

## Greek Law 5073/2023: measures to limit tax evasion, etc.

Recent Law 5073/2023 introduced a series of amendments in Greek tax legislation, the most important of which are the following:

### **A. Minimum (*imputed*) income from business activity of natural persons. Effective for income of fiscal years 2023 onwards.**

- ▶ According to the new provisions, as a general rule a freelancer or self-employed person is presumed to offer work of at least equal value and pay to that of an employee who is paid the minimum wage (*or to that of an employee s/he employs if the latter's salary is higher than the minimum wage*). In particular:
  - (a) A freelancer or self-employed person is presumed to offer work of at least equal value and remuneration, but not higher than €30,000, to that: aa) of the employee who is paid the minimum wage (*an amount that increases by 10% after the first six years of professional activity, an additional 10% after the lapse of a three-year period and an additional 10% after the lapse of a second three-year period after the first six years*), or
    - alternatively bb) of his highest paid employee, if the remuneration of the employee in question is higher than the amount of the minimum wage under [aa].
  - (b) In addition, it is assumed that his/her profit includes a percentage of 10% on annual labor costs, up to the amount of €15,000.
  - (c) The presumption is also increased by 5% on the amount by which the turnover of the individual exceeds the average turnover of the tax activity code number of the business activity from which the individual derives the highest revenues.
- ▶ The total annual (*imputed*) business income of the individual is calculated as the sum of the above amounts (a), (b) and (c) and cannot exceed the amount of €50,000 per year.

- ▶ The imputed income determination is rebuttable and the individual taxpayer can prove the reduction in their business activity, due to reasons, such as military service, prison sentence, health reasons, natural disasters, revocation of the operating license of his individual business or of the license to practice his profession, seasonality of the business activity, prohibition of operation and other reasons of force majeure.
- ▶ The individual taxpayer has in any case the right to request an audit of his business, in order to prove that the income resulting from the accounting books is real.

Based on the final wording of the provision, tax losses will continue to be carried forward as provided for in article 27 of the Income Tax Code to be set off against the accounting profits in the tax years in which there is no case of application of the rules for the imputed income of business activity (e.g. in cases of where the taxpayer has successfully challenged application of the rules for the imputed income of business activity).

**B. Prohibition of tax-abusive creation of corporate forms for the purpose of circumventing the introduction of the minimum (imputed) income from business activity of natural persons. Effective for income of fiscal years 2023-2026.**

- ▶ A self-employed/freelancer individual who, after the enactment of Law 5073/11.12.2023 and until fiscal year 2026, interrupts their business activity and sets up a single member company with the same business activity, may, after a tax audit, be required to pay as a natural person, the tax difference he avoided with his tax-abusive behavior, if the tax resulting from the operation of the company (*tax on the profits of the company and on the dividend, if all the profits had been distributed*) is lower than the tax he would have paid if he had continued his individual business activity, pursuant to the above (under A) provisions of the minimum (*imputed*) business income rules.
- ▶ In such a case the individual pays the difference between the tax owed by the company and the tax he would have owed if the company's profit had been distributed as a dividend in its entirety, and the tax he would have paid pursuant to the minimum (*imputed*) income from business activity.
- ▶ This is rebuttable i.e. the above provisions by which the natural person has the right to challenge the application of the above imputed business income rules are applied accordingly here, too.

**C. Issues of carrying forward of losses in the case of application of the rules of determining a minimum (imputed) net business income: effective for income of fiscal years 2023 onwards.**

- ▶ The determination of the minimum (imputed) business income does not affect the right of the taxpayer to carry forward a loss.

- ▶ The taxpayer is entitled to carry forward the realized loss in order to offset this against declared accounting business profits.

**D. Reduction of advance payment of income tax for natural persons upon the application of minimum (imputed) net business income. Effective only for fiscal year 2024.**

The amount of advance tax (*currently calculated with 55% rate for individual freelancers & self-employed individuals*) is reduced by half to the extent that the imputed net business income exceeds the declared one (*i.e. the advance tax amount corresponding to the excess is reduced by half*).

**E. Reduction of freelancer duty for self-employed persons & freelancers by 50%. Effective from fiscal year 2023 onwards.**

- ▶ For the self-employed individuals and freelancer individuals freelancer duty is set at €325 per year.
- ▶ For each branch of a self-employed or freelancer natural person freelancer duty is set at €300 per year.

