Tax Flash

July 2020

Important tax reforms

The Parliament passed the new tax bill (hereinafter "Law"), while L.4712/2020 was published in the Government Gazette, both introducing several amendments to the Income Tax Code (ITC), the Tax Procedures Code (TPC), the Value Added Tax Code (VAT) and other tax legislation. Herein, we present the most important provisions of these Laws.

A. Corporate income taxation

A1. Enactment of exit taxation rules

Article 58 of the Law incorporates into Greek legislation the provisions of Article 5 of the Directive (EU) 2016/1164 regulating the introduction of exit tax rules, with the addition of Article 66A to the ITC.

Purpose of exit taxation

Exit taxation rules are intended to ensure that, when a legal entity transfers its assets or tax residence outside Greece, the economic value of any capital gain is taxed, even though that gain has not yet been realized at the time of the exit. These provisions do not apply to natural persons.

Cases of application of exit taxation

Exit taxation applies to transfers of assets from a head office to a permanent establishment or between permanent establishments, as well as to transfers of a business carried on by a permanent establishment in Greece, in another member state or in a third country in so far Greece no longer has the right to tax the transferred assets due to the transfer (when the assets cease to be taken into consideration for accounting purposes in Greece). Furthermore, it applies when a taxpayer transfers its tax residence to another member state or to a third country, except for those assets which remain effectively connected with a permanent establishment in Greece.

Taxable basis and applicable tax rate

The taxable basis is the market value of the assets transferred, minus their value for tax purposes at the time of exit. Furthermore, the tax is calculated by applying the CIT rate applicable for the tax year of the exit.

Tax payment

The tax due is paid by filing a special return, which is submitted three (3) working days before the occurrence of the event of exit and is paid in a lump sum or in five (5) equal annual interest-free installments, subject to conditions. In the latter case, the Tax Administration may require the payment of a guarantee as a condition for the payment of the tax in installments.

It is noted that Greece did not transpose the option provided by the Directive for the imposition of interest when the tax is paid in installments.

Exemptions

Exit taxation does not apply to asset transfers related to the financing of securities, assets posted as collateral or where the asset transfer takes place in order to meet prudential capital requirements or for the purpose of liquidity management, provided that the assets are to be returned to Greece within a period of twelve (12) months from the transfer. In this case, a zero return is submitted.

Linking rule for transfers to Greece

In the event that the transfer of assets or the transfer of the tax residence or the activity carried out by the permanent establishment is directed to Greece, the acquisition value of the assets for tax purposes shall be the value set by the other member state, unless this does not reflect the market value.

Entry into force and first application arrangements

The provisions on exit taxation apply to transfers of assets, tax residence or business from Greece to another member state or third country taking place from 1 January 2020 onwards. For transfers that have taken place until the date of publication of the Law, the relevant returns are submitted, without the imposition of sanctions, until 31 October 2020.

In order to regulate the procedural issues for the application of the exit taxation rules, the relevant decisions are expected to be published by the Governor of the Independent Authority of Public Revenues.

A2. Enactment of hybrid mismatches rules

Article 59 of the Law incorporates into Greek legislation the provisions of article 9 of the Directive (EU) 2016/1164, as amended by Directive (EU) 2017/952, establishing rules for hybrid mismatches (hereinafter “mismatches”), with the addition of Article 66B to the ITC. We present below a very brief overview of these provisions, taking into account that they are rather complex, making it necessary to thoroughly examine each individual case based on its specific characteristics.

General notes on hybrid mismatches

Mismatches are a consequence of differences in the legal characterization of payments (financial instruments) or entities (hybrid entities) between two states. These mismatches may often lead to the double deduction of a payment, expense (e.g. depreciation) or loss (i.e. deduction in either state) or the deduction of a payment in one state without being included in the tax base of the other state (deduction without inclusion).

According to the explanatory memorandum of the Law, the explanations and examples of the OECD BEPS Action 2 report should be used to interpret the hybrid mismatches rules to the extent that they are consistent with the provisions of the Directive and EU law. Furthermore, it is clarified that, if the provisions for the transposition of another Directive (e.g. the Parent-Subsidiary Directive) result in the elimination of any mismatches, these rules do not apply.

