

# **PRESENTATION OF CIRCULAR 49/28.11.2012 OF THE HELLENIC CAPITAL MARKET COMMISSION ON THE FIGHT AGAINST TAX EVASION**

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## **1. INTRODUCTION**

The purpose of this presentation is to provide instructions to Companies supervised by the HCMC for the identification and reporting to the competent Authority of Article 7 of Law 3691/2008 of transactions that give rise to suspicions of tax evasion and legalization of the property benefit.

More general questions will also be answered about the Prevention of Money Laundering.

## **2. The main effects of the tax exemption and the legalization of this benefit are:**

- Economic consequences
  - Unfair competition in the private sector
  - Slowdown in economic growth
  - Increased corruption
  - Devastating consequences for the reputation of the country internationally

- Social impacts
  - Reduce employment
  - Problems of the unequal distribution of government burdens to citizens

One of the factors that have led our country to the dire economic situation that is today is tax evasion.

### 3. Regulatory framework

- Law 3691/2008, as in force. Article 77 (1) of Law 3842/2010 also included the tax evasion of "basic offenses".
- Decision of the Hellenic Capital Market Commission 1/506/8.4.2009, as amended by paragraph 1 of article 1 of Decision 35/586/26.5.2011.
- Circular EP 41/8.4.2009 (Indicative typology).
- Circular EP 49/28.11.2012 (New Circular).

### 4. The Culture of the Market

Although the Company's obligation to identify and report transactions that are suspected of evading tax is now clearly apparent from the Regulatory Framework, previous experience has shown that a key role in Compliance with this obligation is played by the culture of the Market.

In the past, entrepreneurs, who quickly increased their wealth by unduly leveraging their taxes to the State, paradoxically managed to win the admiration of Greek society.

Several companies did not consider the transactions their customers were making for 'Tax Reasons' as damaging. Indeed, in a recent audit, a Company's representative was strongly reluctant to accept that he would have to check the assets of his clients and thought that submitting any reference to him for his client would be "betrayal"!

Today, although almost all companies have adequate procedures in place to deal with money laundering, there are still a few companies that are reluctant to implement adequate procedures for their own reasons. Therefore, it should be noted that if during the second cycle of our audits the same violations of the same companies are again detected, then this will be considered a relapse and the sanctions will be increased according to article 52 of Law 3691/2008.

## 5. Strict framework for professionals

The administrative and criminal sanctions provided by the current regulatory framework are strict to very strict (see Articles 52 and 45 of Law 3691/2008, where in this c. 1c of this article the culprits of money laundering profession are punished by imprisonment of at least ten years and a fine of up to two million euro).

Also, in paragraph 1d of Article 45 (Law 3691/2008), an employee of the liable legal person or any other person liable to report suspicious transactions is punished by imprisonment of up to two years, if he fails to report suspicious or abnormal transactions.

Until recently, some practitioners may not have thought it so pernicious or so dangerous even to help a client to legalize his non-taxed capital.

## 6. Comments on the New Circular

### A. Due diligence

In the reporting of high risk customers referred to in paragraph 2(f) of article 10 entitled "Provision of Information" of Decision 1/506/8.4.2009 of the Board of Directors of the Hellenic Capital Market Commission, the number of customers will be allocated according to the types of high risk customers as described in paragraph 6 of Article 2 of Decision 1/506/8.4.2009, as in force.

This provision specifies that instead of the total number of high-risk customers mentioned so far by the Company in its Annual Report to the EC, it should now indicate the number of customers broken down by type.

For example, 70 high-risk customers will report 5 offshore companies, 10 non-residents, 5 non-physical customers, 50 clients with increased risk of tax evasion. The latter usually include doctors, manufacturers, lawyers, plumbers, professors etc.

Sources and size of natural person's income are verified on the basis of the income tax statement and the customer of a legal entity are verified on the basis of the income tax return submitted, except for cases where the non-taxable persons have submitted a tax return where they are verified on the basis of other documents from reliable sources, judged on a case-by-case basis. (Paragraph 8, article 2 of the Decision 1/506 / 8.4.2009, as it stands).

Based on the income tax statement, it will be determined (either by a reduction in the income derived from a payee or by the income from more related payables) that the funds handled by the client have been declared. The clearing note is more reliable than the income tax statement because it is issued after any amended statements. The written investigation of the Company, which will be sought by the HCMC during its on-site inspections, must conclude: (a) that no reference should be made to the Anti-Money Laundering Authority; or (b) Reference should be made because the funds handled by the customer have not been declared. So these funds may concern: property income, teacher fees from private lessons, undeclared physician fees, difference in the sale price of real estate with the objective value, receipts of freelancers without evidence etc.

In the high-risk category (along with offshore companies, politically exposed persons, non-residents, etc.), business relationships and transactions involving increased risk of tax evasion are also mandatory. (Paragraph 6 of article 2 of decision 1/506 / 8.4.2009, as in force).

The companies show increased due diligence, consider carefully the transactions and apply additional procedures for continuous monitoring of business relations and transactions of natural or legal persons, which,

according to specific criteria determined by the Companies, involve increased risk of tax evasion or legalization of the resulting from this offense of benefit.

