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Tax Controversy 2024


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Greece: Law & Practice

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Zepos & Yannopoulos

Greece: Trends & Developments

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GREECE



Law and Practice

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Zepos & Yannopoulos is one of the longest-established law firms in Greece, having been founded in 1893. Throughout its history it has consistently been one of the most prominent law firms in the country. Zepos & Yannopoulos offers comprehensive legal and tax services, with a focus on multinational companies and high net worth individuals. The firm's tax and accounting practice, acknowledged as the largest and most specialised in any law firm in Greece,

offers the full range of tax services on both a transactional and ongoing basis to clients doing business in the country, in collaboration with its affiliated company Zeya Accounting. The tax and accounting practice covers the areas of corporate tax and accounting compliance, international tax and M&A, tax controversy and litigation, real estate taxation, transfer pricing, VAT, indirect tax and customs, banking and finance taxation.

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Z E P O S & Y A N N O P O U L O S

1. Tax Controversies

1.1 Tax Controversies in This Jurisdiction

The majority of tax controversies in Greece arise following a tax audit initiated by the tax authorities. The taxpayers to be audited are selected on the basis of a risk analysis made centrally by the tax administration, using criteria not officially published. Once the taxpayer is selected for audit, an audit order is issued and notified to the taxpayer, thus initiating the tax audit. Furthermore, unannounced tax audits may be performed on the spot to check the compliance of taxpayers. Depending on the findings, tax audits may result in the assessment of taxes, penalties and interest against the taxpayer, which the latter has the right to dispute.

A tax controversy may also be initiated in cases where:

- the taxpayer files tax refund claims, when in a tax credit position; or
- the taxpayer files tax returns with reservation or revokes tax returns already filed and asks for the refund of a tax they consider to have been unduly paid.

In both the above-mentioned cases, the tax authorities may:

- perform an audit in order to review the refund claim of the taxpayer, which can result in its rejection; or
- let the relevant deadline for reviewing the refund claim pass, thus tacitly rejecting the refund claim.

1.2 Causes of Tax Controversies

There is no official statistical data as regards the taxes that more often give rise to tax controversies, either in terms of nature or values involved.

In practice, however, it appears that the most common areas of tax controversy for legal entities concern corporate income tax (including transfer pricing), VAT and stamp duty. For individuals, tax controversies arise mostly in relation to personal income tax and property taxes.

1.3 Avoidance of Tax Controversies

Tax legislation in Greece is often complex, and at times outdated, not adjusting to the changing economic reality and new types of transactions carried out. As a result, there are many issues whose tax treatment is currently not regulated by Greek tax law. At the same time, tax legislation is widely fragmented, with many decisions and circulars being issued for the interpretation of the applicable legal framework and the provision of guidelines for its implementation. Furthermore, especially since the financial crisis, tax legislation has been subject to constant amendments, which are sometimes not easy to keep up with.

In view of the above, it can be difficult for taxpayers to achieve full compliance with their tax obligations and therefore mitigate the possibility of a tax controversy. They are protected, however, when they have followed the interpretation and guidelines contained in the circulars and decisions issued by the tax administration, which are binding for the tax authorities. As long as this is the case, the taxpayers cannot be assessed with taxes and penalties.

However, Greek tax legislation does not provide for the issuance of binding tax rulings, so it is not possible to receive, in advance, the binding position of the tax administration on the tax treatment of certain transactions, and thus reduce uncertainty. Written queries may be filed with the tax administration, although their prevailing policy is no longer to issue individual replies, but, when they receive multiple queries on the same

issue, to issue (where possible) general guidelines through circulars. However, even when they issue individual replies, the tax auditors are not bound by them and can adopt a different position.

There is an exception for transfer pricing, where advance pricing agreements (APAs) can be concluded with the tax authorities.

1.4 Efforts to Combat Tax Avoidance

The OECD's base erosion and profit shifting (BEPS) recommendations and the EU's recent measures to combat tax avoidance have not yet had an impact on tax controversies in Greece. The reason for this is that they are relatively new and not many audits have yet been performed for the fiscal years in which these rules have been in effect. It should be noted that the statute of limitations for the right of the tax authorities to perform audits is, in principle, five years starting from the end of the tax year in which the relevant tax return should be filed and usually the tax authorities perform audits towards the end of this period.

There have been isolated cases where the general anti-abuse rule (GAAR), contained in the Tax Procedures Code, has been invoked by the tax authorities; however, the Administrative Courts have not yet widely examined and commented on this rule.

1.5 Additional Tax Assessments

Upon issuance of the final tax assessment note following an audit, the taxpayer is obliged to pay the total amount assessed within 30 days. Making this payment is not a pre-condition for disputing the assessment further. However, when an administrative appeal is filed and 50% of the assessed amount is paid, payment of the remaining 50% can be suspended by law.

If the administrative appeal is rejected and the taxpayer proceeds with a judicial appeal at first instance, the suspension remains (although in the event that the appeal is dismissed, payment of the suspended amount will be burdened with 8.76% interest per year, from the date it had originally become due).

However, if the judicial appeal is dismissed at first instance, payment of 20% of the main tax upheld by the first instance court that is due (excluding penalties and interest) is a condition for the admissibility of the second instance appeal.

If the assessed amounts are not paid when they become due, without being lawfully suspended, they become overdue, and the tax administration has the right to take enforcement measures.

Safeguard Measures

Nevertheless, even before the tax debt becomes due and payable, the tax administration may impose so-called safeguard measures in order to avoid the imminent risk of not collecting taxes. Such measures include the seizure of movable and immovable assets or claims of the debtor.

In a case where, in the context of a tax audit, the tax authorities consider that the taxpayer has not paid VAT; insurance premium tax; or taxes, duties and contributions which are either withheld or passed on to the counterparty, the amount of which exceeds EUR150,000, they have the right to proceed with the following safeguard measures against the taxpayer:

- freezing 50% of the bank deposits and the contents of safety-deposit boxes;
- freezing the entirety of the non-monetary assets of safety-deposit boxes; and

- not issuing documents required for the transfer of assets (eg, tax clearance certificate).

Where the taxpayer, who is found not to have paid the above amount of taxes, is a legal entity, the aforementioned safeguard measures are also imposed against any individual involved in the management, administration and representation of the legal entity.

The safeguard measures are lifted if 70% of the total assessed amount is paid, or the taxpayer submits a guarantee letter of an equal amount in favour of the Greek State.

Penalties and Criminal Proceedings

When an additional tax assessment is made, apart from the main tax due, penalties and interest are also assessed. These penalties include the administrative penalties that are applicable to the tax infringements identified and therefore administrative offences are not subject to a procedure separate from the additional tax assessment.