Scope of the rules

Mismatches are considered only if they arise between affiliate companies, between a taxpayer and an affiliate company, between a head office and a permanent establishment, between two or more permanent establishments of the same entity, or through a structured arrangement and regardless of whether third countries are involved. Furthermore, they do not apply to individuals.

The definition of related companies for the application of the rules on hybrid mismatches differs both from that of Article 2 of the ITC (e.g. for the application of the transfer pricing provisions) and from that of Article 66 (for the application of rules regarding controlled foreign companies). Specifically, a participation rate of fifty percent (50%) or more is required, while cases of joint participation with other persons, accounting consolidation and exercising of significant influence are also covered.

Categories of mismatches	The categories covered by the Law, concern mismatches arising from a series of payments, financial or not, which lead to a double deduction or a deduction without inclusion. In addition, the following cases are included: • imported mismatches; • payments to a disregarded permanent establishment; • surplus tax credits on hybrid transfers.
Entry into force	The provisions on the hybrid mismatches rules apply as of 1 January 2020.

A3. Enhancement of the tax incentives framework for research and development (R&D) expenditure

Increase to 100% of the additional discount on R&D expenses as of 01/09/2020	Article 46 of Law 4712/2020 amends article 22A of the ITC and provides for the increase of the additional percentage of tax deduction of R&D expenses from the gross income of companies, from thirty percent (30%) to one hundred percent (100%), at the time of their realization. The application of the increased percentage enters into force as of 1 September 2020.
Possibility of certification of expenses by a certified auditor - accountant	Furthermore, in order to speed up the process of examining the relevant applications, an alternative procedure for certifying the realization and the amount of expenses is introduced, through the submission of an audit report by a certified auditor - accountant and/or auditing company, simultaneously with the submission of the income tax return. In this case, the General Secretariat for Research and Technology will conduct an audit only to determine that the expenses realized relate to R&D activities, within six (6) months. It is noted that, after the expiration of this period, the relevant expenses are deemed to be approved. The alternative certification procedure may also apply to R&D expenditure already submitted to the General Secretariat for Research and Technology by the date that the Law entered into force. *The significant increase of the tax deduction rate, in combination with the acceleration of the procedure for the examination of the relevant applications, renders Greece a more attractive destination for investments in R&D activity.*

A4. Provision of grants to Shared Services Centers (L. 89/1967)

Modification of the starting time for eligible expenditure	Article 39 of Law 4712/2020 modifies the starting time for eligible expenditure for the provision of grants provided by articles 6 and 7 of L. 89/1967 and instead of the date of the decision to grant the aid, the date of submission of the application, which should include specific information, is set as starting date. Furthermore, it is provided that said aids can now be financed by the Public Investment Program of the Ministry of Development and Investments. *With this amendment, companies can receive grant for eligible expenditure as of the date of the submission of their application.*
Registration in the General Electronic Commercial Registry	In addition, it is explicitly clarified that the offices of foreign companies located in Greece, according to the provisions of L. 89/1967, are included in the cases that do not have the obligation to register in the General Electronic Commercial Registry (G.E.MI.).
Entry into force	The above apply as of 29 July 2020 (date of the publication of Law 4712/2020 in the Government Gazette).

A5. Income tax arrangements for the tax year 2019

Reduction of the income tax advance payment	Article 18 of the Law provides for a reduction from thirty percent (30%) to one hundred percent (100%) of the income tax advance payment for the tax year 2019, for legal persons / entities and natural persons engaged in business activity, depending on the

percentage of reduction of their VAT turnover of the first half of 2020 compared to the first half of 2019 (with a minimum reduction limit of five percent (5%)).

For a detailed analysis of this measure, see here.

Extension of the deadline for submission of income tax returns and payment of the tax

Article 97 of the Law stipulates that, especially for the tax year 2019, the income tax returns of legal persons or legal entities whose tax year ended on 31 December 2019, may be timely submitted by 28 August 2020.

Furthermore, in case of payment of the tax in eight (8) installments, the first two (2) must be paid by 31 August 2020.

The provisions for the extension of the deadline for submission of income tax returns and the payment of income tax, apply accordingly to natural persons. Furthermore, in the case of natural persons, if the resulting tax is paid in a lump sum until 31 August 2020, a two percent (2%) discount is provided on the total amount.

