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Greece

TAX DISPUTES

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Greece.

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GREECE

TAX DISPUTES



1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

It is necessary for taxpayers to register with the tax authority.

Law provides for each natural and legal person or entity who will be liable to pay or withhold tax, according to the tax legislation or will be obliged to file a tax return within the context of Tax Procedures Code (L. 4174/2013) to apply for registration in the tax registry.

The tax registry provides the taxpayer with a Tax Identification Number, same for (corporate) income tax purposes, as well as for VAT purposes. However, if the taxpayer will be subject to VAT, he has in this case the obligation to report additional information.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment - or there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

Law provides for a dual system of tax assessments. In principle, tax returns are online filed through *Taxisnet*. The above electronic system proceeds to a direct tax assessment at the same time of submission.

However, pursuant to the relevant legislation there are also other forms of tax assessment, such as administrative tax assessment, estimated tax assessment, corrective tax assessment and preventive tax assessment, which are made by the competent tax authorities. Especially, in case of non-filing of a tax return, although the taxpayer was obliged to, the tax administration is allowed to proceed to an estimated tax assessment based on every available data.

Moreover, also in case of a direct tax assessment, tax

administration has the right to subsequently audit the filed tax return and proceed to the issuance of a corrective tax assessment.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Amending tax returns can be filed anytime until the service of a preliminary tax assessment, should a tax audit be underway. Otherwise, at any time within the statute of limitations.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

Following a tax audit, tax administration can proceed to a corrective tax assessment in relation to any previous assessment, should the tax audit conclude that the previous tax assessment made by the taxpayer was inaccurate or mistaken.

5. What is the procedure where a taxpayer has not registered so is unknown to the tax authority (for example a newly incorporated company or a foreign company operating through a permanent establishment?)

Law provides for the obligation of every person who conducts business activities to register to the tax administration prior to carrying out any transaction within the context of their business.

Moreover, tax administration has the right to assign, to suspend or to deactivate a Tax Identification Number on its own motion, if necessary, in order to be able to assess taxes, or to prevent further infringements of the tax legislation. Furthermore, the tax administration can

terminate a business, should a 2-year-period expire without the incorporation and registration of the business having been completed.

6. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

A tax audit can be initiated any time within the statute of limitations, i.e. within five years, starting from the end of the tax year in which the relevant tax return should be filed.

Said statute of limitations is extended, as follows:

- a. For one year, if the taxpayer submits an initial or an amending tax return or if new evidence is made available to the tax authorities, within the fifth year of the statute of limitations.
- b. For as long as it takes for the transmission of the requested information, should a request for information is submitted to another jurisdiction, plus one year from the receipt thereof by Greek tax authorities.
- c. For one year following the issuance of the relevant decision, should an administrative or judicial appeal be filed. In this case, the extension concerns only the subject matter under dispute.
- d. For as long as a Mutual Administrative Procedure (MAP) is in progress and only for the subject matter under dispute. If a decision is handed down in the context of the MAP, the statute of limitations is extended for one year following the issuance of the decision.
- e. For one year, should a request for annulment or amendment of a tax assessment or a fine be submitted, because of a numerical or calculating error or due to manifest lack of tax liability.

Apart from the above, the statute of limitations can be extended from 5 to 10 years, in case of non-filing of a tax return within five years starting from the end of the year in which the tax return should have been filed or in case new evidence is made available to the tax authorities after the expiry of the aforementioned five-year period.

Moreover, especially for years 2012 – 2017 should the tax authorities identify tax evasion, in this case the applicable statute of limitations extends to 10 years, starting from the end of the tax year in which the

relevant tax return should have been filed.

