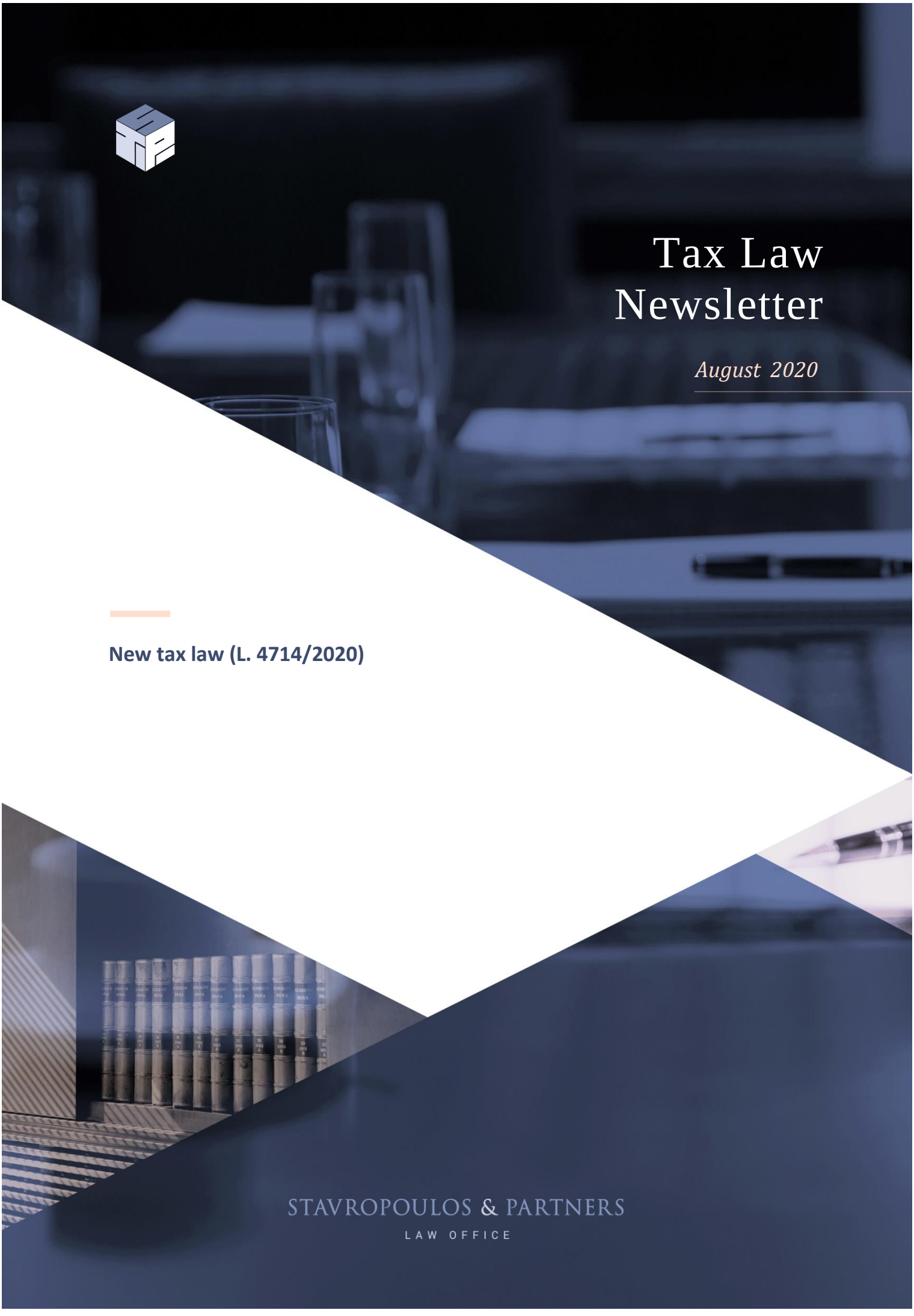

Tax Law Newsletter

August 2020

New tax law (L. 4714/2020)

STAVROPOULOS & PARTNERS

LAW OFFICE

New tax law (L. 4714/2020)|

On 31.07.2020, a new tax law (l. 4714/2020) was published under the title: "Tax interventions for the enhancement of the development process of the Greek economy, incorporation into Greek Law of Directives (EU) 2017/1852, (EU) 2018/822, (EU) 2020/876, (EU) 2016/1164, (EU) 2018/1910 and (EU) 2019/475 and other provisions".

The new law introduces, *inter alia*, the following developments on main tax topics:

I. Internal measures

➢ Non-dom tax regime for foreign pensioners

Greece strengthens the non-dom tax regime by implementing new tax incentives targeted to foreign pensioners.

