The Tax Disputes and Litigation Review

Fourth Edition

Editor
Simon Whitehead

Law Business Research

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This article was first published in The Tax Disputes and Litigation Review- Edition 4
(published in February 2016 – editor Simon Whitehead)

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-909830-84-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

BOWMAN GILFILLAN

CHEVEZ RUIZ ZAMARRIPA Y CIA, SC

CUATRECASAS, GONÇALVES PEREIRA

DANNY DARUSSALAM TAX CENTER

DLA PIPER

FLICK GOCKE SCHAUMBURG

GREENWOODS & HERBERT SMITH FREEHILLS

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EDITOR'S PREFACE

The objective of this book is to provide tax professionals involved in disputes with revenue authorities in multiple jurisdictions with an outline of the principal issues arising in those jurisdictions. In this, the fourth edition, we have continued to concentrate on the key jurisdictions where disputes are likely to occur for multinational businesses.

Each chapter provides an overview of the procedural rules that govern tax appeals and highlights the pitfalls of which taxpayers need to be most aware. Aspects that are particularly relevant to multinationals, such as transfer pricing, are also considered. In particular, we have asked the authors to address an area where we have always found worrying and subtle variations in approach between courts in different jurisdictions, namely the differing ways in which double tax conventions can be interpreted and applied.

The idea behind this book commenced in 2013 with the general increase in litigation as tax authorities in a number of jurisdictions took a more aggressive approach to the collection of tax; in response, no doubt, to political pressure to address tax avoidance. In the UK alone we have seen the tax authority vested with broad new powers not only of disclosure but even to require tax to be paid in advance of any determination by a court that it is due. The provisions empower the revenue authority, an administrative body, to compel payment of a sum, the subject of a genuine dispute, without any form of judicial control or appeal. Over the past year the focus on perceived cross-border abuses has continued with action by the European Commission on past tax rulings in Ireland, Luxembourg and Belgium and the BEPS reaching a crescendo in the announcement of a 'diverted profits tax' to impose an additional tax in the UK when it is felt that a multinational is subject to too little corporation tax even in an EU context. As we go to press the UK has introduced another measure imposing a ring-fenced super tax to strip away half of any interest received with the refund of overpaid tax where the refund is, in practice, the result of the enforcement of EU rights.

These are, perhaps, extreme examples, reflective of the parliamentary cycle, yet a general toughening of stance seems to be felt. In that light, this book provides an overview of each jurisdiction's anti-avoidance rules and any alternative mechanisms for resolving tax disputes, such as mediation, arbitration or restitution claims.

We have attempted to give readers a flavour of the tax litigation landscape in each jurisdiction. The authors have looked to the future and have summarised the policies and approaches of the revenue authorities regarding contentious matters, addressing important questions such as how long cases take and situations in which some form of settlement might be available.

We have been lucky to obtain contributions from the leading tax litigation practitioners in their jurisdictions. Many of the authors are members of the EU Tax Group, a collection of independent law firms, of which we are a member, involved particularly in challenges to the compatibility of national tax laws with EU and EEA rights. We hope that you will find this book informative and useful.

Finally, I would like to acknowledge the hard work of my colleague Peter Stewart in the editing and compilation of this book.

Simon Whitehead
Joseph Hage Aaronson LLP
London
February 2016

Chapter 14

GREECE

Panagiotis Pothos and Nina Kakali[1]

I INTRODUCTION

Since 2010 the tax landscape in Greece, including tax dispute resolution and controversy, has changed dramatically due to the impact of the financial crisis. In actual fact, the need for more efficient tax collection (which is the state's main source of revenue) made the task of accelerating the administrative and court proceedings relating to the imposition and collection of taxes more urgent. Previously, the process of resolving a tax dispute could last over 10 years (sometimes even more), if the case was referred to the administrative courts. Such a significant delay for delivering a judgment on a tax dispute was caused by the heavy workload of the administrative courts dealing with these kinds of cases, including the Supreme Court (the Council of State), in conjunction with the lack of judges.