7. How is tax fraud defined in your law?

Law provides for a definition of tax evasion. The latter is committed when the taxpayer intentionally in order to avoid the payment of tax:

- conceals taxable income deriving from any source or assets; especially, by omitting to submit a tax return, or by submitting an inaccurate tax return, or by posting in the accounting books or declaring in the tax return (partly or fully) fake expenses,
- does not pay, or inaccurately pays, sets off and deducts taxes,
- deceives the tax administration in order not to pay, or to inaccurately pay, set off, deduct, receive a tax refund, or to hold taxes, duties & contributions,
- issues false or fictitious fiscal documents or accepts fictitious fiscal documents or alters same irrespective of whether avoids the payment of tax.

8. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

Tax authorities carry out a tax audit. Should the tax audit findings come within the ambit of law providing for tax evasion, the tax inspectors issue a corrective tax assessment and immediately file criminal complaints due to which criminal proceedings are initiated.

9. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

Due to the applicable statute of limitations, taxpayers are, in principle, audited once every 5 years, although there may be cases where they are audited more often, or they are audited less frequently than 5 years. Nonetheless, the filing of a tax return which results in a tax refund, the filing of a tax return under reservation and/or the filing of an amending tax return – under conditions – should be considered as triggering events for a tax audit.

No. Tax authority does not have to give a reason for opening an audit. Moreover, the selection of the taxpayers to be audited is based on risk analysis criteria,

not publicly available.

10. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

Tax offices should abide with the Code of Conduct for Public Servants. Said Code applies to almost all public sector workforce. Thus, there are no rules specifically applicable for tax officers.

No. Such details are not made available.

11. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

Yes. The tax authority has a wide range of auditing powers, while the taxpayer is recommended to abide with the tax authority's requests.

Said powers may include also review of emails, although this is not a common practice among the tax authorities. The criterion to assess the validity of the tax authority's request is whether such request can be deemed relevant with the purpose and/or the subject of the tax audit.

Law does not explicitly provide for a remedy in case of arbitrary use of power. However, this might be a part of tax litigation arisen from the challenge of the corrective tax assessment.

12. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

The Code of Tax Procedure explicitly provides for the tax authority's right to request information from third parties. As third parties are defined organizations of the public sector, public independent authorities, financial institutions, Undertakings for Collective Investment in Transferable Securities (UCITS), the cadastre, land registries, insurance companies, private clinics, private schools, telecommunication companies etc.

Law does not provide for a remedy explicitly referring to the use of excessive power. However, the taxpayer could challenge the final corrective tax assessment invoking also argumentation related to violations of the audit

process, within the context of which any potential violation, as aforementioned could fall.

13. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

Law does not provide for a binding agreement to settle an audit. However, law provides for the following option: between the service of the tax audit order and the issuance of the preliminary tax assessment taxpayers have the right to file an amending tax return. Should the resulting tax be duly paid, law provides for a discount of the penalty imposed.

14. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

In principle, procedural legislation provides for very short deadlines within which the taxpayers must respond to the tax authorities' requests (i.e., a 5-day-deadline to provide required information and documents). Thus, it is common practice to seek for an extension of the relevant deadline(s). Said extension lies with the tax authority's discretion. On the other hand, tax authorities cannot extensively delay the conduct of an audit, because in this case are running the risk the statute of limitations to apply. Also in this instance, there are no remedies specifically addressed for cases regarding the treatment and/or the speed of the tax audit. Again, should the taxpayer challenge the final corrective tax assessment, then can also address violations of the audit process.

15. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Yes.

16. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

[the below answer covers both, questions 15 & 16]

Should the taxpayer disagree with a tax assessment, the latter can be challenged. The first step to appeal is to file an appeal with an administrative body, the Dispute

Resolution Committee of the Independent Authority for Public Revenue. Said Committee should review the case, in principle, within a 120-day-period. After the expiry of the above period, either the Committee will deliver a decision by virtue of which the taxpayer's administrative appeal will be accepted or rejected, or the taxpayer's administrative appeal should be deemed as tacitly rejected. Subsequently, the taxpayer has the right to file an appeal with the competent court. Law allocates jurisdiction in tax disputes as follows: for tax assessed up to €150,000 the case falls in the jurisdiction of the Administrative Court of First Instance, while in excess of €150,000 the case will be heard by the Administrative Court of Appeal at both first and last instance.