Should, however, the tax infringements result in tax evasion that triggers criminal liability, criminal proceedings may be initiated against the taxpayer (or their representatives, when the taxpayer is a legal entity).

2. Tax Audits

2.1 Main Rules Determining Tax Audits

As mentioned in **1.1 Tax Controversies in This Jurisdiction**, the taxpayers to be audited are selected on the basis of a risk analysis made centrally by the tax administration, using criteria not published. Therefore, the tax administration identifies those taxpayers for whom there is an auditing priority; however, the way in which

this qualification is made is not disclosed. In this respect, tax audits may also be triggered by information the tax authorities receive from other countries (when the taxpayer is involved in cross-border transactions) or from audits performed on other taxpayers, for example when a supplier is found to have been issuing fictitious invoices. Furthermore, unannounced tax audits may be performed on the spot to check the compliance of taxpayers, usually those engaged in the retail sector where the risk of tax evasion is high (eg, unannounced visits to restaurants to check the issuance of retail receipts to the customers).

2.2 Initiation and Duration of a Tax Audit

A tax audit can be initiated at any time within the statute of limitations; ie, as long as the right of the tax authorities to proceed with an assessment has not expired under the statute of limitations rules. According to these rules, the tax authorities have the right to assess taxes within five years, starting from the end of the tax year in which the relevant tax return should be filed.

The aforementioned statute of limitations is extended as follows.

- For one year if the taxpayer submits an initial or an amending tax return within the fifth year of the statute of limitations or if new evidence is made known to the tax authorities within the fifth year of the statute of limitations; in the latter case, the extension applies only for the matter which the new evidence relates to.
- In a case where a request for information is submitted to foreign tax authorities, the statute of limitations is extended for as long as it takes for the transmission of the requested information, plus one year from the receipt thereof by Greek tax authorities.

- In a case where an administrative or a judicial appeal is filed, the statute of limitations is extended for one year following the issuance of the decision; the extension concerns only the subject matter under dispute.
- In a case where a mutual administrative procedure (MAP) is initiated, the statute of limitations is extended for as long as the MAP lasts and only for the subject matter under dispute; if a decision is issued in the context of the MAP, the statute of limitations is extended for one year following the issuance of the decision.
- In a case where an application for the annulment or amendment of a tax assessment is made because a numerical mistake has been made or it is obvious that no tax liability exists, or the annulment/amendment is made by the tax authorities without an application having been made, the statute of limitations is extended for one year after the annulment/amendment and only for the matter the assessment concerns.
- In a case of non-filing of a tax return within five years from the end of the year in which the tax return should be filed or new evidence is made known to the tax authorities after the completion of the aforementioned five-year period, the statute of limitations is extended to ten years.

As long as the statute of limitations has not lapsed, there is no time limit for the completion of the audit, although the tax audit order issued for the particular audit provides an indicative duration of the audit.

The issuance of a tax audit order, or the tax audit itself, does not suspend or interrupt the statute of limitations. Any such suspension occurs only upon the issuance of the final tax assessment note to the taxpayer.

2.3 Location and Procedure of Tax Audits

Usually, the main part of the audit is performed from the tax authorities' offices. Upon initiation of the tax audit, the tax authorities serve a written request to the taxpayer, requesting them to provide certain data from their books and records. The taxpayer provides them electronically and then the audit is performed remotely. However, during the audit, the tax auditors may regularly visit the taxpayer's premises to discuss certain issues they need to clarify with them, or to check additional documentation.

2.4 Areas of Special Attention in Tax Audits

As regards corporate income tax, the deductibility of expenses is still the main focus of tax auditors. In this respect, the tax auditors may challenge this deductibility on two grounds:

- because they consider that the productivity condition has not been met (ie, that the expense has not contributed to the expansion of the business and the increase of its income); or
- because the supporting documentation available is not sufficient to establish the deductibility (eg, no detailed descriptions on the invoices).

In relation to VAT, the application of exemptions and reduced VAT rates is scrutinised, both with regard to the substantive conditions for their application, as well as the formal conditions (eg, the existence of supporting documentation evidencing the nature of the VAT-exempt activity or the goods that are subject to the reduced rates).

Stamp duty has been another area of focus for tax auditors, especially cross-border inter-company loans and whether their execution is

deemed to have taken place in Greece, as per the territoriality rule. In this respect, auditors will review the flow of payments made in the context of such loans.

Lately, the focus of audits has also shifted to transfer pricing, with the tax auditors scrutinising the benchmarking studies. Cross-border cost-plus structures are also reviewed for permanent/ fixed establishment purposes.

Overall, the tax authorities still focus equally on substantive issues as well as formal ones (as regards the existence and proper issuance of fiscal documentation); in the coming years, however, it is expected that more focus will be placed on the substantive issues.

2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

Cross-border exchanges of information and mutual assistance have increased, especially with regard to VAT audits, where cross-border exchanges of information and assistance are more common. The audits usually focus on discrepancies detected in the transactions declared in EC Sales Lists, whereas audits on possible carousel frauds are also performed. Lately, multi-country audits have started being conducted, again with regard to VAT. Additionally, this exchange of information has recently started to be extended to the income of individuals generated in other countries.

2.6 Strategic Points for Consideration During Tax Audits

From a strategic point of view, during a tax audit it is important for the taxpayer to respond in a timely manner to any requests raised by tax authorities. This means that the taxpayer should

provide all documentation and data requested, and be prepared to provide explanations and clarifications on issues not clear to the tax auditor. Orderly bookkeeping, prompt retrieval of any supporting documentation requested and solid explanations may have a positive impact, since otherwise the tax auditors may be negatively predisposed and therefore become more aggressive.

3. Administrative Litigation

3.1 Administrative Claim Phase

Upon completion of the tax audit, the competent tax authorities that performed it shall serve the taxpayer with a preliminary audit findings report, together with a provisional assessment note on the amount of taxes and penalties to be assessed. The taxpayer shall have a 20-day deadline to submit an explanatory memorandum raising arguments against the audit findings together with any supporting documentation.

Following the review of the aforementioned memorandum, the tax authorities may accept the arguments raised by the taxpayer either fully or partially, or may reject them entirely. Accordingly, and within a month from receiving the memorandum, they shall issue the final audit report and the final tax assessment notes assessing the taxes and penalties.

Upon being served the final assessment notes, the taxpayer shall have a 30-day deadline (60 days if the taxpayer is not established in Greece) to submit an administrative appeal before the Dispute Resolution Unit, a special directorate of the Independent Authority for Public Revenue, which is exclusively competent to review administrative appeals.

The submission of such an administrative appeal is a condition of admissibility for any subsequent judicial appeal before the competent court.