Under the previous regime, the taxpayer and the competent authorities could amicably resolve a dispute in the context of an administrative settlement (prior to referring the case to court) but in practice this settlement could only work if both parties involved had agreed on the amount of taxes to be paid and in most of the cases no real discussion was had as to the legal issues pertaining to the specific facts of the case as long as there was an agreement on the figures. In addition, the Greek tax authorities used the possibility of settling and thus reducing to some extent (i.e., by 40 per cent) the penalties originally assessed so as to prevent the taxpayers from referring their case to the court. Nevertheless, prior to the eruption of the crisis a lot of cases finally ended up in a court of law since no agreement on the figures was achieved, whereas referring the case to the courts was not an expensive procedure (as opposed to the current situation) since the applicable judicial costs were quite low.

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1 Panagiotis Pothos is a partner and Nina Kakali is an associate at Kyriakides Georgopoulos Law Firm.

In particular, the pillar of the radical reform, at least as regards the applicable tax proceedings (effective as of 1 January 2014), is reflected in Law 4174/2013 (the Code of Tax Procedures). On the basis of such legislative act, there was an effort to unify all the previously separate provisions on the administrative procedures for assessing and challenging taxes. Pursuant to the new regime, significant changes were effected as to how taxes are assessed and challenged and in this respect the notion of an 'amicable administrative settlement' between the parties involved has been abolished and thus a first evaluation of any act issued by the Tax Administration (prior to the initiation of court proceedings in case of a negative evaluation) is executed by a specific Tax Dispute Resolution Directorate of the Ministry of Finance (a quasi tribunal), which consists of officers of the Administration.

II COMMENCING DISPUTES

Under the current tax system, the basic mechanics for the initiation of a tax dispute may have as follows.

In a nutshell, the trigger for the commencement of a dispute is usually the receipt of an assessment act, which is issued by the competent tax office further to the scrutiny of a tax return filed by the taxpayer. Further to the filing of a tax return, the authorities have the power to scrutinise such declaration within a lawful deadline by means of issuing an administrative act.

Greece does not operate an advance clearance or ruling system (except for the recently introduced procedure, which resembles an advance pricing agreement (APA) and is applicable to the transfer pricing cases).

According to the relevant provisions of the Code of Tax Procedures, the assessments acts, on the basis of which the Administration's tax claim is defined in terms of figures, may be categorised as follows:

a Direct tax assessment (Article 31), which derives without a further action by the Administration, simultaneously with the submission by the taxpayer of their tax return. The latter retains the right to amend due to a mistake or omission until the issuance of order for the audit of the return or within the lawful statute of limitation corresponding to the right of the tax authorities to lawfully scrutinise such return. Filing a corrective tax return (after the deadline for submitting the original return) may attract penalties and interest for late filing.

b Administrative tax assessment (Article 32), which may be issued by the Administration. Such act is based on data that may have been provided by the taxpayer through a tax return or any other evidence available to the tax administration.

c Estimated tax assessment (Article 33), which may be issued by the Tax Administration in case the taxpayer does not file a return, although is obliged to do so. In this case, the taxable base included in such assessment is determined on the basis of any data available to the tax authorities. If the taxpayer subsequently files a tax return, the act of estimated assessment automatically ceases to exist.

d Corrective tax assessment (Article 34), which may be issued by the Administration, further to scrutiny, in relation to any previous direct, administrative, estimated or pre-emptive tax assessment, provided that it justifiably emerges from the audit that the previous assessment of tax was inaccurate or erroneous. This kind of assessment, which should be issued solely further to the execution of full scope audit, is subject to a subsequent correction only if 'new' data arises (namely information that could have not been at the disposal of the tax authorities at the time of the original audit). Moreover, the taxpayer may request the issuance of a corrective tax assessment act in case of filing an amending tax return for which an administrative assessment tax act has been issued. The tax administration is obliged to issue such corrective tax assessment, if the amending tax return is accepted.

e Pre-emptive tax assessment (Article 35), which can be issued by the Tax Administration further to the commencement of the tax period but prior to the lapse of the date for submitting the respective tax return, if there are indications that the taxpayer intends to leave the country, thus jeopardising the collection of tax, especially through the transfer of personal assets to a third party. The preliminary tax assessment is followed by a corrective tax assessment within one year from the date of issuing the pre-emptive tax assessment act.

