
CHAMBERS GLOBAL PRACTICE GUIDES

Tax Controversy 2023

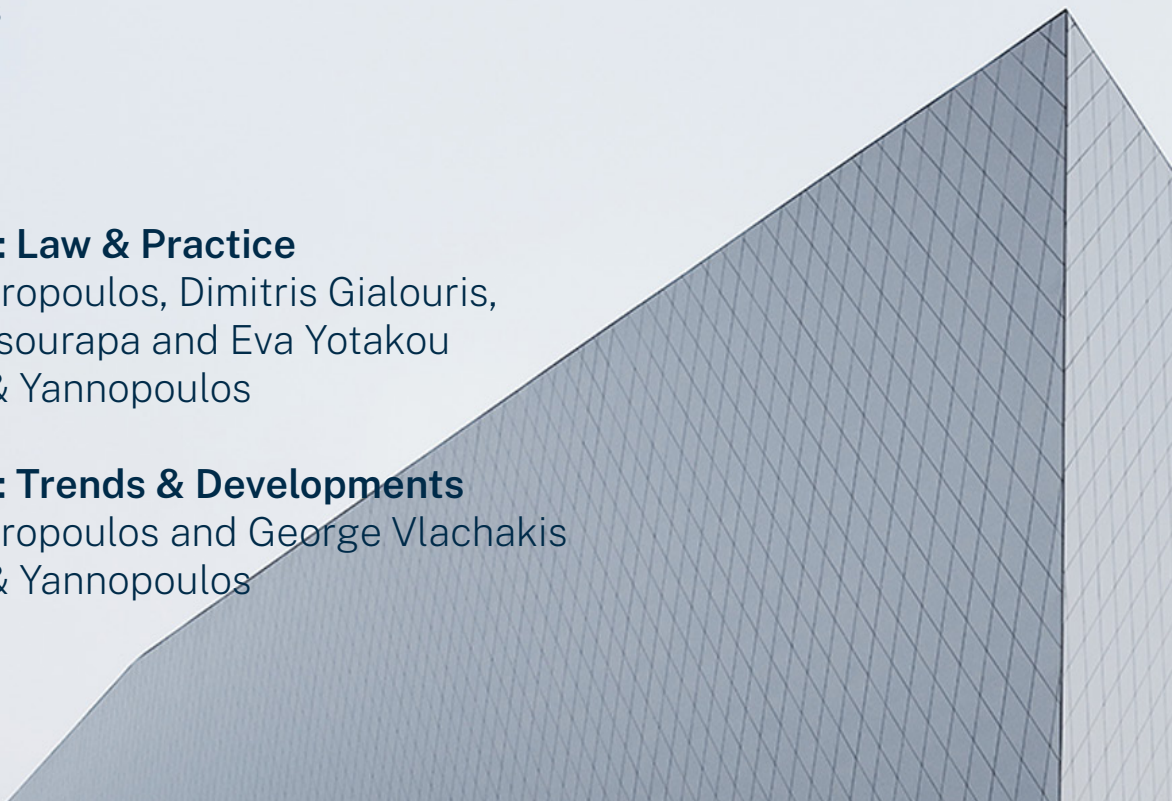
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Greece: Law & Practice

Alex Karopoulos, Dimitris Gialouris,
Diana Tsourapa and Eva Yotakou
Zepos & Yannopoulos

Greece: Trends & Developments

Alex Karopoulos and George Vlachakis
Zepos & Yannopoulos



GREECE



Law and Practice

Contributed by:

Alex Karopoulos, Dimitris Gialouris, Diana Tsourapa and
Eva Yotakou

Zepos & Yannopoulos

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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.

Authors



Alex Karopoulos is a partner at Zepos & Yannopoulos who heads the tax controversy practice. He has extensive experience in advising multinational companies on all

stages of tax controversies and representing them before the tax authorities and all court instances, including the Supreme Administrative Court. He has litigated some of the biggest tax assessments ever made in Greece and has won tax disputes concerning income tax, VAT and stamp duty, as well as the incompatibility of local taxes with EU legislation. Alex regularly advises on the indirect tax aspects of corporate reorganisations and M&A. His clients include those in the financial and insurance services, real estate, public procurement, energy, IT, aviation, pharma, travel and retail sectors.



Dimitris Gialouris is a partner in the tax controversy practice of Zepos & Yannopoulos. Dimitris' practice focuses on tax litigation involving both direct and indirect taxation, as well as matters of

interpretation of both domestic and EU law. He has extensive experience in dispute resolution and has successfully pleaded before courts of all instances, including the Supreme Administrative Court. Dimitris, who has a PhD in tax law from the University of Heidelberg, has also provided advice to domestic and multinational companies on direct and indirect tax matters, as well as on administrative and court procedures. He has also published extensively in Greek and international tax law journals.

