



EUROPEAN CENTRAL BANK
EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK
of 20 November 2019
on tax disincentives for the use of cash
(CON/2019/39)

Introduction and legal basis

On 19 November 2019 the European Central Bank (ECB) received a request from the Greek Ministry of Finance for an opinion on certain draft amendments to the Greek Income Tax Law¹ seeking to further expand already existing tax disincentives for the use of cash (hereinafter the 'draft amendments').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty and the second indent of Article 2(1) of Council Decision 98/415/EC², as the draft amendments relate to means of payment. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft amendments

- 1.1 According to the explanatory report accompanying the draft amendments, the objective of the draft amendments is to incentivise electronic transactions when purchasing goods and services, with the aim to (i) reduce tax evasion and (ii) broaden the tax base, for reasons of public interest.
- 1.2 The draft amendments build on already existing legislative measures adopted in 2016 that promote the broader use of electronic payment instruments in Greece. One such legislative measures which was adopted in 2016 and remains in force³ provides that the eligibility of taxpayers to avail of existing income tax credits for income earned from employment and pensions is conditioned on compliance with an obligation to pay a certain amount of expenses by means of electronic payments according to a minimum quota of a taxpayer's annual income. If the minimum quota of e-payments is not reached, an additional 22% tax is charged on the difference⁴, and taxpayers are

¹ Law 4172/2013 on taxation of income, urgent measures for implementing laws 4046/2012, 4093/2012, 4127/2013 and other provisions (Government Gazette A 167/23.7.2013).

² Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

³ Article 16 of the Greek Income Tax Law.

⁴ This tax is an additional 'penalty' tax which will be payable on top of the other types of income tax applicable to the respective taxpayer.

- no longer eligible to benefit from currently applicable income tax credits⁵. The minimum quotas of e-payments currently increase progressively on the basis of income brackets, as follows: for income between EUR 1-10 000, the minimum e-payments threshold is 10 %; for income between EUR 10 001-30 000, the minimum e-payments threshold is 15 %; and for income exceeding EUR 30 001, the minimum e-payments threshold is 20 % with however a lower ceiling of EUR 30 000⁶.
- 1.3 Another already-existing legislative measure which was adopted in 2016 and remains in force provides that any single cash payment for the acquisition of goods and services exceeding EUR 500 for consumer-to-business transactions is prohibited and that such payment may only be made via electronic means⁷.
- 1.4 The draft amendments propose to increase the minimum threshold for e-payments that must be reached by taxpayers to 30 % and to make it applicable to all income brackets uniformly with a ceiling of EUR 20 000⁸. The 22 % additional tax on the difference between the increased minimum e-payments threshold and the income actually spent via e-payments remains unaltered. The definition of e-payments or of expenses realised through electronic means of payments for the purposes of the draft amendments remains unaltered. This definition comprises expenditure which is incurred by the taxpayer for the acquisition of goods and services in Greece or Member States of the European Union or the European Economic Area via electronic means of payments, such as credit and debit cards, bank wire transfers, e-wallets, and payment accounts held with a payment service provider⁹. The expenditure that may be counted towards the minimum e-payment threshold remains unaltered. It comprises expenditure for the acquisition of goods and services which belong to the twelve categories of the consumer price index of the Hellenic Statistical Authority¹⁰.
- 1.5 The draft amendments also provide that the required minimum e-payments threshold is 20 % of real income in cases where e-payments of income and property tax, rents and loans to credit institutions have been made and amount to 60 % or more of real income¹¹.
- 1.6 The draft amendments propose to lower existing income tax credits¹², but provide that taxpayers will continue to benefit from such lower income tax credits even if they do not meet the revised

⁵ The currently applicable income tax credit is: (a) for taxable income not exceeding EUR 20,000: (i) EUR 1 900 for a taxpayer without dependent children; (ii) EUR 1 950 for a taxpayer with one dependent child; (iii) EUR 2 000 for a taxpayer with two dependent children; and (iv) EUR 2 100 for a taxpayer with three dependent children; (b) for taxable income exceeding EUR 20 000 the tax credit under (a) above is reduced by EUR 10 for every EUR 1 000 of taxable income earned from employment and pensions (paragraphs 1 and 2 of Article 16 of the Greek Income Tax Law).

⁶ Paragraph 3 of Article 16 of the Greek Income Tax Law.

⁷ Article 20 paragraph 3 of law 3842/2010 as amended by 69 of law 4446/2016.