A 7% flat tax regime on the sum of non-Greek sourced income is available as of January 1, 2020 to foreign pensioners who opt to shift their tax residence to Greece, following similar schemes already introduced in other southern EU member-states. For the transfer of tax residence the normal criteria of Income Tax Code apply, while the application of the provisions of any applicable Double Tax Treaty is not affected.

To qualify for this beneficial rate, foreign pensioners should not have been Greek tax residents for the previous 5 (five) out of the 6 (six) years prior to their tax relocation and the country from which they transfer their tax residence should have a valid agreement with Greece on administrative cooperation on tax issues.

The maximum term of the preferential regime can be fifteen (15) years while non-payment of the corresponding tax in any of the years in force results into taxation based on the general rules.

The application for submission to this alternative regime is submitted by the interested persons to the Tax Administration by March 31st of each year and concerns the following tax years.

Exceptionally, for applications to be submitted within 2020, the deadline ends by September 30, 2020.

Procedural details on the application of the above preferential regime will be published through a Ministerial Decision.

➢ Tax incentives for free shares to employees

Bonus shares granted to employees, management or shareholders for the accomplishment of targets, are no longer taxed as salary income but are taxed upon resale of the shares as capital gain (rate 15%) which includes the value at the time of grant plus any realized capital gain. Exceptionally any realized capital gain in cases where the shareholding of the seller represents less than 0,5% of the share capital of a listed company is not taxed.

➢ Out-of-court settlement of pending tax disputes

Article 16 of the new tax law provides for the establishment of an out-of-court Committee for the settlement of tax disputes pending before the Council of State and the Administrative Courts.

Each Committee will be formed by one former judge of the Administrative Court of Appeals, one member of the Legal Council of State (Government's lawyers) and a reporting officer of the tax administration who will not have a voting right.

The litigant taxpayer in tax cases on suitable subject-matters pending, but not yet heard, before the Council of State and the Administrative Courts may apply before the Committee for the out-of-court settlement of the dispute. Customs disputes do not fall within the scope of this Committee. The application shall be submitted by December 31, 2020 only for cases that: a) are pending for hearing before the Council of State and the Administrative Courts until October 30, 2020 or b) are pending before the Dispute Resolution Directorate until October 30, 2020, provided that such cases will become pending before the Administrative Courts by December 30, 2020. As long as a case is pending before the Committee, the procedure before the Council of State or the Administrative Courts is suspended. The Committee will issue its ruling on all examined pending cases brought before it, by July 31, 2021 while cases not examined will be considered as tacitly rejected.

Out-of-court settlement may exclusively concern the following subjects:

- Statute of limitation for the tax audit
- Lack of competence for tax audit due to tax audit certificate without reservation
- Erroneous tax assessment due to an obvious mistake
- Retroactive application of the more favorable tax penalty
- Reduction of additional tax, interest, surcharges and fines.

If the applicant accepts the Committee's proposal in its entirety within five (5) business days as of its notification, a relevant out-of-court settlement is concluded, which is then published on the website of the Ministry of Finance. The settlement is final unless the taxpayer does not pay within five (5) days 30% of the relevant amount.

If settlement is not reached the case returns to Court.
A Ministerial Decision will be issued on the details.

➢ Roll-back provision of the Advance Pricing Agreements (APAs)

In compliance with the recommendations of Action 14 of BEPS project (Minimum Standard), a roll-back mechanism on APAs is introduced in the Greek legislation.

Such a possibility is available only in case of bilateral or multilateral APAs as long as the true facts of earlier tax years are identical with these of the year to which the application refers, the application covers tax years for which the statute of limitations of the Greek State to perform a tax audit has not yet expired and a tax audit order has not been notified to the interested taxpayer for the years in question.

➢ Reduction of the advance payment of income tax for tax year 2019

The advance payment of income tax for the tax year 2019 of legal entities and individuals engaged in business activity is reduced at a range from 30% to 100%, depending on the extent of the decrease in the turnover as declared for VAT purposes of the first semester of 2020 as compared to the one of 2019. This provision seeks to support businesses' liquidity, in view of the effects of the COVID-19 pandemic.

II. Implementation of EU legislation

➢ EU Directive on tax dispute resolution mechanisms in the EU

Directive (EU) 2017/1852 of 10 October 2017 sets out an improved legal framework for the resolution of cross-border double taxation disputes between different member states, in compliance with the standards set forth in Action 14 of the BEPS project. Articles 21-48 of the new tax law incorporate in the Greek legislation the provisions of the Directive.

The scope of the new framework, as compared to the previous one (Directive 90/436/EEC, L. 2216/1994) is significantly widened, so as to include not only double taxation disputes related to transfer pricing and attribution of profits to permanent establishments, but also other issues on the interpretation and application of international tax treaties leading to double taxation such as tax residency and permanent establishment issues.