3.2 Deadline for Administrative Claims

The Dispute Resolution Unit shall have a 120-day deadline to issue a decision on the administrative appeal (the deadline is suspended from August 1st to 31st). Upon the lapse of the aforementioned deadline, and in so far as no decision has been issued, the administrative appeal shall be considered as tacitly rejected.

In such a case the tacit rejection can be challenged by filing a judicial appeal with the competent administrative court, while the explicit rejection of an administrative appeal is challenged in the same way.

4. Judicial Litigation: First Instance

4.1 Initiation of Judicial Tax Litigation

Judicial tax litigation is only initiated following the explicit or tacit rejection by the Dispute Resolution Unit of the administrative appeal filed by the taxpayer. Direct recourse to the courts without prior filing of an administrative appeal is not permitted. The judicial appeal is filed within 30 days (or 90 days for taxpayers not established in Greece) from the service of the negative decision by the Dispute Resolution Unit or the tacit rejection of the administrative appeal.

4.2 Procedure for Judicial Tax Litigation

As long as the amount of the main tax or tax penalty under dispute is lower than EUR150,000, the case is lodged before the Administrative Court of First Instance. If the amount exceeds the aforementioned threshold, the case is directly lodged at first instance before the Administrative Court of Appeals.

Initially, the taxpayer must submit an appeal before the competent court, as defined in 4.1 **Initiation of Judicial Tax Litigation**. The competent court is also determined by reference to the place of establishment of the taxpayer filing the appeal. The appeal should include the legal and factual arguments against the negative decision of the Dispute Resolution Unit or the tacit rejection of the administrative appeal. Subsequently, and in any case no later than 15 days before the hearing date, the taxpayer has the right to submit additional grounds for the appeal. The document containing these additional grounds should be officially served by the taxpayer to the litigant tax authorities through a court bailiff.

The competent court shall set a hearing date and notify the parties accordingly. The taxpayer has the right to ask for an adjournment of the hearing, explaining the reasons they are asking for it. Usually, the first time an adjournment is requested, the court agrees to it. However, requests for adjournment in subsequent hearings are less likely to be accepted.

The tax administration must submit before the court the case file, together with a report which sets out its position on the case, at the latest 30 days before the hearing date (although in practice this deadline is usually not observed). The taxpayer must furnish any supporting documentation and evidence to the court up to one day prior to the hearing date.

Following the hearing, the parties shall have three working days to submit a memorandum to elaborate further on any arguments already raised. Upon the lapse of this deadline, each party shall have three more working days to rebut the arguments offered by the other party in its memorandum.

The procedure is then completed, the court examines all documents submitted and issues its decision.

4.3 Relevance of Evidence in Judicial Tax Litigation

As mentioned in 4.2 Procedure of Judicial Tax Litigation, any supporting documentation and evidence should be submitted to the court up to one day prior to the hearing date. The supporting documentation submitted by the taxpayer is very important for the substantiation of their arguments and it is taken into account by the court. It is often the case that the court will dismiss appeals on the ground that the supporting documentation submitted by the taxpayer was not sufficient to prove their arguments.

Witness testimony is possible both in the form of an affidavit and through direct examination in court.

An affidavit may be furnished to the court, together with the other supporting documentation. In order for such an affidavit to be admissible, at least ten days prior to the testimony date, the taxpayer should notify the State (with an invitation served to the litigant tax authorities through a court bailiff), on the date, time and place (ie, the notary public's office) where the testimony will take place. This is to allow the tax authorities to have the opportunity to attend the testimony and ask questions if they so wish, but in practice they never attend.

The court may, of its own motion or following the request of a litigant party, order the examination of a witness before the court or before the Judge-Rapporteur, even if the witness has already testified via an affidavit. The request of a party for such an examination must be either included in the appeal or in a special applica-

tion submitted to the court five days prior to the hearing date. This option, however, is not usually followed in practice.

It is often the case that witness testimonies are not taken into account equally by the court with the rest of the supporting documentation (eg, agreements, invoices, extracts from the accounting books).

4.4 Burden of Proof in Judicial Tax Litigation

In the tax litigation proceedings before the administrative courts, each party has the burden to prove any facts it has invoked and support the argumentation it has raised, unless otherwise provided by law. The other party shall have the right to submit evidence in rebuttal.

As regards criminal proceedings, the competent criminal authorities should provide all the necessary evidence to substantiate the accusation, while the taxpayer needs to prove their own arguments.

4.5 Strategic Options in Judicial Tax Litigation Timing

The procedure before the court is standard: all legal arguments should be included in the judicial appeal at the time of its filing with the court, or with an additional document that can be filed up to 15 days prior to the hearing. Therefore, the Greek State will have the time and opportunity to review these arguments and rebut them with its own memoranda. Thus, there is no room for a strategy as regards the timing of the raising of arguments. The same applies for supporting documentation and evidence. They should be submitted to the court up to one day before the hearing date. Usually, the tax authorities do not comment on the documentation and evidence

submitted, but they focus on rebutting the legal argumentation raised by the taxpayer.

It used to be debated whether all arguments should already be raised, and the supporting documentation and evidence submitted, at the level of the administrative appeal, or whether it was possible for them to be raised and submitted for the first time at the level of the judicial appeal. The Supreme Administrative Court, however, ruled that arguments relating to the facts of the case cannot be raised for the first time at the level of the judicial appeal if they had not already been raised with the administrative appeal. On the other hand, legal arguments related to the validity and interpretation of the applicable legislation or legal principles may be raised for the first time with the judicial appeal. In this respect, it is advisable for the taxpayer to raise all their arguments and submit all evidence at the level of the administrative appeal.

Settlements

In principle, and with certain limited exceptions, Greek law does not provide for a settlement procedure during the judicial phase, which, if entered into by the taxpayer, could result in the reduction of the payable amounts.

Payment in Advance

The payment of the amounts assessed is not considered as acceptance of the assessment by the courts. As mentioned above, in **1.5 Additional Tax Assessments**, upon filing of the administrative appeal and payment of 50% of the assessed amount, payment of the remaining 50% is suspended. The suspension continues even if the administrative appeal is rejected and a judicial appeal is filed. If the court issues a negative decision for the taxpayer, the taxpayer needs to pay the remaining 50%; however, this will be burdened with interest of 8.76% annually

(from the date this amount had originally become due). Therefore, when it is ambiguous whether the case will be won at court, taxpayers opt to pay the total amount assessed at the beginning, in order to avoid paying interest if they lose.

Expert Reports

Expert reports can be submitted as additional evidence. This could be opportune, especially as regards issues that present a certain degree of complexity for judges; eg, transfer pricing issues or issues requiring clarification on the accounting treatment of transactions.

