

## TAX BRIEFING: Monthly Insight

# Recent Developments in Tax Legislation

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1. By way of Circulars 2066/2023 and 2068/2023 the Independent Authority of Public Revenues (**IAPR**) provides guidelines with regard to the VAT treatment of FCFDs.
2. FCFDs are derivative financial products that are not traded on a stock market and are used for hedging purposes. Each party agrees to pay to the other the difference that arises due to the movement in the price of an underlying commodity such as the stock market index, the price of a share or the price of a commodity (eg gas, electricity, etc).
3. In guidelines issued by the 63rd meeting of the VAT Committee (17 July 2001), the European Commission stipulates that transactions involving options traded on regulated markets are exempt from VAT under Article 13 (B)(d) of the Sixth Directive.
4. In accordance with Article 9 of Implementing Regulation 282/2011/EU, the sale of an option falling within the scope of Article 135 (1)(f) of the VAT Directive, is a supply of services within the meaning of Article 24 (1) of that Directive.
5. With regard to Greek legislation, paragraph 11 of Article 16a of Law 2459/1997 stipulates that contracts and ancillary transactions on derivative financial products, as well as any kind of profits and revenues arising from the execution of these contracts, are exempt from stamp duty and from any other indirect tax, fee, contribution or right in favour of the State or Legal Entities of Public or Private Law.
6. Article 32 of Law 2533/1997 stipulates that:
  - a. the acquisition of derivative stock exchange securities;
  - b. capital gains from derivative transactions on the Athens Stock Exchange (**ATHEX**);
  - c. the provision of collateral to the Athens Derivatives Exchange Clearing House (**ADECH**) and members of ATHEX and ADECH;
  - d. the transfer of legal relations on derivatives and collateral between members of the ATHEX and ADECH; and
  - e. any act and agreement,are exempt from all taxes including VAT, duties, stamp duty and royalties in favour of the State or third parties ancillary to these.
7. Paragraph 3 of Article 82 of Law 3606/2007 stipulates that, without prejudice to the provisions of the Income Tax and Value Added Tax Codes:
  - a. the acquisition of derivatives traded on a regulated market;
  - b. capital gains from transactions in the relevant derivatives;
  - c. income or profits from transactions in loan or borrowing products; and
  - d. sale or purchase under a repurchase or repurchase agreement on transferable securities,are exempt from all taxes, duties, stamp duty and royalties in favour of the State or third parties.
8. Consequently, it appears that in both Greek and Community legislation, the exemption from VAT exists only in cases of derivatives traded on a stock market.
9. In view of the above, and considering the settled case-law of the CJEU on a restrictive interpretation of the exemption provisions, any income generated by FCFDs is subject to VAT at a rate of 24%.
10. The above guidelines do not preclude the application of the VAT exemptions provided for by other provisions of the VAT Code to Over the Counter (**OTC**) derivatives. In this context, the provision of services and the proceeds therefrom:
  - a. which arise from OTC transactions; and
  - b. where at least one of the contracting parties or participants to the transaction is a credit institution or an Investment Services Société Anonyme (Investment Services SA),are exempt from VAT.

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11. The provisions of Article 22 of the VAT Code define the exemptions from VAT of certain supplies of goods and services within our country. These exemptions are binding on persons and transactions covered by Article 22 of the VAT Code.
12. Finally, given that the FCFD is an agreement between parties to exchange the difference between the current price of the underlying instrument and the price of that instrument at

the time of termination of the contract, and under no circumstances is the underlying instrument of the FCFD acquired or bought, any revenue generated is revenue from the provision of services. Therefore, when one of the parties to the FCFD is established outside Greece, whether inside or outside the EU, the provisions of Article 14 of the VAT Code regarding the place of supply and consequently the place of taxation of this service primarily apply.

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