In addition, the aforementioned deeds of assessment as well as any other act issued by the tax authorities (including tacit rejections of the Administration upon relevant requests of taxpayers) can be contested before through the following procedure, the conclusion of which is a prerequisite for referring the dispute before the administrative courts.

The Code of Tax Procedure introduces the filing of a mandatory administrative recourse before the Tax Dispute Resolution Directorate of the Ministry of Finance as the sole administrative remedy for challenging an act issued by the competent tax authorities. In fact, any kind of tax dispute (income, VAT, stamp duty, direct tax, indirect tax, personal tax, partnerships etc) may be the object of such recourse.

Since we refer to an obligatory procedure, which should be followed by the taxpayer objecting to any assessment act, the filing of such recourse is a prerequisite for a lawful submission of an appeal before a court of law. Otherwise, namely if the taxpayer tries to directly refer the case to the court, the relevant appeal shall be rejected as inadmissible. Exceptionally, the law sets outs the possibility for a direct filing of an appeal before administrative courts, only in the cases concerning pre-emptive tax assessment acts.

The administrative recourse may be submitted to the Tax Dispute Resolution Directorate of the Ministry of Finance within 30 days of the date of the notification of the final corrective assessment act.

Upon filing of the recourse, 100 per cent of the disputed tax is being assessed, from which the 50 per cent is immediately payable, whereas the remaining 50 per cent is suspended provided though that the former 50 per cent has been remitted to the state. A payment suspension application can be filed for the 50 per cent (which is immediately payable), but such suspension may be granted only on the grounds of 'irrevocable damage' to the payer. This application is considered silently rejected if a decision is not issued within 30 days.

Any suspension granted does not exclude the debtor from their obligation to pay late payment interest.

The Tax Dispute Resolution Directorate of the Ministry of Finance must issue a decision that is communicated to the liable party within 120 days from the filing of administrative recourse. In the case of non-issuance of a decision within the deadline, the recourse is considered as having been silently rejected.

The Tax Administration has no right to appeal against the decision of the office of Tax Dispute Resolution Directorate of the Ministry of Finance, while the taxpayer may appeal before the competent administrative courts against the decision or the silent rejection on the administrative recourse.

III THE COURTS AND TRIBUNALS

If the Tax Dispute Resolution Directorate issues a negative decision or does not issue one within 120 days as of the filing of the administrative recourse (thus the latter is considered as rejected), the taxpayer has the right to judicially challenge such rejection by means of submitting an appeal to the administrative courts within 30 days as of the date of the notification of the decision issued by the Directorate or the expiry of the 60-day period if no decision is reached after all by the Directorate. If the taxpayer resides abroad the deadline for filing a judicial appeal is extended to 90 days.

Tax cases fall within the competency of the administrative courts that have two degrees, namely the Administrative Court of First Instance and the Administrative Court of Appeal.

According to the relevant procedures of the Code of Administrative Court Procedure, tax disputes reaching up to €150,000 lie within the competency of the first instance single-member Administrative Court. On the other hand, tax disputes exceeding the amount of €150,000 lie within the sole competency of the three-member Administrative Court of Appeal.

In case of rejection of the filed case before the Administrative Court of Appeal, a petition exclusively on legal grounds can be filed before the Council of the State (i.e., the Supreme Administrative Court) for the cassation of the appellate decision.

In view of the constitutional provision of the separation of powers (Article 26 of the Greek Constitution) the administrative courts are totally independent to rule upon any case filed before them, and are not subjected to the control of the tax administration as opposed to the Tax Dispute Resolution Directorate competent to decide upon the administrative recourses. Such a body, which could be considered a quasi tribunal, is classified as an integrated part of the tax authority itself, thus its independency is not secured and constantly under question.