The new provisions are applicable to disputes related to income and capital acquired as of January 1, 2018 and onwards. However, already pending complaints or complaints concerning tax years prior to January 1, 2018 may be subject to the scope of the new provisions following agreement with the tax authorities of the other member states concerned.

The main structure of the new mechanism is as follows:

A. Filing of complaint

- Any affected taxpayer shall be entitled to submit a complaint related to a dispute in question before the Independent Authority for Public Revenue (IAPR) and each one of the competent authorities of the other member states concerned, requesting the resolution thereof.

- The complaint is submitted within three (3) years as from the first notification of the action that may result in the question in dispute, regardless of whether the affected taxpayer has recourse to the remedies available under the national law and is not affected in case of expiry of national limitation period.

- Initiation of litigation proceeding before the Greek courts with respect to the dispute in question does not prohibit the process, as long as a court hearing has not taken place

at the time of submission of the complaint.

B. Mutual Agreement Procedure (MAP)

- IAPR may a) reject the request, illustrating the reasons for its decision or b) accept the request within six (6) months as of receipt. Non-issuance of a decision within the deadline provided is considered as a presumption of tacit acceptance of the complaint.

- IAPR may also decide to go through the procedure unilaterally, without the involvement of the tax administrations of the other member states concerned within six (6) months of the receipt thereof.

- In case of rejection of the request by all parties concerned, the taxpayer is entitled to appeal against the IAPR rejection decision before the competent Greek Administrative Courts.

- In case of acceptance of the request by all parties concerned, a MAP is opened and the tax administrations are required to resolve the tax dispute within a two-year period which upon request of IAPR to the other tax administrations involved may be extended for one (1) more year.

- If during the course of the MAP an irrevocable judgment is issued by the Greek courts on the matter, MAP is terminated.

- Once an agreement with the other tax authorities concerned is reached, IAPR shall notify the agreement to the interested taxpayer which is subject to its acceptance in order to result to termination of all pending administrative or court procedures on the same tax dispute. If no agreement is reached, IAPR shall inform the taxpayer of the negative outcome.

C. Arbitration stage

- In case that the tax authorities involved fail to reach an agreement on how to resolve the dispute in question in the course of MAP within the time period provided (two or three years, as the case may be), the affected taxpayer may submit a request to open the Arbitration stage, by setting up an Advisory Commission, within fifty (50) days as of

notification of the negative outcome.

- IAPR may reject the request for setting-up the Advisory Commission in case that either the affected taxpayer has been irrevocably convicted for tax evasion crimes or the dispute in question does not give rise to a double taxation situation.

- The Advisory Commission is set-up within 120 days following receipt of the request and delivers its opinion in writing to the tax authorities involved within six (6) months.

- In compliance with the Directive, IAPR may agree with the competent authorities of the other interested member states to set up an Alternative Dispute Resolution Commission instead of an Advisory Commission to deliver an opinion on how to resolve the question in dispute. In such case, other dispute resolution processes may be adopted, including the so-called "final offer" arbitration process (otherwise known as "last best offer" arbitration), so as to solve the dispute in a binding manner.

- IAPR may reach an agreement with the other tax authorities involved within six (6) months on the basis of the opinion delivered by the Advisory Commission or by the Alternative Dispute Resolution Commission or may take a decision which deviates from such opinion. The final decision shall be implemented subject to the affected person accepting the final decision and renouncing the right to any domestic legal remedy within sixty (60) days as from notification of the final decision.

➢ Implementation of EU Directive on Mandatory Disclosure Regime (DAC6)

Articles 50-58 of the new law implement in national law the provisions of Directive (EU) 2018/822 of 25 May 2018 as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6).

Under these provisions, intermediaries (i.e. persons that draft, make available in the market, organize or manage a reportable cross-border arrangement) and, in certain cases taxpayers themselves have the obligation to disclose certain information on these reportable cross-border arrangements to the competent tax authorities. This obligation applies as from 1.01.2021 (extensions of deadlines provided under Directive (EU) 2020/876 due to COVID-19 have been also taken into account) and must be exercised within thirty (30) days with respect to any reportable cross-border arrangements that were made available for implementation or

ready for implementation or the first step in their implementation has been made between 1.07.2020 and 31.12.2020 or become reportable on or after 1.01.2021. Reporting on historical arrangements between 25.06.2018 and 30.06.2020 will be due by 28.02.2021 and the first automatic exchange of information will be due by 30.04.2021.

Lawyers, who are subject to legal professional privilege, are exempt from the reporting obligations, however they have an obligation to notify any other intermediary who is not subject to such a legal professional privilege, or in absence thereof, the taxpayer concerned by the relevant reporting obligations pertaining to a reportable cross-border arrangement.

