

Tax - Breaking News

April 2019



Consistent with our commitment to keep you updated on the most significant tax developments, we summarize below the most important amendments introduced by Law 4607/2019

Anti-avoidance rules

- Greece recently adopted a new law in order to align Greek legislation with the anti-avoidance rules of the EU Anti – Tax Avoidance Directive (ATAD). In particular, the existing domestic tax rules on interest limitation rule (thin capitalization), controlled foreign corporation rule (CFC rules) and the general anti-avoidance rule (GAAR) are modified.
- The new rules against tax avoidance apply for income and expenses derived from tax years as starting on 1 January 2019 and onwards.

Interest limitation rule

- Excess borrowing costs shall be deductible in the tax year incurred **up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortization (EBITDA)**.
- Since there is no provision in the Greek law for tax treatment of groups, the fixed rate 30% of EBITDA is applicable, irrespective of whether the legal entity belongs to a group or not.
- In any case, even if the excess borrowing costs exceed the 30% of EBITDA, the taxpayer has the right to **fully deduct excess borrowing costs up to EUR 3 million**.
- “Borrowing costs” include interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance (such as convertible bonds and zero coupon bonds).
- “Excess borrowing costs” means the amount by which the deductible borrowing costs of a taxpayer exceed taxable interest income and other economically equivalent taxable income.

- The excess borrowing costs as well as tax depreciation, following the tax adjustments provided by the ITC, excluding tax exempt income, are added to the taxable income in order for the EBITDA to be calculated.
- Excess borrowing costs which cannot be deducted in the current tax period are carried forward, without time limitation.
- An exception from the interest limitation rule is applied for:
 - The excess borrowing costs that are incurred from loans used to fund a long-term public infrastructure project, where the project operator, the borrowing costs, the assets and the income earned are established or occur in the European Union.
 - Financial corporations, including *-inter alia -* credit institutions, insurance undertakings, pension institutions, UCITS etc). The former provision exempted leasing companies and factoring companies from the thin capitalization rule. Such exemption no longer applies and the thin capitalization rule now applies to the aforementioned company types.

Controlled foreign company rule (CFC rule)

- The taxable income of a controlled foreign company includes the non – distributed income derived from the following categories (passive income):
 - Interest or any other income generated by financial assets,
 - Royalties or any other income generated from intellectual property,
 - Dividends and income from the disposal of shares,

- Income from financial leasing,
- Income from insurance, banking and other financial activities,
- Income from invoicing companies that earn income from sales and services from goods and services purchased from and sold to associated enterprises, that add no or little economic value.

— An entity or permanent establishment, which acquires profits that are not subject to tax or are exempt from tax, is treated as a controlled foreign company where the following conditions are met:

- the Greek shareholder of the CFC holds by itself or together with associated enterprises a direct or indirect participation of more than 50 percent of the voting rights, or owns directly or indirectly more than 50 percent of capital, or is entitled to receive more than 50 percent of the profits of that entity,
- the actual corporate tax paid by the CFC is lower than the difference between the corporate tax that would have been paid in Greece and the actual corporate tax paid in a foreign country,
- More than 30% of the CFC's net income of the CFC incurred in the foreign country falls under one or more occasions of passive income, referred above.

— The definition of "associated enterprise" includes individuals or entities that hold - directly or indirectly - a participation in terms of voting rights, or a capital ownership in a taxpayer of 25% or more, or it is entitled to receive 25% or more of the profits.

— The taxable income, which includes the non – distributed income of the CFC, is determined on the existing tax base, for the business profits that are acquired by individuals or legal entities, on a case by case basis. Losses of the CFC are not included in the tax base but can be offset by upcoming gains.

— In order to avoid double taxation of the CFCs, new rules on the distribution of profits, the transfer of holdings and the offset of the tax paid in a foreign country, are introduced.

— CFC rules do not apply where an entity or permanent establishment in European Union and European Economic Area, carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant actual facts and circumstances. In such a case, the Tax Administration bears the burden of proof. This exception is not applied to legal entities or permanent establishments situated in a third country.

General Anti-Abuse rule (GAAR)

- The tax administration ignores an arrangement or a series of arrangements that have been put into force in order to obtain a tax advantage that defeats the objective or purpose of the Law. Such an arrangement or a series thereof, shall be regarded as non genuine to the extent that they are not put in place for valid commercial reasons which reflect the economic reality. The law lists such indicative cases.
- GAAR applies to both domestic and cross border arrangements between entities from Member States, including third countries and aims to fill in gaps in the tax assessment procedure, without affecting the application of special anti-abuse rules, including the special provisions provided in Double Taxation Treaties.
- A decision by the Governor of the Independence Authority for Public Revenue shall determine the implementation of the said provision.

