

Newsletter on the mandatory disclosure of income tax information by certain undertakings and branches and other disclosure obligations

Law 5066/2023 (hereinafter the "Law"), that has been published on 14th November 2023, incorporates into the Greek legal order the Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive (EU) 2013/34 as regards disclosure of income tax information by certain undertakings and branches. At the same time, its provisions introduce additional disclosure obligations for companies, that enhance transparency both towards society as a whole and towards financial institutions.

Specifically, the Law increases the disclosure obligations of multinational groups and certain standalone undertakings, by introducing for them the obligation to submit and publish a report on income tax information in the General Commercial Registry (G.E.M.I.). In addition, as per the provisions of the above law, limited liability companies that do not operate in the financial industry but receive financing from credit institutions operating in Greece, are required to submit their financial data to the Central Balance Sheet Office of the Bank of Greece.

Below is a summary of some of the main provisions of Law:

TABLE OF CONTENTS

- A. Obligation to publish a report on income tax information
- B. Exemption from the obligation to publish a report on income tax information
- C. Content of the report on income tax information and publication
- D. Liability of administrative, managing and supervisory bodies to draw up, publish and make the report on income tax information publicly accessible
- E. Obligation of limited liability companies operating in the non-financial sector to submit their annual financial statements to the Bank of Greece
- F. Entry into force of the Law 5066/2023
- Commentary

A. Obligation to publish a report on income tax information

- The concept of «**ultimate parent undertaking**» is defined as an undertaking which draws up the consolidated financial statements of the largest body of undertakings and the concept of «**standalone undertaking**» as an undertaking which is not part of a group as defined in Annex A of Law 4308/2014.
- An obligation is established for **ultimate parent undertakings and standalone undertakings** to publish and make accessible a report on income tax information if the (consolidated) revenue on their balance sheet date, exceeded for each of the last two consecutive financial years a total of seven hundred and fifty million Euros (750,000,000€) according to their (consolidated) financial statements.
- An obligation is introduced for **medium-sized and large subsidiary undertakings, within the meaning of paragraphs 5 and 6 of Article 2 of Law 4308/2014, controlled by an ultimate parent undertaking that is not governed by the law of a Member State of the European Union**, to publish and make accessible a report on income tax information in respect of that ultimate parent undertaking, provided that the consolidated revenue of the latter, on its balance sheet date, exceeded, for each of the last two consecutive financial years, a total of seven hundred and fifty million Euros (750,000,000€) according to their consolidated financial statements.
- An obligation is introduced for **branches established in Greece by undertakings that are not governed by the law of a Member State** to publish and make accessible a report on income tax information concerning the ultimate parent undertaking or the standalone undertaking that established them, provided that the following apply:
 - (a) the net turnover of the branch exceeded the threshold laid down in case b' of paragraph 4 of article 2 of Law 4308/2014, that amounts to eight million Euros (8,000,000€) for each of the last two consecutive financial years and
 - (b) the undertaking which established the branch is an affiliated undertaking of a group whose ultimate parent undertaking is not governed by the law of a Member State and the consolidated revenue of which on its balance sheet date exceeded for each of the last two consecutive financial years a total of seven hundred and fifty million Euros (750,000,000€), as reflected in its consolidated financial statements, provided that the ultimate parent undertaking does not have a medium-sized or large subsidiary, or
 - (c) the undertaking which established the branch is a standalone undertaking the revenue of which, on its balance sheet date, exceeded in total for each of the last two consecutive financial years, seven hundred and fifty million Euros (750,000,000€), as reflected in its financial statements.
- In the event of failure of the standalone undertaking or the ultimate parent undertaking to provide its branches or its medium-sized and large subsidiary undertakings with the information required for reporting their income tax information, branches or medium-sized and large subsidiary undertakings shall submit a public report on income tax information containing all information in their possession, as well as a statement that the standalone undertaking or ultimate parent undertaking, as the case may be, has not made available the necessary information.