In practice, it is estimated that the majority of the disputes (i.e., over than 70 per cent) are either not resolved in the level of the mandatory administrative recourse before the Tax Dispute Resolution Directorate or declined. In fact, the most recent statistics issued by the Ministry of Finance vigorously depicts the very poor percentage of the cases upheld by the aforementioned Directorate.

Nevertheless, this results to an increase number of tax disputes, which are brought before the competent administrative courts, whereas the formation of the above Directorate was to serve the acceleration of the process and the 'decongestion' of the courts dealing with tax cases.

The expected time from the filing of the case until the hearing before the first instance court is approximately three to four years, and from five to 10 months before the Court of Appeal.

IV PENALTIES AND REMEDIES

i Administrative penalties

Administrative penalties may be divided in two major categories: procedural infringements and violations with the purpose of tax evasion.

Procedural infringements are related to non-submission or late submission of returns, no responding to a request or audit of the Tax Administration, non-cooperation during the tax audit, non-disclosure of the tax representative appointment, failure to perform a tax registration, non-compliance with book-keeping and fiscal documentation requirements.

Procedural transfer pricing violations are related to delayed filing or non-filing of summary information memorandum (TP reporting obligation), delayed submission of TP file to tax auditors, submission of incomplete TP file to tax auditors, and failure to submit TP file to tax auditors.

Tax evasion is related to the issuance of false and fictitious tax records, the concealment of taxable income, the non-payment or inaccurate payment and collection of a refund of taxes after the deception of the Tax Authorities. The fines imposed concerning tax evasion are calculated as percentage of the value of the infringement whether it concerns the fictitiousness, forgery and concealment of the taxable income or whether it concerns the nonpayment, of taxes or fraudulent refund of taxes. The fines and the procedure are independent of criminal sanctions that are applicable to tax offences. The right of the tax administration to assess taxes can be extended to 20 years in cases of tax evasion.

ii Administrative enforcement

Pursuant to the provisions of the Code of Administrative Procedure and the Code of Collection of Public Revenue, the enforceable orders on the basis of which the tax administration may proceed to the enforcement for the collection of tax debts are explicitly enumerated. In very urgent cases and in cases in which the collection of the taxpayer's respective tax is at risk, the tax administration may proceed on the basis of the enforceable orders provided by the Code and without a judicial decision, to the imposition of a seizure of moveable assets, real estate, property rights, claims and in general of all assets of the debtor of the state, either held by the taxpayer or by third parties.

According to the above conditions, the tax administration may also proceed to taking the appropriate interim or pre-emptive measures on the basis of the enforceable order. The measures are ordered without summoning the taxpayer (Article 46 L. 4174/13 and Article 14 L. 2523/1997).

Though, in general, the Tax Administration is obliged to send an individual notice to the taxpayer in order to inform him or her to pay his or her debts before the carrying out of enforcement actions. In case of non-payment of the amount due within 30 days from the serving of the default notice, the competent body may proceed to measures of enforcement.

In case of a suspicion of fraud that endangers the collection of taxes, the Tax Authorities are given the option of taking enforcement actions or writing a mortgage prior to the legal deadline for the payment of taxes or default notice or the lapse of 30 days from the aforesaid default notice is provided.

iii Criminal penalties

Pursuant to Law 4174/2013 and Law 2523/1997 relating to administrative and criminal penalties with respect to taxation, it is provided that liabilities and criminal penalties may be imposed for the following offences:

a Wilful tax evasion by concealing net income or revenue, Special Real-Estate Tax (EFA) and Unified Real Estate Possesion Tax (ENFIA) from any source, failing to file tax returns, filing false tax returns or making false registrations of transactions in the accounting books (Article 66, Paragraph 1(a)).

b Wilful tax evasion by failing to pay VAT, any withholding taxes, duties and contributions, by not paying the correct amounts or offsetting the amounts due, or making false returns in relation to the amount of the above taxes that are due and as a result receives a refund (Article 66, Paragraph 1(b)).

c Wilful tax evasion by failing to pay shipping tax (Article 66, Paragraph 1(c)). Issuing or accepting (or forging) false or fictitious invoices, irrespective of whether the taxpayer avoids paying tax or not (Article 66, Paragraph 5).