VAT code

- With the view to harmonize Greek VAT legislation with Directive (EU) 2016/1065, the notion of a "single-purpose" and a "multiple-purpose" voucher is introduced, as a means of consideration corresponding to the supply of goods or services. When the place of supply of goods or services and the amount of VAT due are known, the voucher is classified as "single-purpose voucher" and each transfer of such voucher is subject to VAT. Otherwise, the voucher is classified as "multiple-purpose voucher" and VAT is due only on the actual supply of the sold goods or services, upon voucher redemption. The new provisions apply as of 1 January 2019.
- The short-term leasing of pleasure boats that are put at a customer's disposal in Greece is not subject to Greek VAT, to the extent that the boats are used in international or third-country territorial waters.

Levy of article 1 L. 128/1975

- As of May 1 2019, levy of article 1 of L.128/1975 is imposed on the balance of all types of credits, as well as to all financial agreements with equivalent effect to credits, from financial institutions that operate in Greece or abroad.
- In case of foreign financial institutions, the levy burdens the borrower, individuals and legal entities that are liable for filing a Greek tax return.
- Exemptions from the levy applicable to financial institutions are equally valid for credit institutions.

Shipping companies under article 25 of L. 27/1975

With the new law amendments introduced, permanent taxation is imposed on shipping companies (both domestic and foreign) of Art. 25 of L. 27/1975 except for those involved in the management or operation of ships. Following the reform of the relevant provisions, the below is now in force:

- Special contribution calculated on the annual amount of total foreign currency imported and converted into EURO is imposed on all offices of

foreign shipping companies and on domestic shipping companies established in accordance with article 25 of L. 27/1975 (for domestic shipping companies, it is imposed on foreign currency imported in 2019 onwards) except for those who are engaged in the management or operation of ships.

— A tax is imposed at a rate of 10%, with elimination of any further tax liability on:

- Dividends received by individuals, Greek tax residents, from foreign or domestic shipping enterprises established in accordance with Article 25 of L. 27/1975 (in case of domestic companies, it is imposed on dividends paid or credited in 2019 and onwards) and engaged in shipping activities other than ship management.
- Extraordinary payments and bonuses distributed, on top of salaries, from:
- offices of foreign shipping companies established in accordance with article 25 of L. 27/1975, that are not engaged in management or operation of ships, to members of their Board of Directors, managers, executives and employees (for employees, as from 2019 onwards).
- domestic shipping companies established in accordance with article 25 of L. 27/1975, that are not engaged in management or operation of ships, to members of the Board of Directors, managers, executives and employees (as from 2019 onwards for all the above individuals).
- management offices of foreign shipping companies established in accordance with article 25 of L. 27/1975, to members of the Board of Directors, managers, executives and employees (as from 2019 for all the above individuals).

Contribution Agreement between the Greek State and the Maritime Community

— An updated contribution agreement shall be ratified by the Greek State and the Maritime Community. According to this agreement the members of the Maritime Community agree to financially assist the Hellenic Republic by voluntarily paying a fixed percentage of 10% of the amounts imported to Greece in any currency and derived from dividend income of the ultimate shareholders or partners or actual beneficiaries of shipowners' companies under Greek or foreign flag vessels, subject to the management of the (foreign flagged vessels) by a company established in Greece, pursuant to the provisions of Article 25 of L. 27/1975. The contractual duration of this contribution is for an indefinite timeframe, meaning that it is actually converted into permanent.

Beneficial Owners' Central Register

- According to the new provisions, not only corporate and other entities having their registered office in Greece, but also those which carry out a business activity taxed in Greece, are obliged to maintain in their registered office Special Registers of their Ultimate Beneficial Owners (UBOs).
- Listed companies in a regulated market or in a Multilateral Trading Mechanism are exempt from the obligation to maintain a Special UBO Register. Instead, they must keep records of notifications under Law 3556/2007, without reporting to Central UBO Register.
- In accordance with Directive 2018/843/EU (AMLD5), the law provides public access to the Central UBO Register only for certain beneficial ownership information (name, nationality, type and extent of UBO rights). Furthermore and upon a prosecutor's order, full access to the UBO information can be granted to persons who demonstrate legitimate interest.
- The law provides the possibility to impose a special electronic fee (paravolo) for the public access to the Central UBO Register. The fee amount of the fee shall be determined by a Decision of the Minister of Finance.
- A Ministerial Decision shall determine the launch and other procedural issues of the Central UBO Register.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.

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