To determine the risk of tax evasion of their clients (to be included in the high risk category), Companies take into account the various elements among which are:

- Source of income for a natural person (eg free trade, wage earning, training, etc.).
- Branch or type of professional or business client.
- Significant deviation of the client's financial / transactional profile in relation to the funds he / she is trading.

In the process of certifying the client's profession, the Company should clearly identify the industry or the type of profession of that client. For example, instead of a businessman he should say owner of a night club, restaurant, instead of a freelancer he must say a doctor, a lawyer, a plumber and instead of a civil servant one should say a professor, a town planning officer, a tax collector.

Normally, the amount of a declared available asset of a customer is determined by the total of its clearing notes. But this is practically very difficult to implement. In practice, therefore, a large-scale calculation from a recent recalculated pay-off (depending on the years) is sufficient to have an order of magnitude. After that, if the client cannot explain any major deviation with the funds he is handling, a petition is made.

## B. Suspicious transactions / activities potentially related to or related to tax evasion (typology)

1. Client unwilling to produce the statement of the tax return of a natural person or the submitted corporate income tax return as a prerequisite for the formation of his / her financial / transactional profile, despite repeated complaints from the Company.
2. There is information from an outside source (local society, media, etc.) that a client is involved in activities that are possibly associated with tax evasion or that his or her way of living is disproportionately high in relation to the resulting data from his tax return.

3. Deposits shall be made to the investor's account of a customer of a natural person who is a company owner who are incompatible with the amount of his declared income or his place of residence, which gives rise to suspicions that such deposits may be related to his company's disguised sales or other corporate events.
4. A significant amount of transactions are executed in a client's investment account for which the Company has received requests from tax, customs, judicial or prosecution authorities for the provision of data or the imposition of provisional State Safeguard measures or investment accounts of members of its family; close associates.
5. Client transactional activity for which the tax, customs, judicial or prosecution authorities' requests for disclosure or enforcement of government safeguards have been brought to the attention of the Company are transferred to a new investment account belonging to the individual or members of the family his or her close associates or a company owned, managed or represented by him. (Beware of names communicated to the press as well as their relatives).
6. Recurring investments in dividend shares are carried out in order to show income, but without any real economic benefit.
7. Indications from the next income tax statement of the customer that selectively only profitable trading pads have been used to declare increased tax-free income.

### C. Record keeping

1. Companies keep as a minimum (Article 35 Law 3691/2008) the following documents for at least five years from the expiry of the business relationship with clients (not from each transaction), unless required by a law, keeping them for longer:
  - ... certification and verification details ...
  - ... legalizing documents ...
  - ...relevant correspondence ...
  - ... copy of statement ...

2. The Companies have archiving procedures and systems (article 35 of Law 3691/2008) that are able to ensure for the above period the rapid reproduction of identification and customer transactions information in order to respond promptly to a request of the Anti-Money Laundering Authority or other competent authority. Indicatively, the circular includes information such as:

- ... identity credentials
- ... the documents of the transactions
- ... the origin of money,
- ... etc

#### 6a. Highlights

1. The fact that small ISFs and RATCs do not accept money or securities from clients does not mean that their obligation is limited to the Regulatory Framework for Combating Money Laundering. On the contrary, these companies have in some cases more opportunities to identify suspicious activity, because they usually know their client better than the affiliate brokerage. Also, if the client has codes in other affiliated brokerages, only these companies (small AEDs and AEDs) have the ability to take into account the client's overall portfolio.

2. There should be no confusion between client categorization of money laundering and customer categorization for MIFID. The first concerns the risk of money laundering the client, while the latter mainly concerns the risk of being damaged by his investment choices.

3. Money Laundering Clients' Classification aims to apply fewer due diligence measures to low-risk customers and more for high-risk customers. The diversification of these due diligence measures, which should be provided for in the Company's written procedures, may involve

more frequent transaction audits (e.g. weekly or daily), more frequent updates of certification documents (e.g. every year), more certification documents for data crossing, etc.

4. The Company should maintain an electronic or non-standard list of suspects, which will be informed by communications from the relevant authorities, publications and other sources. There should be some indication that the list has been checked.

5. In the written procedures of several Companies, the method and periodicity of updating customer documents is not provided, so that no updates are made. The update should pay particular attention to the reliability of the documents.

#### 6b. Clarifications on Questions submitted

- Circular 49 / 28.11.2012 is directly applicable upon its adoption. There is no question of subsequent application of what is contained in it, because it provides interpretation and specification of already existing provisions.
- The control of the uniform application of this circular by all independently supervised companies, as well as other legislation on Money Laundering is made by the Hellenic Capital Market Commission.
- The provisions of Circular 49 do not constitute a Greek innovation but are in line with a more general trend towards adopting similar regulations internationally.
- In order to justify the client's funds available for investment, the Company should seek the way of acquiring these funds. Any legitimate source can justify the source of the funds available but also the taxation of those funds. The funds to be invested and the proof that they have been taxed arise if they are included as declared income in the tax statements of the Tax Office. In other words, the available income declared to the Tax Office must be at least equal to the amount of the funds to be invested. This arises either by summing the actual declared earnings of one or more

years, or by calculating the incomes of more than one year that would have been justified by the customer, if this can be done by reducing the income declared in one year.