In particular, the following penalties may be imposed a taxpayer for the offence of Article 66 of Law 4174/2013 (as amended).

A minimum of two years' imprisonment:

a if the tax corresponding to the concealed net income or revenue or assets exceeds the total amount of €100,000 in a tax year;

b if the amount of non-paid VAT exceeds the total amount of €50,000 in a tax year; or

c if the amount of non-paid withholding taxes, duties and contributions exceeds the total amount of €100,000 in a tax year,

Incarceration (minimum five years and maximum 20 years):

a if the amount of non-paid VAT exceeds the total amount of €100,000 in a tax year; or

b if the amount of non-paid withholding taxes, duties and contributions exceeds the total amount of €150,000 in a tax year,

For the crime of issuing or accepting (or forging) false or fictitious invoices (Article 66 Paragraph 5 Law 4174/2013) there is a penalty of minimum one year's imprisonment if the total amount of fictitious invoices exceeds €75,000. The imprisonment sentence is a maximum of 10 years if the total amount of fictitious invoices exceeds €200,000.

Furthermore, penalties may be imposed for the crime of non-payment of monetary debts owed to the Greek state (Law 1882/1990 Article 25). There is a minimum one-year imprisonment sentence if the total amount of debt owed exceeds the sum of €100,000.

There is a minimum three-year imprisonment sentence if the total amount of debt owed exceeds the sum of €200,000.

V TAX CLAIMS

i Recovering overpaid tax

By virtue of the new regime introduced by the Code of Tax Procedures, in case that a taxpayer is entitled to a tax refund, the Tax Administration may set off the claim for recovery of the overpaid tax with any tax due and then proceed to the reimbursement of any remaining difference, within 90 days as of the date of the refund's written application. Such a process should also cover the case of a foreign entity which has paid a tax not due. As per the prevailing case law crystallised in the course of the previous regime (Decision No. 340/2006 of the Council of State), in case of withholding both parties involved namely the foreign beneficiary entity and the Greek paying entity (on behalf of the latter) may lawfully request the refund of the tax that was unjustifiably withheld by the domestic company upon the payment of fees to the foreign one. However, the Greek entity is entitled to request the amount of the tax unlawfully paid to the Greek state only in case it has filed a written reservation along with the filing of the tax return, in which their concerns should be thoroughly analysed.

Especially for VAT refunds, the Tax Administration may reply to a request for refund within four months as of filing of the relevant request. In addition, under the refund process initiated back in 2012, a credit balance VAT (i.e., in case the outputs are less than the inputs) may be refunded after the filing of the relevant periodical return and there is no need to wait for such balance to be transferred so as to be offset at the end of the tax year.

ii Challenging administrative decisions

Administrative decisions or acts may be contested on grounds of any substantial or legal (procedural) illegality such as being contrary to legitimate expectation and constitutional authority or opposed to the EU legislation (especially regarding VAT disputes).

Nevertheless, the tax authorities and subsequently the tax courts have the tendency to focus more on the substantial merits of the case and thus they only take into account a typical illegality in case the latter is more than apparent.

iii Claimants

Tax claims can be brought by the taxpayer. Moreover, taxpayers who receive an assessment act may initiate tax litigation procedures after they have 'exhausted' the mandatory process of the 'administrative recourse'.