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Zepos & Yannopoulos



Diana Tsourapa is a senior associate in the tax controversy practice of Zepos & Yannopoulos, and she has extensive experience in handling tax audits of multinational

companies, including tax matters such as income tax and transfer pricing, VAT, stamp duty and real estate taxes. She works closely with clients in order to determine the appropriate line of defence and represents them before tax authorities and courts of all instances, including the Supreme Administrative Court. In addition, Diana has extensive experience in advising multinational companies across most industries on the full scope of corporate tax issues arising in Greece. She also advises clients on matters of international tax regarding cross-border transactions, corporate restructurings, mergers and acquisitions.



Eva Yotakou is a senior associate in the tax controversy practice of Zepos & Yannopoulos. Eva focuses on tax litigation in matters of direct and indirect taxation and regularly advises clients on indirect taxation and customs issues.

Zepos & Yannopoulos

280 Kifissias Av
152 32 Halandri
Athens
Greece

Tel: +30 210 6967 000
Fax: +30 210 6994 640
Email: info@zeya.com
Web: www.zeya.com

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

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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 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

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- 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.

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- 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

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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, 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 of 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 afore-

mentioned 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

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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 application 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

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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, has now 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.

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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 alternative dispute resolution (ADR) mechanism applicable for taxes in Greece.

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6.2 Settlement of Tax Disputes by Means of ADR

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

6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

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

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

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

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”,

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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. 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,

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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 very 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. 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 very recent. It should be expected, however, that it could potentially create more disputes with the

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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 foreign 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, which, however, have so far been upheld by the courts as well.

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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 tax-

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able 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

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 Pillar One and Two

Both Pillars 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 Arbitration 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

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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 award interest as well.

11.4 Costs of ADR

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

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 for 2022, the pending tax cases (including customs cases) on 31 December 2022 were as follows.

In the Administrative Court of First Instance – 14,949 total pending tax cases, comprising:

- 4,896 tax cases for which no hearing date had been set;
- 5,720 tax cases for which a hearing date had been set but which had not yet been heard; and
- 4,333 tax cases which had been heard but for which no decision has yet been issued.

In the Administrative Court of Appeals – 5,487 total pending tax cases, comprising:

- 1,794 tax cases for which no hearing date had been set;
- 2,037 tax cases for which a hearing date had been set but which had not yet been heard; and
- 1,656 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 for 2022, the total pending tax cases on 31 December 2020 were 3,370 analysed per amount under dispute as follows:

- 341 lower than EUR10,000;
- 208 between EUR10,001 and 50,000;
- 286 between EUR50,001 and 100,000;
- 982 between EUR100,001 and 500,000; and
- 871 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.

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Zepos & Yannopoulos

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:

Alex Karopoulos and George Vlachakis
Zepos & Yannopoulos

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.

Authors



Alex Karopoulos is a partner at Zepos & Yannopoulos who heads the tax controversy practice. He has extensive experience in advising multinational companies on all

stages of tax controversies and representing them before the tax authorities and all court instances, including the Supreme Administrative Court. He has litigated some of the biggest tax assessments ever made in Greece and has won tax disputes concerning income tax, VAT and stamp duty, as well as the incompatibility of local taxes with EU legislation. Alex regularly advises on the indirect tax aspects of corporate reorganisations and M&A. His clients include those in the financial and insurance services, real estate, public procurement, energy, IT, aviation, pharma, travel and retail sectors.



George Vlachakis is a senior associate in the tax controversy practice of Zepos & Yannopoulos. George focuses on tax litigation in the areas of direct and indirect taxation. He

has experience in advising and assisting clients in the course of tax audits and court proceedings. He also advises clients on direct and indirect tax matters. Before joining the firm, he held a position in a foreign multinational consulting firm, where he practised international and European tax law.

Zepos & Yannopoulos

280 Kifissias Av
152 32 Halandri
Athens
Greece

Tel: +30 210 6967 000
Fax: +30 210 6994 640
Email: info@zeya.com
Web: www.zeya.com

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

Introduction

Lately, Greek Administrative Courts and the Dispute Resolution Committee (which examines tax disputes before they are submitted to the courts), have been particularly active in resolving disputes in favour of taxpayers, thus setting the precedent for more tax certainty and delivering rulings on complex legal matters. Examples of such rulings are illustrated below.

Fixed Establishment for VAT Purposes

For many years, the Supreme Court consistently adopted a very wide interpretation of the concept of fixed establishment, having ruled that even the provision of ancillary services by Greek subsidiaries may create a fixed establishment for their foreign parent companies. This position was followed by Greek tax authorities which had been challenging cost-plus structures, arguing that the services (more often promotional ones) provided by the Greek subsidiaries were creating a fixed establishment for the foreign service recipients.