⁸ Article 7 para 1 of the draft amendments amending Article 15 of the Greek Income Tax Law.

⁹ For this purpose, the terms 'payment account' and 'payment service provider' are as defined in Directive 2015/2366 of the European Parliament and of the Council on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

¹⁰ These are as follows: Group 1: food and non-alcoholic beverages; Group 2: alcoholic beverages and tobacco; Group 3: clothing and footwear; Group 4: housing, with the exception of expenditure for rent; Group 5: household equipment and services; Group 6: health; Group 7: transport, with the exception of expenditure for circulation tolls and for the purchase of vehicles except bicycles; Group 8: communications; Group 9: recreation and cultural activities with the exception of expenditure for the purchase of yachts, airplanes and aircrafts; Group 10: education; Group 11: hotels, cafés and restaurants; Group 12: miscellaneous goods and services

¹¹ Article 7 para 1 of the draft amendments amending Article 15 of the Greek Income Tax Law.

minimum e-payments threshold¹³. The draft amendments also propose to lower the introductory income tax rates for taxable income earned from employment and pensions¹⁴ and maintain largely unaltered the current list of taxpayers who are exempted from the obligation to meet the revised minimum e-payments threshold.

- 1.7 The draft amendments propose to extend the obligation to meet the minimum e-payments threshold to income earned from real estate¹⁵. In accordance with the draft amendments, failure to meet the threshold would result in the taxpayer being liable to pay an additional 22 % tax on the difference up unto the threshold for this category of income as well.
- 1.8 The draft amendments exclude the following from the deductible business expenditure: (i) all expenses related to the acquisition of goods or services of a value exceeding EUR 300 which have not been paid via electronic means of payment or a payment service provider; and (ii) expenses for rent which have not been paid via electronic means of payment or a payment service provider¹⁶.
- 1.9 The draft amendments provide that certain tax deductions arising out of expenses for the acquisition of services related to the energy, functional and aesthetical upgrade of buildings will only be available if the relevant payments have been made via electronic means of payment¹⁷.
- 1.10 It is understood that the draft amendments are intended to apply for income earned after 1 January 2020.

2. General observations

- 2.1 The ECB recalls that it was not consulted by the Greek authorities pursuant to Articles 127(4) and 282(5) of the Treaty on the existing provisions of the Income Tax Law which were adopted in 2016 in order to promote the broader use of electronic payment instruments in Greece.
- 2.2 Under the Treaty, the European System of Central Banks (ESCB) is required to act, inter alia, in accordance with the principle of an open market economy with free competition, favouring an

12 These are proposed to be reduced to the following: (a) (i) EUR 777 for a taxpayer without dependent children; (ii) EUR 810 for a taxpayer with one dependent child; (iii) EUR 900 for a taxpayer with two dependent children; (iv) EUR 1 120 for a taxpayer with three dependent children; and (v) EUR 1340 for a taxpayer with four dependent children; for every additional dependent child the tax credit is increased by EUR 220 per child; (b) for taxable income exceeding EUR 12 000, the tax credit under (a) above is reduced by EUR 20 for every EUR 1 000 of taxable income earned from employment and pensions up to the amount of the tax credit under (a), provided however that the reductions in the tax credit under (b) do not apply to taxpayers with five (5) or more dependent children (Article 9 of the draft amendments amending Article 16 of the Greek Income Tax Law).

13 Article 7 para 1 of the draft amendments amending Article 15 of the Greek Income Tax Law, read together with Article 9 of the draft amendments amending Article 16 of the Greek Income Tax Law.

14 These are proposed to be reduced to the following: from 22 % currently to 9 % for income between EUR 0 – EUR 10 000; for income between EUR 10 001 – EUR 20 000 the tax rate remains unaltered at 22 %; from 29 % to 28 % for income between EUR 20 001 - EUR 30 000; from 37 % to 36 % for income between EUR 30 001 - EUR 40 000; from 45 % to 44 % for income exceeding EUR 40 001 (Article 6 of the draft amendments amending Article 15 of the Greek Income Tax Law).

15 Article 7 para 2 of the draft amendments amending Article 40 of the Greek Income Tax Law. According to paragraph 4 of Article 40 of the Greek Income Tax Law as it currently stands, income earned from real estate is taxable separately according to the following scale: income between EUR 0 – EUR 12 000 is taxed with a 15 % rate; income between EUR 12 001 – EUR 35 000 is taxed with a 35 % rate; and income exceeding EUR 35 001 is taxed with a 45 % rate.