Especially with respect to VAT the taxpayer who charges the tax (i.e., the supplier of the goods or services) is in principle entitled to ask for the refund since such a person also bears the obligation to remit VAT to the state through the relevant returns. Nevertheless, Greek case law (Decision No. 225/2012 of the Administrative Court of First Instance of

Heraklion) has recently dealt with the issue of whether the customer is also entitled to requestthe refund of unlawfully paid VAT in light of the ECJ jurisprudence (C-94/10, *Danfoss A/S and Saier – Danfoss Aps v. Skatteministeriet*) due to the fact that the latter has suffered the VAT burden and has ruled in favour of the customer's privilege to ask for the refund.

VI COSTS

In addition to legal fees for the preparation and filing of a judicial appeal, there is a judicial fee of 2 per cent for referring the case to court, which may not exceed €10,000. The failure to deposit part of such judicial fee before the first hearing of the case results in the rejection of the appeal since the payment of such fee is a prerequisite for the admissibility of the judicial remedy.

In addition, in case a decision of a first instance court is challenged before an appellate court, 50 per cent of the amount of tax originally assessed by means of the first instance court's decision should be paid prior to the first hearing. Again, non-payment of such amount may result in the denial of the appeal on procedural grounds.

Greek law regulating tax litigation provides that the losing party must bear the costs of the litigation. The costs are charged to the defeated party through a reference included in the court's decision on the basis of the costs incurred. In practice though, the courts just limit themselves on defining the minimal ones. In case of partial victory or partial defeat of each litigant, the court may offset the costs to both parties. Under certain circumstances, courts can also discharge costs of the losing party. If the trial is repealed, for any reason, the costs are not charged to the litigants.

VII ALTERNATIVE DISPUTE RESOLUTION

In 2011 a piece of legislation was enacted on the basis of which arbitration could also apply to tax disputes further to a specific agreement between a taxpayer and the competent tax authorities. Nevertheless, the respective provisions were never activated.

As mentioned above, Greece does not operate an advance clearance or ruling system. Up to now, taxpayers could file written queries to the Central Directorate of the Greek Ministry of Finance with full disclosure of the facts of the case but the relevant answers were not strictly speaking legally binding for the tax authorities during the course of an audit (although in practice the latter usually tend to respect them). As of 1 January 2014, such a practice due to the enactment of the Code of Tax Procedures appears to decline.

VIII ANTI-AVOIDANCE

A general anti-avoidance tax provision (GAAR) has been introduced for the first time in the Greek tax system as of 1 January 2014, according to which the Tax Administration may disregard any kind of 'artificial' arrangement or series of arrangements that aim at the evasion of taxation and lead to a tax advantage.

It is defined in the text of the law that an arrangement is considered 'artificial', if it lacks of commercial substance. For determining if an arrangement is 'artificial' various characteristics are examined.

For the purposes of this provision, the goal of an arrangement is to avoid taxation in the event that, regardless of the subjective intention of the taxpayer, it is contrary to the object, spirit and purpose of the tax provisions that would apply in other cases. In order to determine the tax advantage, the amount of tax due taking into consideration such arrangements is compared to the tax payable by the taxpayer under the same conditions in the absence of such arrangement.

As the anti-avoidance clause is quite recent within the Greek legal framework, no corresponding jurisprudence has been established so far for interpreting such an ambiguous rule. At the same time, it appears that the competent authorities have not yet started applying the rule (at least on a large scale).

IX DOUBLE TAXATION TREATIES

There are currently 56 bilateral tax treaties in force to which Greece is a party, the majority of which applies to income and capital. In fact, Greece's tax treaty network covers all of the EU Member States.

Double tax treaties constitute international agreements, which are transposed into the Greek legislation and override any other domestic law on the basis of an explicit constitutional rule. Almost all double tax treaties that Greece has entered into have been drafted alongside the OECD Model Tax Convention on Income and Capital. However each treaty must be examined separately as there are variations, as a result of the negotiations between the contracting states. By exception, the treaties executed with the USA and the UK (being the oldest ones) deviate from the Model as they were concluded before the adoption of its first draft back in 1963.

