

Tax Flash Law 4446/2016

December 2016

Law 4446/2016 titled «**Bankruptcy Code, Administrative Justice, Duties, Voluntary Disclosure of Income of previous years, Electronic Transactions, Amendments to L. 4270/2014 and other provisions**» includes tax provisions. The most important of these provisions are summarized below.

A. Voluntary Disclosure of Income of previous years

Introduction

- A new Voluntary Disclosure Programme (“VDP”) is introduced for Undeclared Income of previous years providing for special conditions and significantly reduced penalties. The VDP, which entered into force on the 21st of December i.e. the date of publication of the present law, and will be applicable up to 31.5.2017, does not constitute a tax amnesty regime, since it requires the filing of standard tax returns for all tax objects by offering as an incentive only the reduction of the additional taxes and fines and the alleviation of any sanctions.

For the application of the VDP a decision of the General Secretary of Public Revenues is required to be issued that will clarify procedural and other practical issues (e.g. supporting documentation required per income category).

Scope

- The following taxpayers fall within the scope of the new VDP provisions:
 - Taxpayers who have not submitted any tax returns or have submitted incomplete or inaccurate tax returns for all taxes, duties or contributions and for whom no audit mandate has been issued.
 - Taxpayers for whom an audit mandate has been already issued or will be issued up to 31.5.2017.
- The provisions apply both to individuals and legal entities.

A1. Taxpayers who have not submitted tax returns or have submitted incomplete or inaccurate tax returns for all taxes, duties or contributions

- Taxpayers may submit initial or amended tax returns as well as informative tax declarations, irrespective of whether tax is due on condition that the deadline for the submission of the initial tax return expired up to 30.9.2016. According to the preamble of the law, the submission of the return is possible, irrespective of the statute of limitation status.
- In case where no tax arises for payment no procedural fines are due (article 54 of Law 4172/2013 and article 4 of Law 2523/1997).
- An additional tax is due, which is calculated at the rate of 8% on the principal tax due, if the submission of the tax return is effected from the 21.12.2016 (date of publication of the law) up to 31.3.2017 and 10% on the principal tax due, if the submission of the tax return is effected from 1.4.2017 up to 31.5.2017.

Additional tax

As regards the calculation of the principal tax, it should be noted that the latter will be calculated on the basis of the tax rates applicable in the year when the tax liability was generated rather than on the basis of a uniform tax rate (as was the case with previous tax amnesty programs) for each type of undeclared income.

The implementation of these provisions entails the complexity of identifying the year when the tax liability for said income was generated and to determine the exact nature of the income, in order to apply the correct income tax rates for the corresponding year.

- The additional tax is further readjusted from 5% up to 25% depending on the year in which the deadline for the submission of the initial tax return expired. In particular:

Table of readjusted tax rates

Tax year	Percentage of readjusted additional tax	Additional tax if the return is filed up to 31.3.2017	Additional tax if the return is filed up to 31.5.2017
Up to 2001	25%	10%	12,5%
2002	23%	9,84%	12,3%
2003	20%	9,6%	12%
2004	16%	9,28%	11,6%
2005	15%	9,2%	11,5%
2006	12%	8,96%	11,2%
2007	10%	8,8%	11%
2008	6%	8,48%	10,6%
2009	5%	8,4%	10,5%
2010 onwards	0%	8%	10%

A2. Taxpayers for whom an audit mandate has been already issued or will be issued up to 31.5.2017

Additional tax

Case	Deadline for the submission of the tax returns		Percentage of additional tax
Notification of an audit mandate prior to 12.12.2016	Within 60 days from the publication of the present Law		13%
	Following the lapse of 60 days and	Prior to the notification of a temporary corrective tax/penalties assessment	15%
		After the notification of a temporary corrective tax/penalties assessment	30%
Notification of an audit mandate after 12.12.2016 and up to 31.5.2017	Within 90 days from the notification of the audit mandate		8% up to 31.3.2017
			10% as of 1.4.2017 up to 31.5.2017
	Following the lapse of 90 days and	Prior to the notification of a temporary corrective tax/penalties assessment	15%
		After the notification of a temporary corrective tax/penalties assessment	30%
Notification of a temporary corrective tax/penalties assessment prior to 12.12.2016	Within 30 days from the publication of the Law (i.e. 21.12.2016)		25%

- The above rates of additional tax are readjusted based on the percentages indicated in the first table, depending on the year that the deadline for the submission of the tax return expired.