B. Individuals taxation

B1. Introduction of a special non-dom regime for pensioners

Article 1 of the Law introduces a new non-dom regime in the ITC (in article 5B), enabling individuals entitled to a pension that arises abroad to be subject to a favorable taxation of their income.

Method of taxation

Every tax year, individuals will pay tax at a rate of seven percent (7%) on their foreign-sourced income, with exhaustion of the tax liability for this income. The tax is paid each tax year in one (1) installment until the last working day of July and can not be offset against other tax liabilities or any credit balances.

It is noted that Greek-sourced income is subject to tax, in accordance with the general provisions of the ITC.

Conditions

To be eligible for this new regime, individuals must, cumulatively:

- not have been Greek tax residents for the previous five (5) of the six (6) years prior to the transfer of their tax residence to Greece; and
- transfer their tax residence from a state with which an agreement on administrative cooperation in the field of taxation with Greece is in force.

The following are also clarified in the explanatory memorandum of the Law:

- *it should be evidenced that Greece is the center of the individuals' vital interests*
- *said individuals are not eligible for the non-dom provisions of Article 5A of the ITC, which cover foreign investors*
- *any tax paid abroad is deducted from the tax due in Greece, up to the amount of the latter*
- *foreign-sourced income is exempt from the special solidarity contribution. However, individuals are not exempted from inheritance tax or property donations tax on wealth located abroad.*

Deadline for the submission of an application and duration of application of the regime

The application for the tax residence transfer and submission to this regime is submitted by the pensioner until 31 March of the respective tax year. Pensioners who meet the conditions and have already transferred their tax residence in Greece within the previous tax year, can also submit an application, within the same deadline. The maximum duration of applicability of the regime is set at fifteen (15) tax years, starting from the next tax year from the date of submission of the application, while the possibility of revocation is provided within the fifteen-year period. Furthermore, this regime will remain available for the next fifteen (15) tax years.

Validity of the Double Tax Treaties (DTTs)	The application of this regime does not affect the validity of the applicable DTTs. *The explanatory memorandum of the Law clarifies that, for pensions paid by a contracting state due to previous service in the public sector, as a rule, tax will still be withheld in the source state even after the transfer of the tax residence. On the other hand, for "private" pensions, if the DTT provides the exclusive right to tax to the state of residence, they will be taxed only under this regime.*
Compliance obligations	Pensioners subject to this regime are required to declare their income earned both in Greece and abroad. Furthermore, non-payment of the entire amount of tax due in one tax year results to the application of the general provisions of the ITC for the taxation of their global income from the relevant tax year onwards.
Entry into force and first application arrangements	This regime applies to tax years beginning on or after 1 January 2020. Especially for the applications, which will be submitted within the year 2020, the submission deadline expires on 30 September 2020. For those individuals who meet the relevant conditions and have already transferred their tax residence in Greece within the tax year 2019, the income tax return for the tax year 2019 is submitted until 31 October 2020 and the tax due is paid in a lump sum within thirty (30) days from the approval of the taxpayer's application. *Further details on the implementation of the regime will be determined in a joint decision by the Minister of Finance and the Governor of the Independent Authority of Public Revenues.*

B2. Provision of tax incentives to angel investors

Incentive	Article 49 of Law 4712/2020 adds a new article (70A) to the ITC, based on which, individuals who contribute capital to a duly registered start-up company, deduct from their taxable income, an amount equal to fifty percent (50%) of the amount of their contribution, in the tax year in which it took place.
Restrictions	This incentive applies to capital contributions via a bank deposit of up to three hundred thousand (300,000) euros per tax year, which are invested in up to three (3) start-ups with a maximum investment of one hundred thousand (100,000) euros per start-up.
Anti-abuse clause	If after an audit it is proved that the capital contribution has been made to obtain a tax advantage which defeats the purpose of the provision (i.e. the provision of investment funds and support during the early stages of operation of a start-up in order to increase investment activity), a fine, equal to the amount of the tax benefit sought, will be imposed.
Entry into force	The above apply as of 29 July 2020 (date of the publication of Law 4712/2020 in the Government Gazette). *Further details on the implementation of this incentive will be determined by a joint decision of the Minister of Finance, the Minister responsible for research and technology and the Governor of the Independent Authority of Public Revenues.*

B3. Favorable tax treatment of stock award plans

Exemption from payroll tax of the benefit in kind in the form of shares	Article 2 of the Law introduces an exemption from tax for the benefit in kind in the form of shares received by an employee or partner or shareholder from a legal person or legal entity in the framework of stock award plans, in which the achievement of specific goals or the occurrence of a specific event, is set as prerequisite in order for the shares to be awarded.

