtue of which the tax exemption in case of collection and payment of dividends (articles of 48 and 63 of ITC) is alleviated in case it is considered that a “non genuine arrangement” exists. A “non genuine arrangement” is an arrangement which has not been put into place for valid commercial reasons reflecting the economic reality.

The above mentioned general rule is open to interpretation by the tax authorities, while there is no indication which party shall have the burden of proof that the arrangement is genuine.

Entry into force

- The aforementioned provisions are effective as of 1.1.2016.

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This information is intended only as a general update for interested persons and should not be used as a basis for decision making. For further details please contact PwC:

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