The Greek tax authorities up to now, in interpreting the double tax treaties were very eager to disregard the OECD guidelines (as embodied in the commentary) due to the fact that the relevant domestic legislation was not updated with such guidance and thus they reacted quite aggressively upon detecting, for example, a permanent establishment (PE) issue. Nevertheless, the respective legislation on PEs has recently been updated with the OECD guidelines in the context of the general reform of the Greek tax legislation effected during the last couple of years and thus it remains to be seen how the authorities will react to this change.

As regards the courts' approach to interpreting double tax treaties, the relevant case law basically takes into account the OECD Commentary and the rules of interpretation of the Vienna Convention. Nevertheless, in some cases the Greek courts tend to be more restrictive upon construing the provisions of the double tax treaty. In actual fact, a recent case ruled by the Supreme Court (i.e., Decision No. 2033/2014 of the Council of State) related to the deductibility of general administrative expenses of a PE established by a US bank pursuant to a specific Ministerial Decision issued for the implementation of the domestic legislation. In particular the US bank's arguments were accepted during the course of the two degrees of competence namely in the first instance court and in the Court of Appeal since the latter acknowledged that the special requirements set by the respective Ministerial Decisions were in breach of the applicable double tax treaty with the USA and in any case such conditions violated the principle of 'equal treatment' as the latter is analysed in the Treaty also in light of Article 7, Paragraph 3 of the OECD Model Tax Convention. Nevertheless, the Council of State decided to finally annul the appellate decision and thus accepted the arguments brought forward by the Greek tax authorities on the grounds that the specific requirements requested do not violate the letter and the spirit of the Treaty, which aims at the avoidance of double taxation and in parallel at the prevention of the tax evasion. In fact, the last observation of the Greek Supreme Court is rather interesting as to how the Greek courts perceive the aim of a double tax treaty, which should also contribute to the elimination of tax evasion.

As regards the interpretation of the VAT legislation the Greek courts upon delivery of their judgment do not ignore the prevailing ECJ jurisprudence (as vividly reflected in the aforementioned case law, See Section V.iii, *supra*).

X AREAS OF FOCUS

Until now the main area of controversy related to the deductibility of an enterprise's common expenses since the Greek tax authorities focused their attention on disallowing such costs on the basis of the 'productivity' criterion. In this respect, several cases before the administrative courts were brought by the taxpayers or corporations claiming that such costs should have been accepted for deduction from the gross profits in the course of the tax audit. Nevertheless, such a trend should be mitigated in the near future since in the last couple of years the big corporations are mandatorily audited by their statutory auditors for tax items as well, thus disputes over the deduction of such expenses has been decreased.

Another major cluster of cases currently pending before the Greek courts referred to issuance and receipt of 'fictitious' invoices since the competent tax authorities had the tendency to react very aggressively in cases whereby there was an indication of tax fraud.

For foreign companies the usual issues raised by the Greek tax authorities in the context of a scrutiny related to PE risks, withholding taxation regarding the payment of interest and royalties by domestic entities and the imposition of stamp duty to loan arrangements, cash pooling schemes and other similar lending facilities, an area in which frankly the Greek tax authorities have been very active in the last couple of years.

A very interesting update refers to the increase of tax disputes involving individuals and specifically high net worth ones. Due to the financial crisis and the need for collecting as many taxes as possible, there was a shift of the auditing authorities' interest from the legal entities (which in most cases had literally run out of cash liquidity) to individuals who are behind such entities namely acting as shareholders or directors and seemed to enjoy a rather lucrative life. This change triggered a series of investigation on the part of the authorities as to whether those individuals have reported (so as to be taxed) all of their income and other property gathered during the last decade. Consequently, a lot of such cases ended up in the courts and are currently pending before the latter.