Taxation of capital gains on the sale of shares acquired for free

Furthermore, Article 3 of the Law expands the currently applicable favorable tax treatment of capital gains arising from stock options, as well to capital gains on the sale of shares acquired for free, by applying a fixed rate of fifteen percent (15%) on the capital gain that the employee obtains from the sale of these shares. In addition, the method of calculating the capital gain in the cases of subsequent sale of shares of listed and non-listed companies is determined, both in case the selling price is lower and in the one that is higher than the shares' value at the time of their acquisition.

Entry into force

The above apply for tax years starting from 1 January 2020 onwards.

Hence, stock award plans become more attractive, both as a benefit in kind remuneration and as a means of attracting executives.

B4. Income tax exemption of domestic tourism vouchers

Especially for the tax year 2020, the value of the domestic tourism vouchers amounting up to three hundred (300) euros (benefit in kind) is exempt from income tax.

C. Donation tax

Conditional exemption of foreign movable property donations

Article 6 of the Law introduces a new exemption in the donations tax code, which provides that donations of movable property located abroad and not having been acquired during the last twelve (12) years in Greece by Greek citizens, are exempt, provided that said citizens have been residing abroad for at least ten (10) consecutive years and, in case of relocation to Greece, no more than five (5) years have elapsed.

This provision attempts to expand the similar regulation that applies to the exemption from inheritance tax of the movable property of a Greek citizen who resided abroad for ten (10) consecutive years, to the taxation of donations. However, the conditions set are much stricter, while substantiating that assets located abroad have not been acquired in Greece in the last twelve years can be proved difficult in practice.

Exemption on donations of cash for the purchase of a main residence

Article 7 of the Law provides that cash donations and parental grants, provided by parents to their children for the purchase of a main residence, which is exempt from the transfer tax on main residence, is exempt from donation tax up to the amount of one hundred fifty thousand (150,000) euros.

Entry into force

The above apply from the publication of the Law in the Government Gazette.

D. Amendments to the Value Added Tax (VAT) code

D1. Incorporation of provisions for the simplification of certain rules in the VAT system (quick fixes)

The provisions of article 61 of the Law, incorporate into Greek law the Directive (EU) 2018/1910 as regards the harmonization and simplification of certain rules in the system of value added tax for the taxation of transactions between member states. Specifically, three simplifications are introduced.

Call-off stock

When a company transfers its goods to another member state in order to create a stock for a specific acquirer, it will not be considered that an intra-community supply takes place at the time of their transfer, but at the time that the goods transferred to the other member state and kept in stock, become property of the acquirer. In this way, suppliers would be required to have a VAT identification number in each member state in which they create stock. For the implementation of this simplification:

- both the supplier and the acquirer must keep a special book for the registration of goods in stock.

- the supplier must submit a summary table to which the VAT identification number of the specific acquirer is referred and, when the delivery is made, normally submit the summary table of intra-community supplies of goods.
- the delivery of the goods must take place within twelve (12) months from their arrival, with the possibility of replacing the acquirer within the same period.

Chain transactions

In the case of successive deliveries of the same goods, via an intra-community transport, directly from the first supplier to the last acquirer in the chain, the transport will now, subject to conditions, be attributed only to the delivery to the intermediary operator, who dispatches or transports the goods either himself or through a third party acting on his behalf. Other deliveries in the chain will be taxed as supplies of goods without transport and will be classified as domestic deliveries either in the member state of departure of the goods or in the member state of arrival. By way of derogation, if the intermediary operator notifies to his supplier the VAT identification number received from the member state from which the goods are dispatched or transported, the transport shall be attributed only to the delivery of goods by the intermediary operator.

Use of the VAT identification number for the application of the exemption to intra-community supply of goods

This provision now defines the inclusion of the VAT identification number of the acquirer in the summary table submitted by the supplier, as an essential condition for the application of the exemption to an intra-community supply of goods. In this way, where suppliers have not fulfilled the obligations relating to the submission of a summary table or when the summary table they have submitted does not contain the correct information on intra-community supplies, the exemption will not apply, unless suppliers can duly justify their omission to the competent authorities.