**F. Obligation to use exclusively banking means for payment of the contractual consideration upon the conclusion of notarial deeds of real estate property transfer -& prohibition of use of cash. Effective as of 11.12.2023.**

- ▶ It is mandatory to effect payment of the contractual consideration exclusively using banking means of payment when concluding notarial deeds for the transfer of real estate property against consideration, preliminary agreements and payment confirmation deeds.
- ▶ A notarial deed or a private document, in which it is recorded that an advance payment or partial or total payment of the contractual consideration has been made in cash (*or in which no payment of the contractual consideration with the use of banking means is recorded*), is automatically invalid, cannot be registered in the relevant Land Registry records and does not produce any legal effect against the contractual parties, the State and any third party.
- ▶ The above obligations for using banking means of payment and for recording the payment in this way (*i.e. in the notarial deed*) do not apply to notarial deeds concluded in execution of preliminary agreements that had been agreed prior to 11.12.2023.
- ▶ It is mandatory to indicate expressly (record) in the notarial deed that the method of payment of the contractual consideration was exclusively using bank means of payment; in case of non-compliance no registration of the notarial deed with the Land Registry records can take place.

- ▶ The minimum (imputed) net income does not apply among else:
  - a) on profits from agricultural business activity,
  - b) to those who are paid in accordance with paragraph f) of paragraph 2 of article 12 of Greek Income Tax Code L.4172/2013, as long as they contract with up to three (3) physical or legal entities, and to insurance intermediaries who contract with up to two (2) insurance companies and declare their place of business as their residence (*i.e. freelancers who are taxed as salaried employees based on the conditions indicated in that provision*),
  - c) to persons with a 80% or higher disability.

It is not clear from the wording of the provision whether the fine will be imposed against the issuer of the tax item or against the individual who receives it, an ambiguity that is exacerbated by the fact that the provision of art. 20 par. 3 of Law 3842/2010 imposes in principle a ban on the "payment" of the tax items in question in cash by the private recipients thereof and therefore it appears that the violation is in principle committed by the private recipient of the item.

**G. Possibility to claim a tax allowance for personal income tax purposes for expenses made for the purchase of goods and the receipt of services for energy, functional and aesthetic upgrading of buildings. Applicable for expenses effected as of 01.01.2024.**

- ▶ The new law regulates the possibility of reducing the personal income tax of individuals with the total expenses for the purchase of goods and the receipt of services related to energy, functional and aesthetic upgrading of buildings equally distributed over five (5) years.
- ▶ The costs for the supply of materials and the receipt services up to the amount of €16,000 can reduce the income tax equally distributed over five years.
- ▶ The amount of expenses for the purchase of goods that is taken into account for the above tax allowance does not exceed one third (1/3) of the amount of expenses for receiving services taken into account.

**H. Clarifications regarding the determination of the procedure for changing tax residence status of individuals.**

- ▶ The authority for the regulation of procedural issues concerning the change of tax residence of natural persons is transferred from the Minister of National Economy and Finance to the Governor of the Independent Authority for Public Revenue (IAPR), so that the procedure & related issues are regulated simply with a decision of the Governor of IAPR and with no need of a joint decision between him and the appropriate Minister.

**I. Clarifications regarding the separate tax return of spouses.**

- ▶ The choice of the spouses to submit separate personal income tax returns is valid not only for the [first] year they choose to do so (*as was the applicable law until now*), but also for the following fiscal years, until it has been revoked by the 28<sup>th</sup> of February of the year concerned.
- ▶ This is effective for personal income tax returns pertaining to income of fiscal year 2023 and onwards.

**J. Changes to short-term real estate leases. Effective as of 01.01.2024.**

The law determines when the income from short-term rental of real estate is taxed as rental income and when it is taxed as business income. It is clarified that with effect from 01.01.2024 the income obtained by individuals from short-term rental of real estate as provided in L. 4446/2016: i) continues being considered and being taxed as real estate income, provided that up to two (2) properties are rented and as long as the properties are rented furnished without the provision of any service except the provision of bed linen while ii) is considered for the first time & taxed as business income, if three or more properties are rented.

The law defines the duration and tax treatment of short-term property leases in the above context. In particular, a limit of 60 days is set for the duration of the lease in order to be considered as short-term and it is clarified that the limit of 60 days does not concern the duration of the leases within the year, but the duration of each lease separately.

The amount of the independent administrative fine is changed in the case of non-compliance with the obligation to register in the Short-Term Rental Property Register of property managers and is set at an amount equal (per year) to fifty percent (50%) of the gross income of the tax year in which the violation is committed, which cannot be less than €5,000, while increased fines are foreseen in case of non-compliance/recurrence.