B. Exemption from the obligation to publish a report on income tax information

The following undertakings are exempted from the obligation to publish a report on income tax information:

- Undertakings which, either as standalone or as parent undertakings and their affiliated undertakings, including their branches, are established or have standard places of business or permanent business activity solely in Greece.
- Undertakings which, either as standalone undertakings or as parent undertakings or their affiliated undertakings, publish a report containing information on all their activities and on the activities of their affiliated undertakings - in case of an ultimate parent undertaking - in accordance with the provisions of Article 81 of the Greek Law 4621/2014.
- Subsidiary undertakings, provided that the ultimate parent undertaking or standalone undertaking, which is not governed by the law of a Member State, draws up a report on income tax information that complies with the specified content of the public report of income tax information, as described in Article 7 of Law 5066/2023 and fulfils the requirements of paragraph 6 of Article 5 of Law 5066/2023.
- Branches where the ultimate parent undertaking or the standalone undertaking that established them, which in both cases is not governed by the law of a Member State, draws up a report on income tax information that complies with the specified content of the public return of income tax information as described in Article 7 of Law 5066/2023 and fulfils the elements of paragraph 6 of Article 6 of Law 5066/2023.

C. Content of the report on income tax information and publication

The content of the report on income tax information is described in Article 7 of the Law as follows:

- The report shall include information relating to all the activities of the standalone undertaking or the ultimate parent undertaking, including information of all the affiliated undertakings consolidated in their financial statements, in respect to the reporting financial year. These data are specified in paragraph 2 of the above article and include, but are not limited to, the name of the undertakings mentioned in the (consolidated) financial statements, a description of the nature of their activities, the number of their employees, the income, the amount of income tax due, etc.

Alternatively, for the submission of the necessary data, the instructions referred to in Section IIIB of Annex III of Law 4170/2013 regarding the administrative cooperation in the field of taxation, may be followed.

- The report shall contain all the above information for each Member State and for each tax jurisdiction.
- The currency used shall be the currency in which the consolidated financial statements of the ultimate parent undertaking or the annual financial statements of the standalone undertaking are presented. In the case of a report drawn up by a subsidiary undertaking, the currency in which the subsidiary publishes its annual financial statements shall be used.

The publication of the public report on income tax information and the statement indicating the failure of ultimate parent undertaking or the standalone undertaking to provide branches or medium-sized and large subsidiaries with the information required to submit their report on income tax information, when such undertakings are required to do so, shall take place as follows:

- Within twelve (12) months from the date of completion of the financial year, both the report and the statement (if applicable) are published in the General Commercial Register of Companies (G.E.M.I.) in Greek or English and remain accessible at G.E.M.I. for an indefinite period.
- Ultimate parent undertakings, standalone undertakings, medium-sized and large subsidiary undertakings and branches that are obliged to publish a report on income tax information and/or a statement as described above, are obliged to inform the public that the above publication in the General Commercial Registry (G.E.M.I) has taken place, by posting it on their website and by referring the viewers to G.E.M.I.'s website.
- For the purpose of establishing the above obligation for publication, which applies to partnerships, limited liability companies, medium-sized and large subsidiaries of companies incorporated in a non-EU Member State, branches of companies incorporated in a non-EU Member State and branches of companies of credit and financial institutions having their head office in an EU Member State, other than Greece, Articles 34-35, 43-44 of the Greek Law 4419/2022 have been amended accordingly.

D. Liability of administrative, managing and supervisory bodies to draw up, publish and make the report on income tax information publicly accessible

- Members of administrative, managing and supervisory bodies of ultimate parent undertakings or standalone undertakings, acting within the limits of their competences, shall be collectively liable for the publication of the report on income tax information.
- Members of administrative, managing and supervisory bodies of subsidiaries, as well as legal representatives of branches acting within the limits of their competences and to the extent that they may be aware of the undertaking's obligation to publish this report in the manner prescribed by law shall be collectively liable for the publication of the report.
- In case of breach of the obligation to draw up, publish and make available to the public the report on income tax information, the Directorate-General for Markets and Consumer Protection of the General Secretariat of Commerce of the Ministry of Development may impose a fine ranging from ten to one hundred thousand Euros (10,000 – 100,000€), on the abovementioned persons, depending on the turnover of the liable undertaking or branch, the financial situation of the infringer and the repetition of the infringement.