4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation

The jurisprudence of international courts is usually taken into account by Greek courts and it is often the case that the courts base their rulings on such jurisprudence. This occurs especially when they examine VAT cases, where they almost always invoke relevant ECJ jurisprudence.

Doctrine may be referenced by Greek courts, in order to substantiate a position they have taken, but not that often. The same applies for the jurisprudence of foreign courts, with the Supreme Administrative Court being more likely to reference it, rather than the lower courts.

As regards international guidelines, BEPS reports have not yet started being invoked, whereas the OECD Commentary on the Model Convention on Income and on Capital, and the OECD Transfer Pricing Guidelines are invoked when relevant issues are examined by the courts.

5. Judicial Litigation: Appeals

5.1 System for Appealing Judicial Tax Litigation

If the amount of the main tax or tax penalty under dispute exceeds EUR150,000, the case is lodged directly before the Administrative Court of Appeals. In such a case, this court rules at first and last instance and its decision is not subject to an appeal (at second instance) but only to a writ of cassation before the Supreme Administrative Court.

Recourse to the Supreme Court is allowed only for matters relating to the interpretation of law. The writ of cassation is admissible in so far as the disputed amount exceeds EUR40,000. This amount refers to the main tax (not including penalties or interest). An additional condition of admissibility is that, for the legal matter in question, there is no prior jurisprudence of the Supreme Administration Court, or the contested decision of the Administrative Court of Appeals is contrary to existing jurisprudence of the Supreme Administrative Court or other supreme courts (including the ECJ or the ECHR), or to an irrevocable decision of an Administrative Court.

If the amount of the main tax or tax penalty under dispute does not exceed EUR150,000, the case is lodged before the Administrative Court of First Instance. In such a case, its decision is subject to an appeal (at second instance) before the Administrative Court of Appeals, provided that the amount under dispute exceeds EUR5,000. The appeal may be based on both legal and factual grounds. The decision of the Administrative Court of Appeals is again subject to a writ of cassation, under the conditions mentioned above.

5.2 Stages in the Tax Appeal Procedure Administrative Court of Appeals

The second instance appeal before the Administrative Court of Appeals is filed within 60 days from the date on which the decision of the Administrative Court of First Instance is served. The deadline is extended to 120 days for taxpayers not established in Greece. Additional grounds other than those included in the initial appeal can be put forward; however, the relevant document should be submitted to the Administrative Court of Appeals, at the latest, 15 days before the hearing date. The document with the additional grounds should be officially served to the litigant tax authorities through a court bailiff.

The court will set a hearing date and notify the litigant parties accordingly. The taxpayer has the right to ask for an adjournment of the hearing, explaining the reasons for which they are asking for that adjournment. Usually, the first time an adjournment is requested, the court agrees to it. However, requests for adjournment in subsequent hearings are less likely to be accepted.

The taxpayer should submit all supporting documentation and evidence, at the latest, by the day before the hearing. The tax administration must also submit before the court the file of the case, together with a report which sets out its position on the case, 30 days before the hearing date (although this deadline is usually not observed in practice).

Following the hearing, the parties shall have three working days in which to submit a memorandum to elaborate further on any arguments already raised. Upon the lapse of that deadline, each party shall have three more working days to rebut the arguments elaborated by the other party in its memorandum.

The procedure is then completed, the court examines all the documents submitted and issues its decision.

Supreme Administrative Court

As regards the writ of cassation before the Supreme Administrative Court, it is filed 60 days after the contested decision of the Administrative Court of Appeals is served to the taxpayer. If the taxpayer is not established in Greece, the deadline for the filing is extended to 90 days.

The Supreme Court shall set a hearing date and notify the applicant taxpayer accordingly. The latter should further serve the writ to the litigant tax authorities 20 days prior to the hearing date. Given the nature of the writ of cassation, no supporting documentation and evidence is submitted. The parties may submit a memorandum, to elaborate further on their arguments, six full days prior to the hearing. At the hearing, they may also make a request to the court president to submit an additional memorandum, within a fixed deadline to be determined by the president.

At the hearing, both representative lawyers of the taxpayer and the Greek State have the right to elaborate fully on their arguments and they may receive questions from the judges.

It is often the case that the hearings before the Supreme Administrative Court are adjourned ex officio, due to the heavy workload of the judges.

5.3 Judges and Decisions in Tax Appeals

Cases where the amount in dispute is less than EUR60,000 (this amount refers to the main tax, not including penalties and interest) are heard by the single-judge Administrative Court of First Instance. If the amount exceeds EUR60,000 and up to EUR150,000, the case is heard by the

Administrative Court of First Instance sitting with three judges.

If the amount exceeds the amount of EUR150,000, the case is heard at first and last instance by the Administrative Court of Appeals sitting with three judges.

The appeal against the decision of the single-judge Administrative Court of First Instance is heard by the single-judge Administrative Court of Appeals, while the appeal against the decision of the Administrative Court of First Instance sitting with three judges is heard by the Administrative Court of Appeals sitting with three judges.

Both the Administrative Court of First Instance and the Administrative Court of Appeals have many chambers comprised of different judges. The allocation of the cases to each chamber is made internally.

The writ of cassation before the Supreme Administrative Court is heard by the competent chamber of the Court sitting with five judges, who differ for each case, depending on the internal allocation of the cases that has been made. Important cases may be referred to the chamber sitting with seven judges or the Plenary of the Supreme Administrative Court.

6. Alternative Dispute Resolution (ADR) Mechanisms

6.1 Mechanisms for Tax-Related ADR in This Jurisdiction

In principle, there is no permanent alternative dispute resolution (ADR) mechanism applicable for taxes in Greece. By way of exception, a committee for out-of-court settlement of tax disputes has been set up, to which taxpayers may have

recourse. Such procedure, however, concerns tax disputes already brought before court and is limited time wise.

Taxpayers can apply to this committee until 30 June 2024 in relation to litigation that is pending before administrative courts until 29 June 2024 and only if the pending litigation concerns specific matters, enumerated in the relevant law.

6.2 Settlement of Tax Disputes by Means of ADR

The taxpayer files an electronic application before the committee with all supporting documentation. The committee should examine all applications before 31 October 2024. Once the committee has reviewed the file it submits a proposal to the taxpayer. If the latter accepts it within five working days, then minutes of the settlement are drafted by the committee and signed by the taxpayer.

6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

If the settlement is reached between the taxpayer and the committee for out-of-court settlement of tax disputes, the taxpayer may pay the tax due in interest-free instalments (1–24), whereas a reduction of penalties may also be provided (ranging between 35%–75%) depending on the instalments to be paid.

