



KARATZAS & PARTNERS

Tax Law Alert

Incentives to attract foreign tax residents in Greece

Update of our tax law alerts dated 07.12.2020 and 11.05.2021

Introduction:

On 01 December 2021, the Independent Authority for Public Revenues (hereinafter referred to as "IAPR") issued guidance note No. E.2224/2021. The recently-published circular specifies the meaning of a "newly-created" employment position filled by an individual relocating their tax residence to Greece, clarifies that shareholders and managers of private limited liability companies, as well as representatives and partners of partnerships may be subject to this favourable tax regime, clarifies the process of withholding income tax and the special solidarity levy from the individuals subject to the regime and adds to the procedural requirements of the application.

Regarding the meaning of a "newly-created employment position":

Pursuant to article 5C para. 6 of the Law 4172/2013 (hereinafter referred to as "Income Tax Code"), in order for the special tax regime to be applicable the employment position filled by an individual must be "newly-created". As derived from the circular E.2224/2021 the employment position is considered to be "newly-created" if the overall number of employees in the Greek legal person or entity or the Greek permanent establishment of a foreign undertaking where the individual is employed increases on the date the taxpayer commences their employment is not reduced for a time period of 1 year following the commencement date, subject to the exceptions set out below.

An employee who is seconded or loaned by a foreign undertaking to a Greek one where the Greek employer: a) is liable for the payment of the employee's salary and b) exercises effective control over the provision of the employee's services, regarding the location, the time and the way in which they are offered, will count towards the increase of the number of employees.

The overall number of employees may decrease without affecting the validity of the employment position as a newly-created one in the following instances:

1. the voluntary resignation of an employee;
2. the termination of fixed term employment agreement;
3. the retirement of an employee;
4. the termination of an employment contract for cause relating to the employee.

Regarding shareholders and managers of private limited liability companies, as well as representatives and partners of partnerships:

The guidance note in question clarified that the special tax regime provided for article 5C of the Income Tax Code is also in principle available to them, provided of course that all the required conditions are met.

Regarding the way in which the income tax and special solidarity levy are withheld:

a) Income from salaried employment

If the employee is deemed to qualify for the special tax regime of article 5C, they shall provide their employer with the approval decision issued by the competent tax office. Upon receiving the approval decision, the employer shall withhold the appropriate income tax and special solidarity levy calculated on 50% of the employee's salary, given that the remaining 50 % is tax exempted.

The individual is subject to tax withholding on 50% of their salary only by the employer mentioned in the approval decision who has provided a solemn declaration regarding the filling of a newly-created position by the employee.

In the event that a change occurs concerning the identity of the taxpayer's employer, the individual is eligible for the special tax regime if their newly-created employment position fills the same requirements as the original one. In that case, they will need to repeat the original process, that is provide a solemn declaration by their employer to the competent Tax Office and present their employer with its approval decision.

b) Income from a business activity

The taxpayers are exempted from income tax and the special solidarity levy for 50% of their income from business activity acquired in Greece thus the remaining fifty percent (50%) is taxed according to the scale of para. 1 of Article 15 of the Income Tax Code, aggregated with any other income from employment or from business activity taxed on the same scale and their taxation shall start from the lowest tax rate.

On the above income, a withholding tax is carried out at the rate of twenty percent (20%) on the total gross wages and not on the fifty percent (50%) thereof. The exemption provided for in article 5C will be provided upon the clearance of the income tax return of each tax year.

Regarding the requirement for electronic transactions:

Regardless of the taxation imposed on only 50% of the taxpayer's income, their obligation to carry out an established quota of their transactions through electronic means of payment applies to their entirety of their income (100%).

Regarding supporting documentation:

In order for the relevant application to be accepted for examination must be accompanied at the time of submission at least with the following documentation:

1. The individual's solemn declaration of their intention to remain in Greece for at least two years; and
2. In case that an individual provides services in Greece in the context of an employment relationship: Either the employment agreement, or the notice of commencement of the employment relationship filed with the competent employment authorities, or the publication in the commercial registry of the resolution whereby the taxpayer is appointed as manager or director the legal person or entity, as appropriate, coupled with a solemn declaration by the employer that the taxpayer covers a newly-created employment position;
3. In case that an individual carries on a business activity: a certificate of commencement of business.

In the absence of this documentation, applications submitted to the competent Tax Authority shall not be processed. Applications submitted before 01.12.2021 shall be processed upon the submission of the aforementioned documentation which must take place until the end of the year 2021. In this case the date of submission of the application will be considered the date that it was filled in with the above documents.

Deadline for the issuance of a decision:

If the taxpayer files an application to be subject to the special tax regime after July 31 (or exceptionally September 30 for the current year), the deadline for the issuance of a decision by the competent tax office is February 20 of the year of inclusion.

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