The aforementioned deadlines apply only to the tax objects indicated in the tax assessment mandate. For any other tax object, the returns may be filed at any time up to 31.05.2017 with the additional taxes indicated in the previous case (under A.1.).

Non-imposition of administrative and criminal penalties

- The application of the VDP ensures that no other administrative and/or criminal penalties would be imposed to the taxpayer regarding the tax infringements restored by application of the Program, whilst any safeguard measures that have been imposed are alleviated .
- The submission of tax returns within the framework of the VDP does not constitute a selection criterion for regular tax audits.

Deadline for the payment of the tax due

- The tax due shall be paid in a lump sum within 30 days from the submission of the tax return, whilst it is clarified that in any case, it would not be refunded. The taxpayer, however, may benefit from available debt settlement programs.

Exemptions

- The provisions of the VDP are not applicable:
 - a) to cases where a final corrective tax/penalties assessment has been issued until 12.12.2016
 - b) to tax returns with reservations or to credit tax returns
 - c) to income tax returns declaring loss in the respective fiscal year
 - d) when the tax returns concern amounts deriving from criminal activities (“money-laundering”) except from cases of tax evasion.

Requirement for electronic transmission of invoices by the entrepreneurs

The minimum threshold for the electronic payment of tax records is reduced to EUR 500 for individuals

B. Safeguard and Monitoring of Transactions

- It is prescribed that entrepreneurs must transmit electronically to the General Secretariat of Public Revenues the data of the issued accounting records/invoices, irrespective of the way of their issuance.
- Tax records issued for the supply of goods or services to individuals which total amount exceeds EUR 500 (instead of EUR 1,500 as current applicable) should be paid exclusively through the use of electronic means of payment.
- Cash or other types of rewards are provided through the participation in lotteries, when the transactions are effected through the use of credit or debit cards or other electronic means.

Rewards for payments with electronic means though the participation in lotteries

Taxation of distributed or capitalized accounting profits

C. Corporate Income Tax

- As of tax year 2017, accounting profits which are capitalized and/or are distributed and for which no income tax has been paid, will be taxed irrespective of the existence of any tax losses.

The aforementioned provision adopts the position of the Legal Council of State in the opinion 178/2016, although the entry into force is now set as of 2017.

Set-off of foreign tax losses

- Foreign tax losses arising from the business activity through a permanent establishment in another EU member state or in EEA could be transferred or set-off only on the condition that the said losses are incurred by the business activity through a permanent establishment of another EU/EEA country provided that a Double Tax Treaty exists, which does not exempt from tax the respective profit of business activity of a foreign permanent establishment.

Following the introduction of this provision, it seems that the clarifications provided by the Ministerial Circular 1088/2016 require amendments, especially taking into account that the new provisions have a retroactive effect and apply as of 1/1/2014. The new Ministerial Decision is expected that will clarify the tax treatment of the cases addressed in the previous one.

In addition, the wording of the provision seems to allow the setoff of losses of foreign source between different countries unlike the abovementioned Ministerial Circular which provides that the foreign losses should be monitored and offset per country.

Payroll expenses are tax deductible only if paid through electronic means

- Payroll expenses incurred, as of the publication of the present Law, would not be tax deductible, unless the partial or total payment is made by the use of electronic means of payment.

D. Income Tax provisions for Individuals

Amendment to the calculation of the taxable value of company cars

- The taxable value of the company cars provided by individuals or legal entities or other persons to employees or partners or shareholders is calculated as a percentage of the Retail Price Before Taxes and the age of the cars (rather than as a percentage on the cost of the car that is recorded as an expense in the employer's accounting books) and it is applicable for income derived as from 2016 onwards.

Suspension of taxation on the capital gains from the transfer of real estate

- The suspension of the taxation on the capital gains derived from the transfer of real estate is extended up to 31.12.2017.