Definitely, in the coming years transfer pricing should emerge as a 'hot topic' for the Greek tax authorities, although they currently appear not to be so familiar with the mechanics of such legislation. In fact, there are limited cases whereby a transfer pricing issue was raised by the Greek authorities but this should change in the future. Additionally, some cases that involved transfer pricing adjustments at the end of the year were treated by the Greek tax authorities as disputes referring to the 'productivity' of expenses, although such adjustments actually related to transfer pricing. Thus, the authorities disallowed the charges relating to such adjustments on the grounds of the lack of 'productivity' criterion.

Ultimately, as regards CFC rules, they have only been introduced in the Greek tax legislation as of 1 January 2014 and thus they have not so far been tested in practice.

XI OUTLOOK AND CONCLUSIONS

The inherent complexity and formalism of the taxation system in Greece over the year has consistently created difficulties in following up legislative developments and at the same time it was 'feeding' the aggressiveness of the tax authorities when they had to execute a tax audit.

Unfortunately, in the past couple of years this situation has become even worse since the economic turmoil has resulted in a dramatic change of the applicable legislation, thus aggravating the position of a taxpayer or litigant party to pursue and win a case in the courts. In this respect, the judicial fees have significantly increased for referring a case to the courts, whereas the procedural requirements for the admissibility of judicial appeal have become harsher than before.

At the same time, the inclination of the administrative tribunals and to some extents of the courts upon dealing with a tax dispute is basically to reject the taxpayers' requests since the state argues that the non-payment of taxes has a detrimental impact on the achievement of its budgetary goals and thus the prevailing 'public interest' is not served in this respect (an assumption already sustained by the plenary of the Council of State), whereas today the priority is for the state to collect as many taxes as possible so as to handle the strikingly unprecedented financial crisis.

Upon detecting cases of tax fraud, the tax authorities are now more eager to use the relevant criminal proceedings, which have become more severe in the past couple of years, and to use the means provided by the anti-money laundering provisions.

Last but not least, automatic exchange of information for tax purposes (overriding bank secrecy) between EU and OECD countries and mutual assistance in combating tax evasion and collecting taxes should be common practice in the near future, thus all parties involved should be ready for such update that shall also effect tax dispute resolution and tax litigation.

Appendix 1

ABOUT THE AUTHORS

PANAGIOTIS POTHOS

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Panagiotis heads the KG's tax department. His field of expertise includes corporate taxation, tax structuring of foreign investments, tax incentive legislation in mergers & acquisitions, tax audits and litigation before the administrative courts, and tax planning for high net worth individuals.

He acts particularly for international investors in cross border transactions (with a focus in the energy and construction sectors) and advises major Greek enterprises and subsidiaries of MNEs in various industries (automotive, financial, insurance, manufacturing, maritime, pharmaceutical, retail, TMT) regarding all aspects of Greek taxation. Panagiotis has also experience in advising sponsors and lenders in the context of major public private partnership and concession projects, and represented major corporations and individuals in the context of administrative and court proceedings regarding tax disputes. In addition, his practice focuses on private wealth planning and asset portfolio restructuring.

Prior to joining the firm, he was a senior manager in the tax department of one of the big-four audit firms in Athens and a Senior Associate in the tax department of highly respected law firms.

Panagiotis is a frequent speaker in both international and local tax law conferences, such as the 12th (2012) and 13th (2013) Annual Tax Planning Strategies: US and Europe conferences (organised by the American Bar Association, the International Fiscal Association and the International Bar Association), the 20th (2015) Annual International Wealth Transfer Practice Conference (organised by the International Bar Association) and the annual Athens and Thessaloniki Tax Forums organised by the American-Hellenic Chamber of Commerce.

He regularly contributes in various international editions on Greek taxation issues.

NINA KAKALI

Kyriakides Georgopoulos Law Firm

Nina works for the tax department of KG law firm.

She specialises in the field of tax dispute resolution and litigation. Her practice area focuses on handling issues concerning tax audits, the collection of public revenues and the application of EU tax legislation. She has extensive experience in representing clients before the competent administrative bodies, tribunals and courts of law involving direct and indirect taxation, import duties and customs rules as well as EU law matters.

Nina has also practised litigation and consulting in a wide range of public law.

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