A cross-border arrangement will be reportable if it includes at least one feature that is indicative of a potential risk of tax avoidance (hallmark), listed in a relevant Annex (article 56 of the law). Some of the hallmarks will only trigger a reporting obligation if the arrangement in question meets the main benefit test (MBT), i.e. when it can be established that the main benefit or one of the main benefits which one may reasonably expect to derive from the arrangement is the obtaining of a tax advantage.

➢ Implementation of the anti-hybrid rules under the ATAD

The new tax law transposes into domestic law the anti-hybrid provisions provided by ATAD I and ATAD II, designed to tackle hybrid instruments as well as hybrid entities.

New article 66B of the Greek Income Tax Code lays down rules to eliminate mismatches in relation to payments as a result of different legal characterization (between EU member states or with third countries) of an instrument or an entity between two jurisdictions which often leads to double deduction outcome or a deduction without inclusion outcome.

In case that a hybrid mismatch results in double deduction, the deduction shall be denied in the member state that is the investor jurisdiction, while if the investor jurisdiction is a country that has not denied the deduction, the member state that is the payer jurisdiction shall deny the deduction.

To the extent that a hybrid mismatch results in a deduction without inclusion, the member state of the payer shall deny the deduction of such payment or if the payer jurisdiction is a country that has not denied the deduction, the member state that is the payee jurisdiction shall include the payment in its income.

These new rules will apply as of January 1, 2020.

➢ Implementation of the exit taxation rules under the ATAD

The new rules on exit taxation implement the requirements of ATAD, which will apply as from January 1, 2020 onwards.

Exit taxation ensures that when a corporate taxpayer transfers its assets or tax residence or activities of a permanent establishment outside the tax jurisdiction of Greece, any capital gains generated in the Greek territory, even if that profit has not yet been realized at the time of exit, shall be subject to Greek income tax.

As required by the ATAD, a deferral to the payment of the exit tax (by paying it in equal instalments over a period of (5) years) shall be available in case of transfers within the EU/European Economic Area (EEA) provided that in case of an EEA state the latter is party to an agreement equivalent to the EU Mutual Assistance Recovery Directive 2010/24/EU.

➢ Implementation of EU VAT quick fixes rules

With article 61 of the new tax law, several quick actions laid down in Directive (EU) 2018/1910 of 4 December 2018 aimed to simplify the VAT rules for B2B EU cross-border supplies are introduced in the Greek VAT legislation, applicable as of January 1, 2020. These measures cover the following areas:

a. Call-off stock

Call-off stock arrangements refer to the situation, where, at the time of movement of own goods by from one member state to another member state, the supplier already knows the identity of the person to whom these goods will be supplied at a later stage, following their arrival at the destination state.

Under the new provisions, a supplier in the state of dispatch will be able to create a call-off stock in the state of arrival for maximum one year with the aim to supply these goods at a later stage and after arrival to the acquiring taxable person, without being obliged to register locally for VAT purposes in such state and without the transfer giving rise to a deemed intra-

community supply in member state of dispatch and a deemed intra-community acquisition in member state of arrival.

Instead, subject to certain strict conditions, the new rules treat the intra-community supply of the goods as occurring when the goods are called-off and the final supply is made to the customer.

b. Chain transactions

Chain transactions refer to a series of successive supplies of the same goods between multiple suppliers but involve only one intra-community transport of those goods.

Under the new simplified VAT rules, harmonized criteria for determining which of the transactions in a chain is the intra-community supply are introduced. In particular, provided that certain conditions are met, the transport of the goods should be linked to only one supply within the chain of transactions.

More specifically, zero VAT rate for intra-community supply shall apply to the supply made to the intermediary operator who arranges for the transport (i.e. to the supplier in the chain other than the first supplier, who dispatches or transports the goods himself or by a third party on his behalf), whereas, by way of derogation, when the intermediary operator communicates to his supplier a local VAT number issued by the member state in which the transport starts, the intermediary operator who arranges for the transport shall be deemed to perform the zero-rated intra-community supply himself instead of his supplier.

c. Mandatory VAT ID number verification for EU cross-border supplies

Indication by the customer of a valid VAT ID number to the supplier and the submission by the supplier of a recapitulative statement reporting the relevant transactions with correct information are material requirements for zero-rated intra-community supplies of goods. If these conditions are not met, the supplies may lead to the rejection by the Tax Administration of the applied exemption.

The present newsletter contains general information only and is not intended to provide specific professional advice or services.

If you need further assistance or information with regard to the above please contact:

Ioannis Stavropoulos
Managing Partner

Valia Michalopoulou
Partner

E: I.Stavropoulos@stplaw.com | **E:** V.Michalopoulou@stplaw.com