16 Article 13 of the draft amendments amending Article 23 of the Greek Income Tax Law.

17 Article 16 of the draft amendments amending Article 39A of the Greek Income Tax Law.

efficient allocation of resources¹⁸. The ESCB has the basic task of promoting the smooth operation of payment systems¹⁹, and the ECB has the exclusive right to authorise the issue of euro banknotes within the Union²⁰. The euro banknotes issued by the ECB and the national central banks of the euro area shall be the only banknotes to have the status of legal tender status within the euro area²¹.

- 2.3 Commission Recommendation 2010/191/EU (hereinafter the 'Commission Recommendation')²² states that the acceptance of payments in cash should be the rule, but acknowledges that cash may be refused for reasons related to the 'good faith principle', without this constituting a breach of the legal tender status of cash. Neither Union law nor the Commission Recommendation explicitly addresses whether, nor to what extent, it may be permissible to introduce a more general limitation to the obligation to accept euro cash payments. Therefore, Union law must be interpreted in order to ascertain the conditions that a limitation on payments in euro notes and coins should fulfil, including the conditions that should be fulfilled to comply with the legal tender status of euro banknotes and coins when general limitations to the obligation to accept cash payments are introduced²³.
- 2.4 The draft amendments must comply with Union law; in particular, any limitation to cash payments needs to comply with the legal tender status of euro banknotes²⁴. In this context, recital 19 of Council Regulation (EC) No 974/98²⁵, which states that 'limitations on payments in notes and coins, established by Member States for public reasons, are not incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available'²⁶, has been taken into account in previous ECB opinions considering the introduction of cash limitations under draft national laws. While the ECB acknowledges that lawful means for the settlement of monetary debts other than cash payments, are generally available in Greece²⁷, their availability across all parts of society, at comparable costs to cash payments, should be closely verified by the Greek authorities. This is because these other means may have different characteristics compared to cash payments and hence may not be fully equivalent alternatives.

18 See Article 127(1) of the Treaty and Article 2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

19 Article 127(2) of the Treaty and Article 3.1 of the Statute of the ESCB.

20 Article 128(1), first sentence of the Treaty and Article 16, first sentence of the Statute of the ESCB.

21 Article 128(1), third sentence and Article 282 (3), second sentence of the Treaty and Article 16, third sentence of the Statute of the ESCB.

22 Commission Recommendation 2010/191/EU of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins (OJ L 83, 30.3.2010, p 70).

23 See paragraph 2.1 of Opinion CON/2017/18, paragraph 3.1 of Opinion CON/2017/20, paragraph 2.3 of Opinion CON/2017/27, paragraph 2.2 of Opinion CON/2017/40, paragraph 2.2 of Opinion CON/2019/04.

24 See also paragraph 2.4 of Opinion CON/2017/18, paragraph 2.5 of Opinion CON/2017/40 and paragraph 2.3 of Opinion CON/2019/04.

25 Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1).

26 See, for example, Opinions CON/2013/18, CON/2014/4 and CON/2014/37.

27 See paragraph 2.1 of Opinion CON/2012/33 and paragraph 3.1 of Opinion CON/2010/36.

- 2.5 In this respect, the ECB notes that Directive 2014/92/EU of the European Parliament and of the Council²⁸ has made it easier for Union consumers to obtain payment accounts and related electronic payment services as alternatives to cash²⁹. In Greece, Directive 2014/92/EU has been transposed by Law 4465/2017, which establishes the legal framework for the creation of the conditions for making a minimum set of banking services accessible to all consumers. However, such banking services and electronic payment services offered by commercial entities may be subject to charges.
- 2.6 The ECB acknowledges that the draft amendments' objectives of (i) combating tax evasion and (ii) broadening the tax base, while maintaining fiscal balance after the decreases in corporate income tax and personal income tax may, in general, constitute 'public reasons' justifying the disincentivisation through taxation of, and the resulting limitation on, the use of cash payments. However, any such limitation needs to comply with the legal tender status of euro banknotes enshrined in Articles 128(1) and 282(3) of the Treaty. Therefore, it would need to be demonstrated that the proposed cash payment limitations affecting the legal tender status of euro banknotes would be effective as regards the achievement of the public objectives that are being legitimately pursued by the limitations. Hence, there should be clear evidence that such limitations are likely, in fact, to achieve the stated public goal of combating tax evasion.
- 2.7 Direct or indirect limitations on cash payments should also be proportionate to the objectives pursued and should not go beyond what is necessary to achieve such objectives, especially in view of the fact that the measures set out in the draft amendments affect transactions made by taxpayers who are natural persons and that they build on already existing legislative measures adopted in 2016 that impose direct limitations on cash by prohibiting all cash payments exceeding EUR 500 for consumer-to-business transactions³⁰. Any adverse impact of the proposed limitations should therefore be carefully weighed against the anticipated public benefits. When considering whether a limitation is proportionate, the adverse impact of the limitation in question should always be considered, as well as whether alternative measures could be adopted that would fulfil the relevant objective and have a less adverse impact³¹.
- 2.8 Furthermore, it should be borne in mind that the ability to pay in cash remains particularly important for certain groups in society that, for various legitimate reasons, prefer to use cash rather than