6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

Greek tax law does not provide for the issuance of binding rulings. Written queries can be filed with the tax authorities and the latter can provide written answers; however, these answers are not binding and the tax auditors can adopt a different position in the context of a tax audit. There is

an exception, however, as regards transfer pricing, where APAs are available.

6.5 Further Particulars Concerning Tax ADR Mechanisms

Please see **6.1 Mechanisms for Tax-Related ADR in This Jurisdiction**.

6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

The out-of-court settlement procedure is not available for transfer pricing and indirect determination of tax

7. Administrative and Criminal Tax Offences

7.1 Interaction of Tax Assessments With Tax Infringements

When an additional tax assessment is made, apart from the main tax due, penalties and interest are also assessed. These penalties include the administrative penalties that are applicable to the tax infringements identified, and therefore the administrative offences are not subject to a separate procedure from the additional tax assessment. When the taxpayer assessed is a legal entity, the individuals managing and representing the legal entity are also jointly liable for payment of the assessed amounts (taxes and penalties). Namely, if the legal entity does not pay its tax debt and it becomes overdue, the tax authorities have the right to approach the aforementioned individuals and request payment of the debt. At the same time, as mentioned in **1.5 Additional Tax Assessments**, the tax authorities have the right to impose safeguarding measures against the taxpayer (or their representing individuals) in order to ensure collection of the tax debts.

If the taxpayer commits tax evasion, they will also have criminal liability. Tax evasion is an offence triggering criminal liability, when the taxpayer intentionally avoids the payment of taxes, evidenced by omitting to file a tax return or filing an inaccurate tax return, or recording fictitious expenses in their accounting books.

Tax evasion also requires that certain thresholds of tax not paid be exceeded on an annual basis; ie, EUR50,000 for VAT or EUR100,000 for any other tax, this threshold being applicable separately to each type of tax.

When the taxpayer is a legal person and tax evasion is committed, the burden of criminal liability is borne by the individuals who manage and represent the legal entity.

In practice, following the issuance of the final tax assessment notes, and as long as the aforementioned thresholds for committing tax evasion are met, the tax officers – without examining or assessing whether the element of “intention”, as required by law for the offence of tax evasion, actually exists – will submit a criminal complaint to the competent Public Prosecutor against the persons bearing criminal liability.

The tax administration has clarified through relevant guidelines that ordinary income tax adjustments (ie, disallowed expenses), as well as TP adjustments and stamp duty, should not be considered as falling under the scope of tax evasion.

Furthermore, a separate criminal offence is provided by Greek law, when the tax debts of a taxpayer exceeding EUR100,000 have become overdue and the taxpayer does not pay them within four months from when they became overdue.

7.2 Relationship Between Administrative and Criminal Processes

Criminal proceedings are suspended until the deadline for the taxpayer to challenge the assessment expires, or if the taxpayer has challenged the assessment, until an irrevocable decision by the administrative courts is issued.

7.3 Initiation of Administrative Processes and Criminal Cases

Please see 7.1 Interaction of Tax Assessments With Tax Infringements and 7.2 Relationship Between Administrative and Criminal Processes.

7.4 Stages of Administrative Processes and Criminal Cases

As mentioned in 7.1 Interaction of Tax Assessments With Tax Infringements, the tax administrative infringement process is not separate from the additional tax assessment.

As regards the tax criminal procedure, following the submission of the criminal complaint by the tax authorities against the persons bearing criminal liability for the offence of tax evasion (and unless the relevant proceedings have not been suspended), the Public Prosecutor, on the basis of the evidence available, can decide either to initiate a pre-interrogation or interrogation procedure, to send the case directly to the competent criminal court, or to close the file. At the pre-interrogation or interrogation stage, the accused individual has the right to submit a defence statement along with all available supporting documentation. At this point, the Public Prosecutor may decide not to continue the criminal procedure or to send the case to the criminal court. In the latter case and at the hearing, the accused individual should present all substantiating documentation, in order to support their case. Following the hearing and the examination

of the facts and evidence, the court shall issue its decision.

Criminal tax cases are heard exclusively by criminal courts, which are totally separate from administrative courts, which only decide on the tax assessments, on the basis of tax law.

7.5 Possibility of Fine Reductions

Reduction of the applicable penalties for tax offences is only possible during the course of the audit and until the issuance of the preliminary audit findings report. After the audit has started, the taxpayer can voluntarily file corrective tax returns and pay any tax due, prior to that tax being assessed. In such a case, the applicable penalties are reduced by 40%. However, the reduction applies under the condition that the taxpayer will waive their right to challenge the payment of the taxes and penalties further.

Furthermore, once the tax assessment is finalised, no reduction is provided in the event that the taxpayer pays the total amount assessed, which becomes due anyway within 30 days from the assessment.

7.6 Possibility of Agreements to Prevent Trial

No such agreement is possible, whereas if the total amount assessed is paid, although the criminal tax trial will still take place, in practice it should be expected that the individual will be acquitted.

7.7 Appeals Against Criminal Tax Decisions

In criminal proceedings, the decision of the first instance court is subject to an appeal at second instance before the competent criminal court.

7.8 Rules Challenging Transactions and Operations in This Jurisdiction

Pursuant to guidelines issued by the Greek tax administration, transfer pricing adjustments should not be considered as falling under the scope of tax evasion. Therefore, in the event of such findings, criminal proceedings are not initiated.

However, as regards tax assessments arising from the application of the general anti-abuse rule (GAAR) or the specific anti-abuse rule (SAAR), tax authorities should be expected to submit a criminal complaint, where the relevant thresholds for committing tax evasion have been exceeded. Nevertheless, such rules are still not commonly invoked by tax authorities and therefore they do not result in tax disputes. There have been isolated cases where the GAAR has been invoked, especially in stamp duty cases; given, however, that the non-payment of stamp duty does not fall within the definition of tax evasion, no criminal proceedings have been initiated in this respect.

8. Cross-Border Tax Disputes

8.1 Mechanisms to Deal With Double Taxation

Until now, limited use of MAPs has been made in cases of tax assessments concerning cross-border elements, due mainly to the lack of response by the Greek tax authorities. Therefore, it has been more common for recourse to be made solely to domestic litigation.

In 2017, however, a renewed legislative framework was introduced for the processing of applications through MAPs, which provides for a structured review and response to such applications. Therefore, it may be possible for MAPs to

start being used more by taxpayers. Nevertheless, it should be noted that if recourse has also been made for the same matter to a domestic court and the latter issues a decision, then the MAP can no longer proceed.

In 2020, Greece also implemented Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. In 2021 the Multilateral Instrument (MLI) was also ratified, but neither of the two has yet had an impact on resolving double taxation issues, as they are recent.