Finally, it is important to stress that the taxpayer cannot directly appeal to courts, omitting the stage of the administrative appeal to the Dispute Resolution Committee.

17. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

The procedure before the Dispute Resolution Committee of the Independent Authority for Public Revenue is not public. Contrary to the above, court hearings are held in public.

Both, the decisions delivered by the Dispute Resolution Committee and Courts are published. Main difference is that whereas the decisions of the Dispute Resolution Committee can be accessed through the publicly available website of the Independent Authority for Public Revenue, court decisions cannot (although it should be stressed however that court decisions are publicized in legal periodicals and databases).

Only the judgment can be accessed by a third party / the public. Litigants' names and further particulars, as well as other documents of the case file cannot be accessed.

18. Is the procedure mainly written or a combination of written and oral?

The procedure is mainly written, although the parties have the right to appear in court through their legal representative(s).

19. Is there a document discovery process?

There is not a discovery process in the sense of common law jurisdictions as a pre-trial procedure. However, the

litigants are obliged to submit their file including all the supporting evidence prior to the hearing date.

In particular, the tax authority should submit its views along with the relevant case file at least 30 days prior to the hearing date, while the taxpayer has the right to submit the supporting evidence until the (working) day prior to the hearing date. Within the aforementioned context litigants are able to make copies of the counterparty's case file, while they are entitled to submit post-hearing memos up to 3 working days following the hearing date in order to enhance their position and rebut the counterparty's argumentation and evidence material.

20. Are witnesses called to give evidence?

Witness testimonies are provided for in law, either in person at the hearing date, or in writing at the pre-trial stage. Since tax disputes usually invoke legal issues deriving from the different interpretation of the tax law provisions and the witnesses are able to testify only facts of which are aware, the witness testimony option is not broadly common in tax disputes. However, in case that a witness testimony is required the process usually takes place in writing at the pre-trial stage either before a notary public or before the district court.

21. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

In principle, each litigant bears the burden to prove that his/her/its allegations are lawful. Notwithstanding the above, in various cases law and/or case law allocate between the parties the burden of proof. For instance, should the tax authority find that an expense is not deductible due to lack of productivity, the tax authority should prove the validity of what is claiming. On the other hand, should tax law provide for a rebuttable presumption in favor of the tax administration, then the taxpayer bears the burden of proof to challenge it.

22. How long does an appeal usually take to conclude?

An average time for a tax dispute to conclude, from appealing to the Dispute Resolution Committee to a Supreme Court decision, would be 5 years.

23. Does the taxpayer have to pay the assessment pending the outcome of the

appeal?

Payment is not a prerequisite for the institution of the proceedings against the assessment. Nonetheless, it is highly recommended to pay the 100% of the amounts assessed in order to avoid interest accruals, safeguard measures, where applicable, blocking of issuance of the tax clearance certificate or enforcement measures in urgent cases. Otherwise, payment of 70% or 50% of the amounts should be examined as alternative solutions providing the taxpayer with comfort to a certain extent. However, it should be stressed that in the above cases that interest accruals and blocking of the tax clearance certificate cannot be avoided.

24. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

As regards the first phase of the tax litigation i.e., the appeal before the Dispute Resolution Committee, the taxpayers themselves are able to sign and file the administrative appeal, as well as to appear on the above Committee, if needed.

As regards the judicial proceedings, authorized attorneys-at-law sign and file the appeals as well as represent the taxpayers before the courts.

25. Is there a system where the “loser pays” the winner’s legal/professional costs of an appeal?

Law explicitly provides for apportion of the costs upon relevant request by the parties. However, the court is not bound from such request and based on the conditions can release the losing party from such obligation. At any rate, it should be stressed that the compensation of the winner’s costs is only symbolic and does not actually result in recovery of the costs incurred by the winner.