However, in 2022, the Supreme Court totally reversed its position and overturned its previous case law. In this respect, it issued decisions ruling that in order for a fixed establishment to be created in Greece, the main activity of the for-

ign company should be performed in Greece, through the human and technical resources that had been placed at its disposal. Therefore, the mere provision of ancillary/supporting services will no longer be considered as creating a fixed establishment.

VAT on rebates

Pharmaceutical companies are obliged to give rebates in relation to the sales of medicines to the public sector. The relevant guidelines that were issued in the past did not provide that the amounts of the rebates included VAT (although the initial sales included VAT). Pharmaceutical companies started lodging appeals requesting that it is recognised that rebates include VAT, which the companies were entitled to recover.

In this respect, the courts have consistently issued decisions, ruling that rebates include VAT, and the companies giving them have the right to recover this VAT.

Stamp duty on loans

Under Greek tax legislation, as of 2021, interest-bearing loans have been subject to stamp duty, unless they are executed abroad. Execution abroad is achieved by Greek companies lending or borrowing funds, through using foreign

bank accounts, where the monies are deposited. In this respect, the relevant guidelines of Greek tax administration provide that execution abroad is not prejudiced, if the monies deposited in the foreign bank accounts of the Greek companies are subsequently remitted to Greece.

However, in practice, tax authorities have not followed this position and assess stamp duty in all cases where the monies were first deposited in foreign bank accounts of the Greek lending/borrowing company and subsequently remitted to Greece. The same position has also been adopted by lower courts, upholding the assessments made by the tax authorities.

Recently, the Supreme Court issued a decision solving the ambiguity that was created by the above practice and expressly ruling that once the funds have been deposited in foreign bank accounts of the Greek companies, their subsequent remittance to Greece does not render the loans executed in Greece.

Furthermore, until 2020, interest-bearing loans were not subject to stamp duty, as falling within the scope of VAT (in 2021 the VAT law changed to allow loans to be subject to stamp duty). In such cases, the interest qualified as the consideration for the supply of the service (granting of credit). An issue that arose, however is whether loans would still be considered as falling within the scope of VAT and outside the scope of stamp duty, if the interest is zero or negative due to market conditions.

The issue was recently resolved by the Dispute Resolution Committee, which issued a decision ruling that when there is no interest, loans still fall within the scope of VAT, as long as the loan agreement provides for the imposition of interest and determines its means of calculation, but

eventually no interest has been imposed due to market conditions.

VAT on bad debts

Greek VAT legislation does not provide for the recovery of VAT in case of bad debts. In 2019, the Supreme Court ruled that such recovery is possible when the client that owes the debt has been placed under a rehabilitation procedure or a special administration procedure or has been declared bankrupt. However, following this ruling Greek VAT legislation did not change and no general guidelines were issued instructing the tax authorities to comply with this ruling.

Therefore, taxpayers had to initiate dispute procedures in order to achieve recovery of the VAT on their outstanding bad debts, especially for cases where their clients had been declared bankrupt. In this respect, both the courts and the Dispute Resolution Committee have issued positive decisions, awarding the VAT to the taxpayers, despite the lack of guidelines or change in the VAT law, ruling that bankruptcy makes it highly likely that the bad debt will remain as such, and therefore the taxpayers will not be able to receive the VAT they have already paid to the tax authorities.

Cash pooling

For quite a long time there has been ambiguity around how cash pooling should be treated from a stamp duty perspective. Finally, the Supreme Court issued a ruling that the deposits made in the context of cash pooling qualify as loans and therefore (i) for years up to 2020 they fall within the scope of VAT with the exclusion of stamp duty, as long as the balance of the account monitoring the cash pooling was interest bearing and (ii) for years after 2021 no stamp duty may be imposed as long as the relevant trans-

GREECE TRENDS AND DEVELOPMENTS

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actions made in the context of cash pooling are executed abroad.

Prescription period for VAT refunds

For a long period, Greek tax authorities took the position that for the refund of credit VAT balances, arising for instance from the performance of zero-rated transactions, or when capital goods have not started being used yet and thus generating revenues, the prescription period was that of three years' applicable taxes unduly paid, instead of the general prescription of five years.

However, the Supreme Court has irrevocably solved this issue, ruling that credit VAT balance does not qualify as unduly paid tax and therefore the (longer) general prescription is applicable.

VAT on transfer pricing adjustments

The Dispute Resolution Committee recently issued a decision ruling that in case a transfer pricing adjustment is made for income tax purposes, this should not affect the VAT deductions already made. Namely, in case of transfer pricing adjustment, no respective VAT adjustment should be made.

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