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Statute of Limitations for tax assessments - Landmark decision of the Supreme Administrative Court

A few days ago the Supreme Administrative Court issued decision no. 1738/2017, ruling that, under certain circumstances, extensions of the time period set out in statutes of limitations ("SoLs"), concerning the right of the Greek State to assess taxes are in violation of the Greek Constitution.

SoLs and the practice of the legislator

Greek tax law provides for different SoLs, depending on the case and on the year of reference. For fiscal years up to 2013 the standard SoL sets out a five-year period for the assessment of income taxes, starting from the end of the year within which the respective tax return has been filed. This period is extended to ten or fifteen years, if, among others, supplementary information comes to the attention of the tax authorities, that was not available at the time of the initial tax audit, or no tax return has been filed by the taxpayer. From year 2014, the standard SoL time frame for income tax assessments remains five years, as previously applicable. However, in the event of tax evasion, the maximum period is extended to up to twenty years.

Due to the delays in the performance of tax audits, in the past decade it has been standard practice for the legislator to extend by law the time periods set out in SoLs. In terms of timing, extensions have usually entered into force shortly prior to the expiration of the time period set out in the applicable SoL.

The decision of the Supreme Administrative Court

In the case that led to the issuance of the decision in question, the Court was called to rule on whether the laws that provided for the extensions are compatible with the Greek Constitution. The Court acknowledged that the continuous extensions create great uncertainty to the taxpayers, whereas said extensions make it more difficult for the State to collect taxes.

The Court ruled that legal provisions extending the time period indicated in previous SoLs are compliant with the Constitution, provided that they enter into force either within the fiscal year to which the relevant tax assessment refers or up to the end of the next year. By way of example, a legal provision extending the time period indicated in the SoL for the assessment

of taxes concerning fiscal year 2006 is compatible with the Greek Constitution, to the extent that it has entered into force either within year 2006 or within year 2007.

In practice, most legal provisions extending time periods indicated in SoLs up to now were enacted long after the year of reference. This means that tax assessments made on the basis of such extending provisions could be nullified in Court.

What's next?

It is of great interest to see, how the Greek Ministry of Finance will react to the above decision and whether guidelines will be released towards the tax authorities as to which fiscal years should be considered as time barred. The plot thickens, taking into account that (a) the voluntary disclosure program for all taxpayers is still running, while (b) a number of taxpayers are currently under tax audit for fiscal years prior to 2011 under a legal framework that may be questioned in the context of the new Supreme Court case law.

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