Entry into force

The above provisions enter into force on 1 January 2020.

For a more detailed presentation of the quick fixes, see here.

D2. Amendment of the intra-community acquisition of goods provisions

Place of intra-community acquisition of goods

The provisions of Article 62 of the Law amend the provisions of Article 15 of the VAT Code (Law 2859/2000) regarding the place of intra-Community acquisition of goods, in order to better align them with the respective provisions of Articles 41 and 141 of Directive 2006/112/EC, so that they are now taxed in Greece, regardless of the place of establishment of the acquirer, when the arrival of goods sent or transferred from another member state takes place within Greece.

At the same time, the VAT identification number obtained in Greece by the acquirer of the goods, with which the acquisition took place, becomes the criterion for the taxation of intra-community acquisitions, regardless of whether or not the acquirer is established in Greece. In this way, an intra-community acquisition is considered to take place in Greece, even if the goods did not enter the country, provided that the acquirer does not prove that the goods were subject to VAT in another member state, where the goods actually arrived.

Finally, the Law regulates the case where the acquirer is not established in Greece (regardless of whether he may have obtained a VAT identification number in Greece), but has a VAT identification number in another member state and makes an acquisition for the purpose of a subsequent delivery within Greece. For this delivery, the recipient of the goods established within Greece, who is registered in the VAT register, is liable for the payment of the tax.

Entry into force

The above provisions enter into force on 1 January 2020.

D3. Determination of the taxable value between relatives and / or related persons

Determination of the market value as taxable in specific cases

With the new provisions of Article 62 and in order to prevent tax evasion and avoidance, the application of the possibility provided by Directive 2006/112/EC on VAT, regarding the determination of the taxable value in cases of supply of goods and provision of services between relatives and / or related persons, as defined in the ITC, is extended by expanding the cases in which the market value will be taken as taxable value.

Entry into force

The above apply from the publication of the Law in the Government Gazette.

D4. Reduction of VAT rates

Articles 11 and 12 of the Law provide for:

- the inclusion of music books in the super-reduced VAT rate (6%) from the publication of the Law in the Government Gazette, and
- the inclusion of sports tickets in the reduced VAT rate (13%) for the period from 1 September 2020 until 30 June 2021.

E. Possibility of retroactive effect of the Advance Pricing Agreement (APA) decisions

Article 17 of the Law establishes the possibility of roll-back implementation of APAs, in line with the elements of the Minimum Standard.

Scope of the measure

The possibility of implementing the APA decisions to previous tax years, covers only cases of bilateral or multilateral agreements, explicitly excluding unilateral ones.

The explanatory memorandum does not clarify the reasons why retroactive effect is not possible in the case of unilateral APAs, although the latter are a realistic choice of taxpayers both under the OECD Guidelines (July 2017) and under the Greek legal framework.

Conditions

Specifically, in case of application for bilateral or multilateral APAs, a request for implementation of the decision in previous tax years from the year of submission of the APA application may be included, as a retroactive clause.

However, there must be an identification of the facts of the years for which retroactive implementation is sought with the facts of the application under consideration. The following conditions, must be cumulative met at the time of application for those tax years:

- the possibility of a tax audit must not have expired;
- the taxpayer must not have received a tax audit order.

Pending applications

The provisions for the granting of a retroactive clause apply also in the case of pending, at the time of entry into force of the Law, applications for bilateral or multilateral APAs.

Impact on the tax audit

The Law explicitly provides that, in the event that an APA decision includes a retroactive clause, the tax audit of the transactions of the years covered by this clause is limited to verifying that the provisions of the APA decision have been complied with and that the facts of the years covered are identical to the facts of the transactions for which the APA was sought.

The explanatory memorandum of the Law further clarifies that, in case of initiation of a tax audit after the submission of a request for a retroactive application, the request has no influence on the conduct of the tax audit for the tax years to which it relates. Furthermore, the APA decision may not contain a retroactive clause, if the taxpayer is notified of a final act of corrective tax assessment until its issuance.