The reduction of income tax depends on the use of electronic means of payment

- As of tax year 2017, a progressive tax scale is introduced with regards to the minimum expenses realized by the acquisition of goods and supply of services which must be paid through the use of electronic means of payments in order for the taxpayer to benefit from the reduction of the income tax. In case the minimum percentage of expenses is not covered, a tax at a rate of 22% is imposed on the remaining amount (e.g. on the balance between the required and declared amount). The progressive scale is as follows:

Income	Minimum expenses of acquisition
1-10,000	10%
10,0001-30,000	15%
30,0001 and above	20% and up to 30,000 Euro

It is not clear whether the above obligation applies in cases where the taxpayer does not benefit from the reduction of the income tax (i.e. due to the amount of the declared income) and whether, irrespective of the said reduction, a tax at a rate of 22% is in all cases imposed on the balance.

Tax deductibility of medical expenses

- It is provided that any medical expenses will be taken into account for the determination of the reduction of the income tax on the condition that they have been paid through the use of electronic means of payment.

Provisions for the taxation of short-term leasing (Airbnb type) are introduced

- Income generated by individuals by application of this special regime, is considered as income generated from real estate property and is subject to taxation ranging from 15% to 45% depending on the amount of the income.
- The lease is exempt from VAT.
- The aforementioned individuals lessors and sublessors must be registered with the “Registry of Short-Term Leasing of Real Estate” which will be kept in the General Secretariat of Public Revenues.
- An administrative penalty of EUR 5,000 will be imposed which will be doubled and quadrupled in case of repetition of any infringement regarding the provisions provided by law.
- The aforementioned provisions are applicable as of 1.2.2017.

Extention for a year of the statute of limitation

E. Extention of the statute of limitation

- The statute of limitation is extended for one year for cases expired on 31.12.2016 and for which cases prosecutors orders, audit mandates, investigations etc. have been issued by the publication of the present Law or will be issued by 31.12.2016.

Rationalization of penalties

F. Intragroup transactions

- The penalties are rationalized in cases of non compliance with the obligations related to the intragroup transactions (transfer pricing file and Listing of the Intragroup Transactions) realized in periods prior to 01.01.2012 provided that they refer to pending cases.
- In any case, the latest favorable provisions apply, irrespective of the time of the realization of the intragroup transactions.

Suspension for one year of the abolition of the reduced VAT rates on specific islands

G. VAT

- The abolition of the reduced VAT rates is suspended for the tax year 2017 for the islands of Lesbos, Limnos, Saint Efstratios, Chios, Inouses, Samos, Ikaria, Psara, Fournoi, Dodecanese (except from Rodos and Karpathos) as well as Samothraki.
- The maximum threshold for the application of the special VAT regime of paying the VAT upon the collection of the consideration is increased to EUR 2,000,000 (instead of EUR 500,000) in order to be applicable for the majority of the Greek legal entities.

Significant increase of the threshold for the application of the special VAT regime of article 39b of the Greek VAT Code

H. Special Real Estate Tax

Possibility of exemption from the Special Real Estate Tax to entities of EEA

- The possibility of exemption from the Special Real Estate Tax is extended to legal entities established, apart from Greece or European Union member states, in the European Economic Area which are exempt on the basis of the disclosure of the individuals shareholders/ partners on the condition that (a) the legal entities are not registered in non-cooperating countries, (b) real estate acquired up to 31.12.2009, (c) the individuals shareholders/partners were tax residents of the aforementioned countries in the tax year the real estate was acquired.

- For the exemption from the Special Real Estate Tax, individuals shareholders/partners should have obtained a Greek Tax Identification Number following each year of taxation (January 1 of each respective year) or within one month from the publication of the present Law.
- A penalty of EUR 2,500 will be imposed for every year of delay of registration with the Greek tax authorities.
- The exemption is also applicable to cases which are pending before the Tax Administration or for which the deadline for the filing of an out-of-court settlement petition/judicial appeal/petition is pending as well as for cases for which the relevant assessments have been issued but have not yet being notified to the taxpayer.

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