²⁸ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

²⁹ Within the framework previously created by Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1), which introduced the legal basis for the creation of an internal market for payments within the Union and allowed for the creation of the Single Euro Payments Area (SEPA) (the Payment Services Directive 1). The Payment Services Directive 1 has been since replaced by Directive 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35) (the Payment Services Directive 2).

³⁰ See paragraph 1.2 above.

³¹ See, for example, paragraph 2.3 of Opinion CON/2014/4, paragraph 2.3 of Opinion CON/2014/37, paragraphs 2.6 and 2.7 of Opinion CON/2017/8, paragraphs 2.5 and 2.6 of Opinion CON/2017/18, paragraph 3.3 of Opinion CON/2017/20, paragraph 2.7 of Opinion CON/2017/27, paragraph 2.6 of Opinion CON/2017/40 and paragraph 2.5 of Opinion CON/2019/04.

other payment instruments. Cash is generally also appreciated as a payment instrument because it is, as legal tender, widely accepted, fast and facilitates control over the payer's spending. Moreover, it is a means of payment that allows citizens to instantly settle a transaction and is the only method of settlement in central bank money and at face value which does not carry the legal possibility of imposing a fee for the use thereof. Also, cash payments do not require a functional technical infrastructure and related investment, and are always available; this is of particular relevance in the case of outage of electronic payments. Additionally, cash payments facilitate the inclusion of the entire population in the economy by allowing it to settle any kind of financial transaction in this way³².

- 2.9 It should be noted that Directive (EU) 2015/849 of the European Parliament and of the Council³³, while confirming the vulnerability of large cash payments to money laundering and terrorist financing, requires that persons trading in goods, who are otherwise not obliged entities under that Directive, be classified as obliged entities and apply customer due diligence measures only to the extent that payments are made or received in cash in amounts of EUR 10 000 or more. This implies that the draft law should establish a proportionate threshold for limits on cash payments, taking into account the objectives of such limits³⁴.
- 2.10 Against this background, the ECB considers that the existing limit on cash payments of EUR 500 for consumer-to-business transactions, and the new tax incentives discouraging companies from spending cash in excess of EUR 300, are disproportionate in light of the potentially adverse impact on the cash payment system. In case the legislator wishes to preserve cash payment limitations, higher thresholds should be chosen and a degree of flexibility should be introduced in the draft amendments. Cash transactions above the defined thresholds should be permitted as long as the parties are able to ensure that the payment is traceable by identifying the amount, the reason for the transaction and the parties involved. In addition, competent authorities are invited to assess whether the remaining restrictions on cash payments are proportionate and compatible with the legal tender status of euro banknotes³⁵, in order to ensure that the effects of these measures do not go beyond what is necessary for achieving the objective of combating tax evasion.

This opinion will be published on the ECB's website.

³² See paragraph 2.6 of Opinion CON/2017/18, paragraph 3.4 of Opinion CON/2017/20, paragraph 2.8 of Opinion CON/2017/27, paragraph 2.7 of Opinion CON/2017/40, paragraph 2.6 of Opinion CON/2019/04.

³³ Directive (EU) 2015/849 of the European Parliament and of the Council of 29 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

³⁴ See, for example, paragraph 3.2 of Opinion CON/2017/18, paragraph 2.10 of Opinion CON/2017/27 and paragraph 3.2 of Opinion CON/2019/04.

³⁵ See also paragraphs 2.2 and 2.3 of Opinion CON/2015/55.

Done at Frankfurt am Main, 20 November 2019.

[signed]

The President of the ECB

Christine LAGARDE