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## TAX TREATMENT OF TRUSTS IN GREECE

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RECENT STEPS TOWARDS AN INTEGRATED APPROACH OF TRUSTS UNDER GREEK LAW.

In general, a Trust is a three-party fiduciary relationship in which the Settlor transfers a property upon the second party, i.e. the Trustee, for the benefit of the third party, i.e. the Beneficiaries. A Trust may be revocable or irrevocable.

A Trust can be established either by a will (testament Trust) or during the Settlor's lifetime (*inter vivos* Trust).

The Greek legal regime does not provide for the institution of Trust having the general Anglo-Saxon fiduciary relationship.

Trusts are not recognized in Greece and do not have a legal personality. However, for tax reasons, foreign Trusts are considered to be legal entities.

Trusts had been regulated only in a rather fragmentary way until a recent Circular by the Independent Authority of public revenue (AADE) which introduced a more integrated approach towards the issues at stake.

Apart from the recent Circular, the most significant changes regarding tax treatment of Trust in Greece stem from the introduction of the new Income Tax Code in 2014, applicable to income generated after 1.1.2014, which we address hereunder.

Firstly, income generated by the Trust is taxed similarly to any other legal entity. More specifically, in case of a Trust not domiciled in Greece, income generated in Greece is taxable under Greek law provided there is no Convention for avoidance of

double taxation between Greece and the country where the Trust is established providing otherwise.

The property in trust by the Settlor is not considered as a donation to the Trustee, thus not being subject to donation tax.

As far as distributions to the Settlor are concerned, those that take place under the capacity of the settlor are taxed similarly to the liquidation of any legal entity, whereas the distributions taking place under the capacity of the Settlor being a Beneficiary are considered as return from his own capital initially contributed, assimilated to dividends and taxed as such.

At this point, we should notice that Controlled Foreign Companies (CFCs) rules regarding interrelated companies located in different jurisdictions (offshore companies) may apply, thus, under certain circumstances, differentiating the tax treatment.

Moreover, distributions received by the Beneficiaries are taxed as inheritance or donation, depending on the Trust being testament one or *inter vivos* accordingly. In any case, inheritance or donation tax is imposed on the Beneficiaries of the inherited or donated property provided it is taxed in Greece.

Regarding the calculation of tax due, the Beneficiaries are classified into three categories depending on the degree of kinship with the deceased or donor, i.e. the Settlor.

Regarding income of the Trustee, the latter is not taxed for Trust's income generated in Greece but only for the remuneration he may receive and for as long he is Greek tax subject, unless a Convention for the avoidance of double taxation provides otherwise.

Furthermore, tax treatment of income received until 1.1.2014 is significantly differentiated compared to the current regime, mainly given that under the previous law, Trusts are not subject to income tax.

Thus, income generated by Trusts is taxed directly in the person of the Settlor and/or the Beneficiaries according to the type of income generated, for example interests, capital gains, rents etc.

TRUSTS HAD BEEN REGULATED ONLY IN A RATHER FRAGMENTARY WAY AND REGULATED AD HOC.

To sum up, the Trust being an institution not recognized under Greek law, it has been an often controversial issue approached in a rather fragmentary way and regulated *ad hoc*. Recently, several steps have been made towards the clarification of the tax treatment of Trust in Greece but it still needs a more integrated approach in order to avoid misconceptions and be easily comprehended by the interested parties.