8.2 Application of GAAR/SAAR to Cross-Border Situations

As mentioned in 7.8 Rules Challenging Transactions and Operations in This Jurisdiction, the GAAR or SAAR are still not commonly used and therefore no tax disputes have arisen due to their application to Cross-Border Situations. The same also applies with respect to the principal purpose test (PPT) introduced by the MLI and the amendments made in the DTTs, as the ratification of the MLI is recent. It should be expected, however, that it could potentially create more disputes with the tax authorities. The taxpayers would normally bring such disputes before the courts, the position of which cannot be predicted in advance, given the lack of precedent.

8.3 Challenges to International Transfer Pricing Adjustments

Transfer pricing adjustments have mostly been challenged under domestic litigation. There have been fewer cases where the MAP has been used, on the basis of both the EU Directive and the applicable double tax treaty.

8.4 Unilateral/Bilateral Advance Pricing Agreements

APAs are provided for in Greek tax legislation and are increasingly used as a mechanism to mitigate litigation in transfer pricing matters. Roll-back APAs have been introduced into Greek tax legislation as well.

APA applications are filed with the Directorate of Tax Audits of the tax administration and comprise the following stages.

- Preliminary consultations – any taxpayer interested in an APA may request entry into an informal preliminary consultation with the aforementioned competent Directorate, in order to explore the possibilities of the APA application being approved.
- Submission of the official APA application together with the minimum documentation provided by the applicable legal framework; if a preliminary consultation has taken place, the APA application should be filed within 30 days.
- Evaluation of the APA application – the competent Directorate evaluates the APA application and issues a document setting out its position; within ten days from the issuance of the aforementioned document, a final meeting is set with the interested taxpayer, who must be invited at least 20 days prior to the meeting date.
- If during the meeting an agreement is reached, relevant minutes are drafted.
- Within 20 days from the meeting, and on the basis of the minutes thereof, the decision on the APA is issued, which is served together with the minutes to the applicant.

The decision on the APA should be issued within 120 days from filing the relevant application. However, in cases where arrangements with for-

eign tax authorities need to be made, the above deadline is not applicable. The duration of the decision on the APA cannot exceed four years.

8.5 Litigation Relating to Cross-Border Situations

Until now, it was more common for litigation to be generated from cases concerning withholding taxes, and more specifically the definition of royalties (which are subject to withholding tax) versus business income (which is not subject to withholding tax). In such a case, litigation could be mitigated if the agreements in place gave a detailed description of the services actually provided (in order for their nature to be more easily defined) and, accordingly, the invoices contained sufficient descriptions or made reference to the agreements in place.

However, transfer pricing litigation is increasing, with APAs being suitable to mitigate litigation. Furthermore, there has been some litigation involving permanent/fixed establishment assessments concerning cost-plus structures, with the tax authorities adopting aggressive interpretations of the respective provisions of double taxation treaties and VAT legislation, however the Supreme Court has rejected such interpretations.

9. State Aid Disputes

9.1 State Aid Disputes Involving Taxes

There have been state aid disputes in the past involving taxes. One such dispute concerned tax-free reserves that certain companies had been allowed by law to form from their undistributed profits, under the condition that the respective amounts would be used in the next three years for certain investments.

However, the European Commission decided that the above incentive constituted state aid incompatible with the single internal market.

9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid

The practice followed for such recovery is that the competent tax authority issues an assessment note requesting the taxpayer to pay the tax that was not paid due to the application of the measure that has been qualified as unlawful/incompatible state aid.

9.3 Challenges by Taxpayers

There have been cases where taxpayers have challenged the assessment notes issued by the tax authorities by filing administrative appeals before the Dispute Resolution Union and judicial appeals before the competent administrative courts. However, the courts tend to confirm the assessments made by the tax authorities.

9.4 Refunds Invoking Extra-Contractual Civil Liability

In practice, taxpayers have not recovered the taxes they have paid on the basis of measures that have subsequently been qualified as unlawful/incompatible state aid, invoking extra-contractual civil liability of the state.

10. International Tax Arbitration Options and Procedures

10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)

Greece has chosen to apply Part VI on arbitration to all 57 DTTs it has concluded, which therefore qualify as Covered Tax Agreements. Only three of these DTTs (with Switzerland, Canada and

Mexico) already include an arbitration clause, but even for those Part VI is applicable.

10.2 Types of Matters That Can Be Submitted to Arbitration

As regards the existing DTTs that already include an arbitration clause, the DTT with Switzerland excludes from the scope of arbitration, matters for which a decision has already been rendered by a Greek or Swiss court or administrative tribunal. The DTT with Mexico allows arbitration only to the extent the taxpayer agrees in writing to be bound by the decision of the arbitration board.

Under the MLI, Greece has reserved the right to exclude from the right to submit to arbitration, cases:

- for which a decision on the issue has already been rendered by a court or administrative tribunal of either contracting jurisdiction;
- in respect to which application has been filed under the Convention on the Elimination of Double Taxation in connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC), as amended, or any subsequent regulation;
- involving the application of domestic anti-abuse rules;
- concerning items of income or capital that are not taxed by a contracting jurisdiction, because they are not included in the taxable base in that contracting jurisdiction or because they are subject to an exemption or zero tax rate provided under the domestic tax law of that contracting jurisdiction; and
- involving conduct for which the taxpayer or a person acting on behalf of the taxpayer has been found guilty by a court for tax fraud or another criminal offence.

10.3 Application of the Baseball Arbitration or the Independent Opinion Procedure

Greece has selected to apply the Independent Opinion Procedure.

10.4 Implementation of the EU Directive on Arbitration and/or the MLI

In 2020, Greece implemented Directive 2017/1852 on tax dispute resolution mechanisms in the European Union. Given that its implementation is recent there is no precedent yet as regards its application.

10.5 Existing Use of Recent International and EU Legal Instruments

The recent international and EU legal instruments to settle tax disputes were not already used in Greece.

10.6 New Procedures for New Developments Under Pillars One and Two

Both Pillars One and Two will take effect in Greece. It remains to be seen how they will be implemented, in order to evaluate whether they could mitigate tax controversies.

10.7 Publication of Decisions

Decisions adopted in the context of the mutual agreement procedure are published on the website of the Independent Authority for Public Revenue, without mentioning the details of the taxpayer concerned. If the taxpayer disagrees with the publication of the whole decision, a summary is published, which includes the description of the matter, the second country involved, the tax year and the legal basis for the decision.

10.8 Most Common Legal Instruments to Settle Tax Disputes

The legal instruments available so far have been the DTTs (prior to the MLI) and the EU Arbitra-

tion Convention. Furthermore, the EU Dispute Resolution Directive has been implemented, as well as the amendments in the DTTs after the MLI. Given that the last two have been recently implemented, so far, the most common legal instrument used to settle tax disputes has been the old DTTs (prior to the MLI), although their use has not been very extensive.