26. Is it possible to use alternative forms of dispute resolution - such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

Setting aside tax disputes arising from cross-border transactions due to which alternative dispute resolution can apply e.g. MAP or Arbitration due to the EU Arbitration Convention, law does not currently provide for an alternative dispute resolution.

27. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Once the tax audit has been concluded and the relevant findings become final, the taxpayer has the right to appeal before the Dispute Resolution Committee of the Independent Authority for Public Revenue.

Following that stage, the case can be brought to courts and particularly within the jurisdiction of either the Administrative Court of First Instance or the Administrative Court of Appeal depending on the monetary threshold set forth in law that are met (for further details please refer above to the question no. 16). Should the case be brought to the court of first instance, then the Administrative Court of Appeal is competent to entertain the case as an appellate court, while the Supreme Administrative Court stands at the last instance. Otherwise, if the appeal is directly tried by the Administrative Court of Appeal at both first and last instance, the litigants are able to seek further review only by the Supreme Administrative Court.

28. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

Law provides for two (2) different types of penalties:

- i. fines and;
- ii. interest for late payment.

As regards the group of fines law distinguishes between fines for procedural infringements of the tax legislation and fines relating to the underpayment of taxes.

Procedural fines are fixed, while fines for underpaying taxes are calculated at a %.

More specifically, procedural fines vary from €100 the lowest for the non-filing or late filing of a tax return, for instance, to €100,000 for tampering with a cash register.

Moreover, fines at a % apply to assessment of underpaid taxes. The minimum applicable rate is 10% to 50% the maximum. In most cases, the base on which the above fine is calculated is the difference between the tax resulted from the tax return and the tax assessed.

On the other hand, interest for late payment currently accrues at 8,76% per annum.

29. If penalties can be mitigated, what factors are taken into account?

Periodically, the legislator adopts time-limited regimes which under specific requirements allow the mitigation of the penalties. Currently, there is no such regime in force. Nonetheless, law gives the taxpayers the option to remedy tax issues that might have identified before the conduct of a tax audit, or the latest, before the service of the preliminary tax assessment. As it is clear, the above option applies before or during the conduct of a tax audit. Based on tax legislation, the relevant penalties cannot be mitigated, once the tax audit findings become final.

30. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

Current trends in tax audits are the following: in the area of corporate income taxation the deductibility of business expenses and transfer pricing are the most common. In VAT, tax authorities are inclined to challenge the VAT refunds, as well as the invoicing between affiliated companies within EU on the ground of fixed establishment. Recent case law has provided clarity on stamp tax issues mostly arisen in previous years from loan/financing agreements.

Wire transfers and purchase of assets is the most common ground for which individuals are audited.

31. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when

faced with a challenge by the tax authorities?

Tax audits resulting in tax evasion have an increased level of difficulty for the taxpayers to deal with. This is due to the fact that any tax assessment can practically qualify as tax evasion, should the requirements of the monetary threshold - relatively low - and the kind of tax assessed be met. Thus, in those cases, besides the tax assessment taxpayers should also face criminal complaints. This is because tax authorities file criminal complaints without investigating whether the taxpayer intended to underpay taxes or not. Even different interpretation of the applicable provisions can lead to tax evasion. Therefore, as a result the taxpayers find themselves involved in different - tax and criminal - proceedings.

32. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

Transfer pricing is expected to be one of the trends the upcoming months; in particular the benchmarking studies and/or the selected method(s).

In terms of corporate income tax, the deductibility of expenses, either on the productivity ground, or on the ground of the adequacy of the supporting documentation, is expected to be challenged.

As regards individuals, tax residence issues are expected to attract the attention of the tax authorities in the following years.

Finally, as regards VAT, the notion of fixed establishment is expected to be disputed, as well as VAT exemptions and/or reduced VAT rates.

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