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# Law 4493/2017

## Issues on the automatic exchange of information with the US with respect to accounts held in financial institutions

We summarize below the main issues on the automatic exchange of information with respect to reportable accounts as introduced by Law 4493/2017 regarding Foreign Account Tax Compliance Act (FATCA), the ratification of respective Memorandum of Understanding (MoU), the Intergovernmental Agreement between the US and Greece, as well as the relevant Agreement between the US and Greek Competent Authorities.

### General context

In the context of mutual administrative assistance and cooperation in tax matters on an international and EU basis (OECD, EU) for the automatic exchange of information, the global standard for the automatic exchange of information of financial accounts (Common Reporting Standard - CRS) has already been adopted in Greek legislation. Law 4493/2017 now ratifies the Intergovernmental Agreement between Greece and the US for the automatic exchange of information between respective Competent Authorities with regard to financial accounts as well as the related MoU and the Competent Authorities' Agreement.

### FATCA

Based on the Agreement for the implementation of FATCA legislation, Greece and the US agreed on the automatic exchange of information on financial accounts held by Greek tax residents in US financial institutions and financial accounts held by US tax residents in Greek financial institutions.

### Main issues

- The bilateral agreement between the US and Greece applies within the context of the relevant US - Greece Treaty for the Avoidance of Double Taxation (DTT).
- The annual automatic exchange of information is activated between the Greek and the US Competent Authorities with respect to reporting certain information on Reportable Accounts held in Financial Institutions (FIs).
- By 31 May of each year, Reporting Greek FIs are obliged to file with the Greek Competent Authority information regarding Reportable Greek Accounts held by Reportable Persons (individuals or legal entities)/account holders who are citizens or (tax) residents of the US or by Non-US Entities with one or more Controlling Persons who are citizens or (tax) residents of the US. Such information shall be further forwarded by the Greek Competent Authority to the respective US Competent Authority.
- The main information that will be provided by Reporting Greek FIs include:
  - a) for Reportable Persons/account holders: name, address, US Tax ID Number, account number and the account balance or value of the US reportable account holder (as of the end of the calendar year concerned or other reporting period), and
  - b) for the Reporting Greek FI: name and its identifying number.
- The principle criterion for an entity to be considered as a Reporting Greek FI is whether its tax residence or establishment is in Greece.
- An indicative list of entities which are excluded from the obligation to submit information and concurrently do not qualify as Reportable Persons, is the following:

- Government bodies
  - International Organizations
  - Bank of Greece
  - FIs with a Local Client Base and local banks
  - Certain Retirement Funds
  - Investment Advisors and Investment Managers etc.
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- The automatic exchange of information by the Competent Authorities will be carried out pursuant to due diligence rules with which Reporting Greek FIs must comply, and within the context of specific rules for confidentiality, data protection and limited use of the information exchanged.
  - The due diligence obligations that apply for the identification and reporting of Reportable Accounts to the US are specified and differentiated, based on whether they relate to pre-existing or new accounts.
  - By exception, it is possible for the Data Protection Authority to issue a specific decision for certain personal data protection rights to be waived (e.g. rights to be notified of or right to access personal data etc.).
  - Reporting Greek FIs are subject to specific fines (ranging from EUR 100 to EUR 5 000, per infringement) in case of infringements related to the automatic exchange of information, indicatively for late submission, non-submission, submission of incomplete or inaccurate information etc.
  - The Minister of Finance and the Governor of the Independent Authority for Public Revenue (IAPR) are granted the authority to determine rules, administrative procedures and measures on the automatic exchange of information, audit and verification of compliance issues.

### CPA Law comments

- In case of non-compliance with obligations related to the automatic exchange of information, it is explicitly stipulated that only the Reporting Greek FIs will be subject to the applicable fines and not the Reportable Persons. Notwithstanding the above, based on the interpretation of the relevant provisions, there appears to be grounds for non-cooperating Reportable Persons/account holders to also be subject to penalties, whereas, the possibility for them to also be held liable within a broader context of activities concerning tax infringements, tax evasion and money laundering cannot be excluded.
- The parallel implementation of the FATCA and CRS rules for the automatic exchange of information concerning financial accounts in combination with the adoption of general and special anti-avoidance rules in Greece (the Base Erosion and Profit Sifting project) signify the rapid adaptation of Greece to global standards, reflecting Greece's efforts to combat tax avoidance and tax evasion practices.
- Finally, although in principle personal data is maintained only for as long as it is required for the exchange of information, it is not clear under what context such information can be further maintained and used, upon expiration of applicable deadlines for automatic exchange.

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