Although the investigation of the statement of accounts is the forecasted way of justifying the capital invested, which is usually effective, other (e.g., the existence of income for the current year not yet declared, or legally taxed income from past years which had not been declared). It is noted that it may not be necessary to present a clearing statement from the customer from the beginning of the business relationship with the Company. Indicatively, if a Company customer is, for example, retired and, in this case, brings relatively small amounts of investment in relation to the income of a pensioner, there is no need to submit a statement. It is understood, however, that if the amounts invested subsequently increase and the amount of income from the tax clearance statement should be investigated.

The invocation of other elements to justify the capital to be invested is assessed on a case-by-case basis, for example, capital from the sale of property, lottery gains, and so on.

- The process of searching for tax evasion through tax evasion does not require specialized knowledge from the responsible employees of the Companies. Usually, the information resulting from the basic codes of the income statement is sufficient.
- If the taxable disposable income of professionals determined by implied criteria is less than the invested capital and these can not be justified in any other lawful way, then reference should be made to the Anti-Money Laundering Authority. Of course, if the imputed income is greater than the invested capital, no reference is made to the Authority.
- Reporting is justified only when the customer fails to justify the amounts available for investment.

- If the taxable income available professionals determined by implicit criteria is less than the invested capital and they can not be justified otherwise legally, then reference should be made to the Authority against Money Laundering. Of course, if the imputed income is greater than the invested capital, no reference is made to the Authority.
- Reporting is justified only when the customer fails to justify the amounts available for investment.
- On paragraph A3 of Circular 49, which refers to 'business relationships and transactions involving higher risk of tax evasion', including all business relationships and transactions which are easy or usual not a document of income issued in order not to declare the specific income. Thus, an increased risk of tax evasion must be considered to include all the professions that are known to have this opportunity under common experience. Examples include cases freelancers known to customary or cannot issue receipts, entrepreneurs - companies often heard that identified not issue receipts (i.e. Restaurants, night coke centers) but also civil servants who may offer and related to their specialty services without evidence (e.g. professors, doctors and others).

"Actual financial benefit," as mentioned in paragraph B6 of circular 49, is the result (gain) that adds to the customer's property. Thus, when the amount of the dividend distributed by a company together with the value of the sale board (the corresponding shares of the company after the dividend is cut) does not exceed the cost of the market share of the shares in question, then it is obvious that there is no real economic benefit. So if the Company finds that the customer repeatedly buys shares before dividing them and selling them immediately, then the possibility that the client (through the appearance of dividends) is intended to legitimize income from criminal activities should be taken into account.

As a result of Circular 49 it is specified that the Company should keep a record of the customer's transaction documents for at least 5 years after the end of the business relationship is that the Company may need to retain all the transaction documents for a very long time more than 5

years after the transaction. However, with modern means of technology and the ability to keep the file in electronic form (see Circular 49, point C.4), the cost burden is now very small.

- In order to ensure the confidentiality of the Reports of the Compliance Officers to the Anti-Money Laundering Authority, the prohibition of disclosure of the reference in Article 31 of Law 3691/08 is provided. By keeping confidentiality from everyone, it is difficult to identify the officials involved and the person who finally made the petition. In this respect, the Anti-Doping Authority has the policy of avoiding the listing of names of persons and companies in its documents and reports.
- Whether a deviation of invested capital and declared income is significant or not is judged on a case by case basis. It is not appropriate to attempt to categorize and categorize possible divergences, because it could not be applied in all cases.
- It is clarified that if income on the last tax bill is too low due to unemployment, this does not necessarily mean that a capital investment is suspected if it can be justified by income from older years or otherwise.
- If the Authorities (CPVO, prosecutors, investigators, etc.) are looking for customer transaction data for a certain period of time, possibly even older, without specifying or giving instructions on what they want to do with these customers, it is self-evident that, without interrupting the professional relationship, increased due diligence measures and their classification as high-risk clients are due to these customers.
- Certification of the profession of investor declaring a profession "domestic" is sufficient for his statement. Certainly, the justification of the capital invested should also be done in this case through the tax bill or otherwise (e.g. with legal income that has

not yet been declared or was not mandatory, e.g. lottery profits, inheritances, sale of real estate, etc.)

- The collection of information on categories of taxpayers in Greece, in relation to the issues raised by circular 49, can be obtained from sources such as: General Secretariat of Information Systems, Bank of Greece Reports, Money Laundering Authority, FATF, and Internet search engines and so on.

## 7. CONCLUSION

It is obvious that tax evasion is one of the factors that contributed to the dire economic situation that our country is today.

Because this situation undoubtedly has an adverse effect on the vast majority of society, it is our duty to work methodically and consistently in our sector to reduce tax evasion and start reversing the climate.