10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes

It is very common for lawyers to be hired by taxpayers in order to initiate and carry out the available procedures for the settlement of tax disputes.

11. Costs/Fees

11.1 Costs/Fees Relating to Administrative Litigation

No fees apply at the administrative stage.

11.2 Judicial Court Fees

For lodging an appeal at first and at second instance, the taxpayer shall pay a court duty equal to 1% of the amount under dispute and up to the amount of EUR15,000.

If the aforementioned court duty exceeds the amount of EUR3,000, only this amount has to be paid; any remaining amount up to the amount of EUR15,000 will be assessed by the court decision, if negative for the taxpayer.

Upon submission of the appeal at first or second instance, the taxpayer shall pay one third of the court duty, whereas the remaining amount should be paid prior to the hearing date.

If the appeal is rejected, the court duty shall be forfeited in favour of the Greek State. However, if the appeal is accepted, the court duty is refunded to the taxpayer (any such refund does not bear any interest).

11.3 Indemnities

With the appeal, the taxpayer can ask for the assessed amount of taxes and penalties they have already paid to be refunded with interest. Indeed, when they issue positive decisions for the taxpayers and order the refund of taxes and penalties, the courts usually also award interest.

11.4 Costs of ADR

No fees apply at an out-of-court settlement procedure.

12. Statistics

12.1 Pending Tax Court Cases

The Greek Ministry of Justice issues, on a quarterly basis, certain statistics regarding the number of court cases per instance.

As regards the administrative courts, based on the latest report available, pending tax cases (including customs cases) on 30 September 2023 were as follows.

In the Administrative Court of First Instance – 13,690 total pending tax cases, comprising:

- 4,368 tax cases for which no hearing date had been set;
- 4,907 tax cases for which a hearing date had been set but which had not yet been heard; and
- 4,415 tax cases which had been heard but for which no decision has yet been issued.

In the Administrative Court of Appeals – 5,570 total pending tax cases, comprising:

- 2,044 tax cases for which no hearing date had been set;
- 2,150 tax cases for which a hearing date had been set but which had not yet been heard; and
- 1,376 tax cases which had been heard but for which no decision had yet been issued.

As regards the Supreme Administrative Court, based on the latest report available, the total pending tax cases on 30 September 2023 were 3,035 analysed per amount under dispute as follows:

- 250 lower than EUR10,000;
- 173 between EUR10,001 and 50,000;
- 266 between EUR50,001 and 100,000;
- 850 between EUR100,001 and 500,000; and
- 779 over EUR500,000.

12.2 Cases Relating to Different Taxes

No statistical data is available as regards the number of cases per tax type and their value.

12.3 Parties Succeeding in Litigation

No statistical data is available regarding which parties have succeeded in litigation.

13. Strategies

13.1 Strategic Guidelines in Tax Controversies

Given the multiple stages of a tax controversy, it is important that the taxpayer sets the defensive line from the very early stage of the audit in order to be in a position to present a solid case before the tax administration and the competent courts. In this context, depending on the issues involved, the best efforts should be put forward in order to present the tax administration and courts with detailed and conclusive evidence on the factual background of the case as well as any administrative guidelines and jurisprudence on the interpretation of the applicable provisions. It should go without saying that the whole tax controversy procedure requires close monitoring at each stage in order to meet the deadlines and safeguard the best outcome.

Trends and Developments

Contributed by:

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Zepos & Yannopoulos is one of the longest-established law firms in Greece, having been founded in 1893. Throughout its history it has consistently been one of the most prominent law firms in the country. Zepos & Yannopoulos offers comprehensive legal and tax services, with a focus on multinational companies and high net worth individuals. The firm's tax and accounting practice, acknowledged as the largest and most specialised in any law firm in Greece,

offers the full range of tax services on both a transactional and ongoing basis to clients doing business in the country, in collaboration with its affiliated company Zeya Accounting. The tax and accounting practice covers the areas of corporate tax and accounting compliance, international tax and M&A, tax controversy and litigation, real estate taxation, transfer pricing, VAT, indirect tax and customs, banking and finance taxation.

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Z E P O S & Y A N N O P O U L O S

Length of Tax Litigation

While tax audits increase and they become more aggressive, an issue that often concerns taxpayers when considering whether to initiate court proceedings or not, is the length of tax litigation. It has always been the case that the administrative courts that are competent for tax disputes are burdened with excessive workload as there are thousands of cases currently pending.

A significant measure that was introduced about ten years ago to reduce the volume of cases before the administrative courts was the mandatory filing of administrative appeals before the Dispute Resolution Committee. Under Greek tax law, taxpayers that intend to challenge tax assessments cannot have direct recourse to the administrative courts, but they must first file an administrative appeal before the Committee.

According to the latest data available, approximately 25% of the appeals filed before the Committee are accepted, whereas approximately 40% of the rejecting decisions of the Committee are further challenged before the courts.

Whereas the number of positive decisions of the Committee may still be low, nevertheless there have been cases where the Committee has issued innovative decisions and has resolved disputes of high amounts in favour of taxpayers. Therefore, the Committee provides a valid opportunity for taxpayers to have their tax disputes resolved in a short time, as the Committee should issue its decision within 120 days, and without cost (as opposed to appeals filed before the courts that require the payment of court duties).

It is true that, on the basis of the above data, the Committee has reduced the workload of courts, allowing the faster processing of pending court

cases. Indicatively, in the past it could take even three to four years for a hearing to be set before the First Instance Administrative Court, whereas now the time has been reduced to approximately one-and-a-half years or even less. Delays mostly occur at the level of the Supreme Court, where currently over 3,000 cases are pending. Nevertheless, especially in the last several years, the Supreme Court has proven to rule fairly, dealing with and resolving complex tax matters, often in favour of taxpayers.

Length of Tax Audits

Greek tax law does not contain any provisions setting specific time limits during which the tax audits should be completed. As a result, it was often the case that the audits would be pending for years and the tax auditors would conclude them only when the prescription period was about to expire. However, this will hopefully change soon. It is within the imminent plans of Greek tax administration to introduce in the Tax Procedures Code specific time limits for the conclusion of tax audits and the issuance of any tax assessment acts. This will put an end to years-long audits that would excessively burden taxpayers.

Tax Audits Landscape

The frequency and intensity of tax audits was reduced during and immediately after the COVID-19 pandemic, where tax auditors were less aggressive, given the extraordinary circumstances surrounding the pandemic.

Now, however, that the situation has been stabilised, tax audits are on the rise again and have started becoming more aggressive. A factor contributing to this trend is the reshuffling of audit powers within tax administration. The audits that were performed by local tax offices have been transferred to centralised audit centres, which

often adopt different and more aggressive interpretations of tax law, overturning positions that were consistently followed by tax authorities in the past.