Short-term real estate leases are subject to i) the temporary residence fee of Law 339/1976 but also to ii) the newly introduced "climate crisis resistance fee" which replaces the "residence fee" and which for the properties in question is set at €1.50 per room or apartment (*or at €10 for single detached houses*) per daily use during the months of March to October (*or respectively at €0.50 and €4 during the months of November to February*).

### **K. Possibility of paying a monetary reward upon a named complaint of tax violations. Effective as of 11.12.2023.**

- ▶ The law introduces the possibility of paying a monetary reward to those reporting tax violations by name through the QR code appodixi digital application of the Independent Authority for Public Revenue (IAPR).
- ▶ Employees of the IAPR, of the Ministry of National Economy & Finance and the employees of the Financial Police Directorate of the Ministry of Citizen Protection who carry out audit duties are not entitled to the monetary reward.
- ▶ The monetary reward is granted subject to the imposition of a fine against an entity of Law 4308/2014 following a tax audit resulting from a formal complaint through the appodixi digital application; the monetary reward is granted with a Decision of the Governor of IAPR, amounts to ten times the value of the transaction of the issued retail item for which a complaint was made, including the corresponding VAT and cannot be higher than €3,000.
- ▶ If the complaint concerns several tax items issued by the same entity, the monetary reward is calculated based the issued tax item with the highest value.

### **L. Reduction of capital concentration tax rate. Effective for tax liability due as of 11.12.2023.**

The rate of capital concentration tax, wherever applicable, is reduced from 0,5% to 0,2%.

### **M. Reduction of sales' tax rate on sale of listed shares. Effective from 02.01.2024.**

"Sales tax" on sale of listed shares, wherever applicable, is reduced from 2‰ to 1‰.

### **N. Amendments to the provisions of the Tax Procedure Code Law 4987/2022 on fines & sanctions for the use of cash above the prescribed limit. Effective from 01.01.2024.**

The law also introduces amendments to the fines for procedural violations of the Tax Procedure Code, with the following being important for natural persons:

- ▶ A fine equal to €500 per tax audit is imposed in the event that the taxpayer (*or any person subject to a corresponding obligation under the Tax Procedure Code N.4987/2022 or the tax legislation referred to in its scope*) a) issues retail sales information without the use of a tax electronic mechanism or from an approved and undeclared tax electronic mechanism, or b) issues slips and receipts from the Integrated Input Output Control System, without the use of an approved marking mechanism model (EAFDSSS).

- ▶ A fine is imposed against the taxpayer (*or any person subject to a corresponding obligation under the Tax Procedure Code N.4987/2022 or the tax legislation referred to in its scope of application*) equal to twice the value of the retail sales items, which have been paid in cash in violation of the obligation of art. 20 par. 3 of Law 3842/2010, according to which "*Tax records with a total value of €500 or more, issued for the sale of goods or the provision of services to individuals, are paid by their recipients, buyers of the goods or services, exclusively by using card or other electronic means of payment, such as, but not limited to, bank transfer, payment through a payment account, use of an electronic wallet. Payment of these items in cash is not allowed.*"

It is not clear from the wording of the provision whether the fine will be imposed against the issuer of the tax item or against the individual (private consumer) who receives it; this ambiguity is increased by the fact that the provision of art. 20 par. 3 of Law 3842/2010 prohibits the "payment in cash" of the tax items in question by the private recipients thereof and therefore it appears that the violation is in principle committed by the recipient of the tax item (private consumer).

The above do not affect the application of article 23 par. b' of Greek Income Tax Code as interpreted by the Greek Tax Administration with Circulars POL 1216/2014, 1079/2015, 1113/2015, according to which an expense made for the purchase of goods or the receipt of services worth more than €500 is not deductible for corporate income tax purposes of natural persons and legal persons (i.e. businesses) to the extent that the partial or total payment was not made using a banking payment instrument.

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For more information, please contact:

#### Stephanos Mitsios





Head of Tax, EY Greece  
Tel: +30 210 2886 363  
[stephanos.mitsios@gr.ey.com](mailto:stephanos.mitsios@gr.ey.com)

#### Manos Tountas

Senior Manager, EY Greece  
Tel: +30 210 2886 387  
[manos.n.tountas@gr.ey.com](mailto:manos.n.tountas@gr.ey.com)

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