Amendments on the applicable penalties

In order to align the penalties regime with the results of the APA decision, the Law's provisions explicitly state that, if such a decision results in an obligation to submit amending tax returns for previous tax years covered by the APA decision, it is considered that these are duly submitted within thirty (30) days from the notification of the APA decision to the taxpayer. Therefore, in these cases no late payment interest and late filing penalties are imposed.

First application arrangements

Especially for the first application of the provisions, it is stipulated that the amending tax returns must be submitted within sixty (60) days starting from 1 August 2020, if an APA decision was issued before the Law's entry into force.

In addition, it is stipulated that late payment penalties and late payment interest imposed for amending tax returns submitted as a result of an APA decision before 1 August 2020 are offset against future tax liabilities.

The introduction of the possibility of retroactive effect of bilateral and multilateral APA decisions is considered particularly important as it greatly improves the business environment in Greece, providing security to multinational groups in terms of possible tax implications of their applicable pricing policy.

F. Out-of-court settlement of tax disputes

Establishment of an Out-of-Court Tax Dispute Resolution Committee

Aiming to quickly resolve the pending tax disputes before the Council of State and the administrative courts, an Out-of-Court Tax Dispute Resolution Committee (hereinafter "the Committee") is established, with article 16 of the Law.

Scope and deadlines for submitting requests

The litigant taxpayer in outstanding disputes with regard to the imposition of a tax or penalty under tax legislation (excluding customs disputes) may submit an application, requesting the out-of-court settlement of the dispute. The application is submitted electronically by 31 December 2020 and may only apply to pending cases that have not been discussed by 30 October 2020. A request can also be submitted for pending, until 30 October 2020, tax disputes before the Dispute Resolution Directorate, if they become pending before the administrative courts by 30 December 2020.

Restrictions on the allegations

It is noted that, with the request for an out-of-court settlement, the following restrictively mentioned allegations can be made:

- expiry of the State's right to impose the disputed tax or penalty due to the lapse of time within which the Tax Administration had the right to charge them (statute of limitations)
- expiry of the State's right to impose the disputed tax or penalty due to receipt of an unqualified tax certificate
- incorrect charging of a tax or penalty due to manifest lack of a tax obligation or numerical error
- retroactive application of the most favorable tax sanction according to what has been accepted by the case law of the Council of State
- reduction of additional tax, interest, surcharges and penalties.

Committee proposal and its consequences

The Committee verifies the allegations based on the case law and the regular practice of the Tax Administration and may propose the acceptance or rejection of the request in whole or in part, submitting a specific proposal to the applicant in each case. If the proposal includes the payment of an amount, it is possible to pay at least thirty percent (30%) of the principal tax due, while reducing the corresponding additional taxes, interest, surcharges and penalties depending on the number of installments opted for. In case of non-acceptance of the Committee's proposal by the applicant, a report of annulment of the out-of-court settlement is drawn up.

Further details on the implementation of the regime will be determined by a decision of the Minister of Finance.

G. Transposition of other EU Directives

Mandatory exchange of information on reportable cross-border arrangements (DAC6)

Articles 49 to 58 of the Law incorporate into Greek legislation the provisions of Directive (EU) 2018/822 (DAC6) regarding the mandatory automatic exchange of information in the field of taxation regarding reportable cross-border arrangements. Furthermore, the provisions of Directive (EU) 2020/876, which extend certain deadlines for the submission and exchange of information in the field of taxation due to the COVID-19 pandemic are incorporated.

Further details on the DAC6 transposition will be provided in an individual newsletter.

Directive on tax dispute resolution mechanisms in the European Union

Articles 21 to 48 of the Law incorporate into Greek legislation the provisions of Directive (EU) 2017/1852 on the tax dispute resolution mechanisms between Greece and one or more of the other member states of the European Union, which arise from the interpretation and application of agreements and DTTs with regard to income and, where applicable, capital. The rights and obligations of the persons affected, when such disputes arise, are set out in detail in said articles.

Specifically for the measures related to dealing with the negative effects of COVID-19, which are included in said Laws, as well as for other measures related to COVID-19, see here our dedicated website.

It should be noted that each individual case should be examined on the basis of its particular characteristics and the above-mentioned general principles may not necessarily apply in all circumstances. Our specialized consultants are in a position to assist you with regard to any issue that may arise in your individual case.