

## Tax Alert

### Greece adopts the EU Directive on the automatic exchange of information on cross-border tax rulings and APAs

With a short delay, Greece shall adopt, via a new tax bill, which will be discussed and voted by the Greek Parliament the week starting 29 May 2017, the Council Directive 2015/2376/EU on the mandatory automatic exchange of information on cross-border tax rulings and Advance Pricing Arrangements (APAs)<sup>1</sup>. The Directive is transposed into national law through amendments introduced by the tax bill in Law 4170/2013 concerning the administrative cooperation in the field of taxation. During 2016 Greece had implemented Directive 2014/107/EU by amending L. 4170/2013 through Law 4378/2016, thereby introducing the automatic exchange of financial account information. With the new tax bill Greece expands the scope of tax information that will be automatically shared with the other Member States further, to include advance cross-border rulings and APAs. The new rules become retroactively effective from 1 January 2017, so that Greece complies with the mandate of the Directive that the relevant implementing national legislation becomes effective from 1 January 2017.

Through these law amendments, Greek authorities undertake the obligation to automatically communicate to the competent authorities of all other Member States information on all advance cross-border rulings and APA issued/concluded, amended or renewed in 2017 or later. In the same way, all cross-border rulings and APAs issued, amended or renewed by the authorities of all other Member States shall be communicated to the Greek tax authorities. This should happen within the first three months following the half of the calendar year in which such an event took place. Hence the fact that the new rules in Greece will retroactively apply from 1 January 2017 implies that the first exchange of related information between Greece and the other Member States on cross-border rulings and APAs that either Greece or other Member States have issued, amended or renewed in the first half of 2017 shall take place until the end of September 2017.

<sup>1</sup>Greece has not yet adopted the ATAD (Anti Tax Avoidance Directive – Council Directive 2016/1164) and the CbCR Directive (Country-by-Country Reporting Directive – Council Directive 2016/881).

In addition, subject to the automatic exchange of information will be any cross-border rulings and APAs issued, amended or renewed between 1 January 2014 and 31 December 2016, regardless of whether they continue to be valid or not, whereas those which were issued or amended or renewed between 1 January 2012 and 31 December 2013 shall be mandatorily shared if they were still valid on 1 January 2014 and regardless of whether they are still valid today. Such information will be shared with the Greek authorities and vice-versa before 1 January 2018. By virtue of the option provided by the Directive, Greece has not adopted the exclusion from the information sharing of rulings or APAs provided to legal entities or groups of entities with group-wide turnover of less than Euro 40 million before 1 April 2016.

In line with the Directive advance cross-border rulings exclusively concerning and involving the tax affairs of natural persons shall not be subject to the above automatic exchange of information.

Reflecting the wording of the Directive, the tax bill defines advance cross-border rulings as any agreement, communication or any other instrument or action with similar effects which is issued by the government or tax authority of a Member State to a particular person or group of persons and which that person or group of persons is entitled to rely on regarding the tax treatment in that Member State of a cross-border transaction or whether, from the standpoint of that Member State, the described activities of a person in another jurisdiction create a permanent establishment and which is issued in advance of the cross-border transactions or activities potentially creating a permanent establishment or in advance of the filing of the relevant tax return. Furthermore, it provides a consistent definition with the Directive of the APA and of the related terms: "transfer prices" and "associated enterprises", independently from the definitions contained in the Tax Procedures Law (Law 4174/2013). Specifically, APA is defined as any agreement, communication or any other instrument or action with similar effects issued by the government or the tax authority of one or more Member States, including one issued in the context of a tax audit, to a particular entity or group of entities and upon which that entity or group is entitled to rely in relation to the determination, in advance of entering into cross-border transactions with associated enterprises, of an appropriate set of criteria for the establishment of the transfer pricing for those transactions or of the attribution of profits to a permanent establishment.

The information to be communicated from Greece to the other Member States and vice-versa shall include the following:

- The identification of the entity and the MNE it belongs to;
- a summary of the content of the advance cross-border ruling or APA containing the information stipulated in the Directive;
- the dates of issuance, amendment or renewal of the advance cross-border ruling or APA;
- the start and end date of the period of its validity;

- the amount of transactions involved, if such amount is referred to in the ruling or the APA;
- the description of the set of criteria and method used for the determination of the transfer prices, in the case of an APA;
- the identification of the other Member States, if any, likely to be concerned by the advance cross-border ruling or APA;
- the identification of any entity in the other Member States, if any, likely to be affected by the advance cross-border ruling or APA;
- the indication whether the information communicated is based upon the advance cross-border ruling or APA itself or upon a request for a bilateral or multilateral APA with a third country or countries in the context of a competent authority procedure provided under an applicable tax treaty with the specific third country (-ies), when such tax treaty does not permit the disclosure of such bilateral or multilateral APA to other parties. In such a case, there will be communicated with the other Member States the relevant information contained in the request for the bilateral or multilateral APA.

## Implications

Once the Greek authorities start processing the information received from other Member States on cross-border rulings and APAs, Greek Companies that are affiliates with companies in other Member States may encounter further scrutiny by the tax auditors of those intercompany transactions that were in the scope of a cross-border ruling or an APA issued by another Member State's authority. They should therefore be prepared, in collaboration with their foreign headquarters, to address the queries of the tax auditor on potential deviations of the content of the transfer pricing file provided to him with the content of a relevant cross-border ruling or APA issued in another Member State, in relation to any of the intercompany transactions not properly or differently documented or any inconsistency in the transfer pricing method applied. Given that the information obtained by the Greek tax authorities from the authorities of other Member States would extend to prior years (i.e. 2014, 2015, 2016 and, on certain conditions, 2012 and 2013), Greek companies should be prepared to be able to defend, in light of such information, any tax positions taken domestically on their dealings with group entities in other Member States.

Foreign companies should review whether their communications with the tax authorities on other Member States regarding the existence of a permanent establishment in other jurisdictions involves Greece and whether their actual tax affairs in Greece currently or in the previous years covered by the information exchange between authorities complies with such communications and identify the grounds for any deviations.

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