E. Obligation of limited liability companies operating in the non-financial sector to submit their annual financial statements to the Bank of Greece

- Article 16 of the Law establishes the obligation of limited liability companies, which receive financing from credit institutions legally operating in Greece in any form of loan (including syndicated and bond loans), to submit their financial data to the Central Balance Sheet Office of the Bank of Greece, within twenty (20) days from the approval of its financial statements by their General Assembly.
- For companies with securities listed on a regulated market, the above publication is mandatory, and shall take place at the same time with the publication of the annual financial report pursuant to article 4 of Law 3556/2007.
- Non-compliance with the above obligation to submit the report or incomplete, incorrect, or late submission of the above information by the obliged companies may lead to the imposition of the sanctions listed in Articles 2 and 55C of the BoG's Articles of Association and may result in the imposition of a fine in favour of the Greek State.

F. Entry into force of the Law 5066/2023

- The Law enters into force upon its publication in the Greek Government Gazette, while the obligation to draw up and publish a report on income tax information applies for the financial years commencing after June 22, 2024.
- The obligation of limited liability companies to submit their financial data to the Central Balance Sheet Office of the Bank of Greece is enforced for the financial year 2022 onwards.



for the tax

Commentary

The incorporation of Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive (EU) 2013/34 as regards disclosure of income tax information by certain undertakings and branches into national legislation imposes additional disclosure obligations for companies and enhances significantly corporate transparency and public scrutiny. The consequence of this transposition is that companies are involved in excessively bureaucratic procedures by repeatedly submitting identical documents before different national authorities.

On the contrary the provision of more explicit and broader information is provided to both citizens and investors, who, in this manner, acquire a comprehensive picture of the operation of multinational groups and standalone undertakings whose revenues exceeded a certain (characterized as high) threshold (750,000,000€) for two consecutive years. At the same time, society acquires the opportunity to evaluate the contribution of multinational undertakings to its welfare, if and to the extent that such contribution exists, while the monitoring of the activity of multinational groups in different states within the European Union is achieved.

The establishment of an obligation for limited liability companies to transmit financial data to the Bank of Greece, provided that such companies receive financing through loan agreements with credit and financial institutions operating in Greece, is of particular interest. This obligation is not imposed by the Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive (EU) 2013/34. As per the explanatory memorandum of the Law, the ratio of this provision is the assessment of the commercial banks' collateral by the Bank of Greece as well as the securing of the proper cooperation between the private and public sectors by law, regarding financial stability and channeling of liquidity to the real economy, following the issue of the Act of the Governor of the Bank of Greece (BoG) no. 2682/3.6.2019. The original objective of the aforementioned Act was to collect and provide statistical information to the Statistics Division of the Bank of Greece (BoG) with respect to the financial data of non-financial sector companies operating in Greece.

Nevertheless, the necessity of establishing a binding obligation by law demonstrates the companies' omission to transmit or to properly transmit their data, despite the publication of this Act. It remains to be determined whether the companies will eventually «comply» with this provision and whether the avoidance of the risk of inadequate assessment by the Bank of Greece regarding commercial banks' collateral as well as of the risk on the failure to secure the required liquidity for Greek banks in a timely and proper manner will be achieved.

Disclaimer: *The information set forth in this newsletter is intended to be a general update on certain issues relating to the subject-matter hereof. It is not intended to be legal advice and, therefore, it should not be relied upon, nor used as a basis for any decision-making. This information summarizes the aforementioned issues as of January 10th 2024 and does not reflect any changes or any developments that may have occurred thereafter.*



For further details please contact:



Eleni Souli
Associate

esouli@fdmalaw.com



Dimitris Diakopoulos
Senior Partner

ddiakopoulos@fdmalaw.com



Petros Pantazopoulos
Partner

ppantazopoulos@fdmalaw.com