Furthermore, the aim of the government is to increase tax revenues without raising the tax rates, therefore tax assessment is a way to achieve this.

Every year the tax administration publishes its audit schedule, and for 2024, more than 73,000 audits have been scheduled to be performed, including regular audits as well as on-the-spot audits which aim at verifying compliance with the many and often complex tax obligations of taxpayers.

Furthermore, the digital transformation of the tax administration, including real-time reporting by taxpayers, has resulted in more tools being at its disposal to perform faster and more targeted audits, often limiting direct interaction between taxpayers and tax officers. Additionally, the introduction of reporting obligations for third parties, such as digital platforms, allows tax authorities to have instant access to data concerning a wide range of taxpayers.

On the other hand, the tax audits that are triggered following refund requests by taxpayers are processed faster and where amounts for refunds are approved, their refund is completed soon.

Whereas transfer pricing remains the main focus of tax auditors, in the past several years, increasingly the deductibility of expenses for income tax purposes is also targeted. Greek tax legislation had introduced the obligation for statutory auditors of companies to perform a tax review as well, issuing a tax certificate confirming the tax compliance of the company or identifying issues

of non-compliance. The practice, however, was for the statutory auditors to discuss in advance the findings with the companies and ask them to proceed with corrective actions, before issuing the tax certificate.

However, as of 2016, this certificate is no longer mandatory. Whereas many companies still obtain it, as it provides an opportunity for tax compliance to be checked, a growing number of companies no longer obtain it and thus the first screening of tax compliance has been removed. This leaves room for tax auditors to scrutinise from the beginning the deductibility of the expenses.

Possibility for Out-of-Court Settlement

Greek tax law does not provide for a standard mechanism that allows taxpayers to settle with the tax authorities and obtain a reduction in taxes and penalties, after the assessment has been made.

By way of exception, an out-of-court settlement committee was set up for tax disputes and the procedure before this committee applies only for cases already pending before the courts. This committee, however, has limited scope since (i) relevant applications can be filed until 30 June 2024 for cases that are pending before the courts until 29 June 2024, and (ii) the law enumerates specific types of cases which can be brought before this committee. Furthermore, the deadline for the committee to issue decisions is until 31 October 2024, otherwise the applications are considered rejected.

The committee submits a proposal to the taxpayer as regards their tax liability and if the taxpayer accepts it, then the taxpayer can pay the tax due in instalments and benefit from further

reduction in penalties depending on the number of instalments over which the payment is made.

There are currently plans, however, for a general and permanent out-of-court settlement mechanism to be introduced, aiming at further reducing the courts' workload.

Recent VAT Case Law

Greek courts and the Dispute Resolution Committee have been particularly active in the last year in delivering judgments in VAT cases. While it is not common for Greek courts to refer cases to the Court of Justice of the European Union (CJEU), when they review VAT cases, they consistently follow the case law of the CJEU and their judgments are aligned with such case law. Highlights of domestic VAT case law are set out below.

Input VAT adjustment for fixed assets

Greek VAT law applies the same rules provided by the VAT Directive (2006/112/EC) as regards the adjustment of input VAT incurred and deducted upon purchase or construction of fixed assets, depending on their use. The adjustment period is five years starting from the year of first use of the fixed asset (except for immovable property for which the option to be leased with VAT has been exercised, where the adjustment period is ten years).

However, Greek VAT law contains an additional adjustment rule, which is not provided by the VAT Directive. According to this rule, when five years lapse from when the relevant cost for the purchase or construction of the fixed asset has been incurred and the fixed asset has not started being used yet, then the obligation exists for the total amount of the input VAT on this cost that has been deducted to be returned to the tax authorities.

Following assessments that were made by Greek tax authorities on the basis of the above rule, the First Instance Court of Athens decided that this rule is incompatible with the VAT Directive. The reason is that the Directive does not set a time limit as to when the fixed asset should start being used, so that no obligation arises to adjust the input VAT incurred upon the purchase or construction of the fixed asset.

This decision is particularly important for big construction projects, where it is common in practice for delays to occur in their completion, thus resulting in the input VAT incurred during their construction to become a cost.

Refund of credit VAT balance

One of the conditions for the deduction and subsequent refund of input VAT is that the goods or services burdened with VAT are used by the taxable person for carrying out VATable transactions. As regards in particular Renewable Energy Sources (RES) projects, one of the conditions for the operation of wind or photovoltaic parks is that a final licence is issued by the competent authorities.

However, until this licence is issued, the operators of such parks usually incur significant expenses related to preparatory works (such as feasibility studies) and procedures that need to be followed for all required licences and permits to be issued. Accordingly, a significant amount of input VAT is incurred which is requested for refund, and such refund is important from a cash flow point of view until the parks start being operative and generate revenues.

Lately, Greek tax authorities have denied these refunds, on the ground that, since the final licence has not been issued, it is not certain yet whether the park will actually operate and there-

fore whether VATable transactions will be carried out. In this respect, they have allowed for the input VAT to be carried forward in the next tax periods so that its refund is decided at the time the final licence is issued.

In several decisions, the Dispute Resolution Committee has ruled that the operators or RES parks are entitled to the refund of their credit VAT balance, even before the issuance of the final licence. The reason is that the operators of the parks have demonstrated in an objective manner their intention to perform a VATable activity (taking all the necessary steps to have the licence issued), therefore they should receive the refund of the input VAT at any time and if eventually the park is not licensed, at that time it should be examined whether the obligation arises to adjust the VAT that has been refunded.

This position of the Dispute Resolution Committee is very important in the RES sector, as it will allow the timely refund of credit VAT balances which will have a positive cash flow impact on the operators of RES parks.

Fixed establishment for VAT purposes

Greek tax authorities have taken the position that the repair of wind turbines taking place in Greece by a Greek company, where the relevant repair costs are invoiced to an affiliated company abroad, create a fixed establishment in Greece for the foreign company.

In this respect, the Court of Appeals has irrevocably ruled that such activity does not result in the creation of fixed establishment for the foreign company. The reason is that one of the conditions for a fixed establishment to be deemed to exist in Greece, is that the foreign company should have at its disposal the human and technical resources in Greece that perform the relevant activity. However, in a structure where a Greek company has undertaken to repair wind turbines and be remunerated by a foreign company, the human and technical resources of the Greek company remain only at the latter's disposal and they are used by the Greek company to provide its services to the foreign company. Therefore, the "disposal" condition for the creation of fixed establishment is not fulfilled.

CHAMBERS GLOBAL PRACTICE GUIDES

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