The Tax Disputes and Litigation Review

Third Edition

Editor
Simon Whitehead

Law Business Research

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CONTENTS

EDITOR'S PREFACE

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

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

It is noticeable in this third edition that the past year has seen a general increase in litigation as tax authorities in a number of jurisdictions take a more aggressive approach to the collection of tax; in response, no doubt, to political pressure to address tax avoidance. In the UK alone we have seen the tax authority vested with broad new powers not only of disclosure but even to require tax to be paid in advance of any determination by a court that it is due. The provisions empower the revenue authority, an administrative body, to compel payment of a sum, the subject of a genuine dispute, without any form of judicial control or appeal. A further announcement has just been made to introduce a 'diverted profits tax' to impose an additional tax in the UK when it is felt that a multinational is subject to too little corporation tax. These are, perhaps, extreme examples, reflective of the parliamentary cycle, yet a general toughening of stance seems to be felt. In that light, this book provides an overview of each jurisdiction's anti-avoidance rules and any alternative mechanisms for resolving tax disputes, such as mediation, arbitration or restitution claims.

We have attempted to give readers a flavour of the tax litigation landscape in each jurisdiction. The authors have looked to the future and have summarised the policies and approaches of the revenue authorities regarding contentious matters, addressing

important questions such as how long cases take and situations in which some form of settlement might be available.

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

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

Simon Whitehead
Joseph Hage Aaronson LLP
London
February 2015

Chapter 13

GREECE

Panagiotis Pothos and Nina Kakali[1]

I INTRODUCTION

Since 2010, the tax landscape in Greece, including tax dispute resolution and controversy, has dramatically changed due to the drastic impact of the unprecedented financial crisis. In truth, the requirement to meet urgent budgetary goals might have had an influence on administrative and court proceedings relating to the imposition and collection of the state's main revenue, namely taxes. Efforts have been made to accelerate the whole process of resolving a tax dispute which could have previously lasted for 10 years or more if the case was referred to the administrative courts. Such a significant delay in delivering a judgment on a tax dispute was caused by the heavy workload of the administrative courts dealing with this kind of case, including the Supreme Court (the Council of State), in conjunction with a lack of judges, which aggravated the relevant situation.

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

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

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

II COMMENCING DISPUTES

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

The triggering point for the commencement of a dispute is usually the receipt of an assessment act, which is issued by the competent tax office further to the scrutiny of a tax return filed by the taxpayer. Further to the filing of a tax return, the authorities have the privilege of scrutinising such declaration within a lawful deadline by means of issuing an administrative act.

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

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

i Direct tax assessment

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

ii Administrative tax assessment

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

iii Estimated tax assessment

Estimated tax assessment (Article 33) may be issued by the Administration where the taxpayer does not file a return but is obliged to do so. In this case, the taxable base

included in such assessment is determined on the basis of any data available to the tax authorities. If the taxpayer subsequently files a tax return, the act of estimated assessment automatically ceases to exist.

iv Corrective tax assessment

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

v Pre-emptive tax assessment

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

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

vi Administrative recourse – a mandatory remedy

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

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

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

Upon filing of the recourse, 100 per cent of the disputed tax is being assessed, from which 50 per cent is immediately payable. The remaining 50 per cent is suspended, provided that the former 50 per cent has been remitted to the state. A payment suspension application can be filed for the 50 per cent (which is immediately payable), but such suspension may be granted only on the grounds of 'irrevocable damage' to the payer. This application is considered as silently rejected where a decision is not issued within 20 days.

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

The Tax Dispute Resolution Directorate of the Ministry of Finance must issue a decision which is communicated to the liable party within 60 days from the filing of administrative recourse. In the case of non-issuance of a decision within the deadline, the recourse is considered as having been silently rejected.

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

III THE COURTS AND TRIBUNALS

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

Tax cases fall within the competency of the administrative courts, where there are two levels: the Administrative Court Of First Instance and the Administrative Court Of Appeal.

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

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

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

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

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

The expected time from the filing of the case until the hearing before the First Instance Court is approximately three to four years, whereas such time is set at five to 10 months before the Court of Appeal.

IV PENALTIES AND REMEDIES

i Administrative penalties

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

Procedural infringements are related to:

a non-submission or late submission of returns;
b no response to a request or audit of the Administration;
c non-cooperation during the tax audit;
d non-disclosure of the tax representative appointment;
d failure to perform a tax registration;
e non-compliance with bookkeeping; and
f fiscal documentation requirements.

Procedural transfer pricing (TP) violations are related to delayed filing or non-filing of a Summary Information Memorandum (a TP reporting obligation), delayed submission of a TP file to tax auditors, submission of an incomplete TP file to tax auditors and failure to submit a TP file to tax auditors.

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

ii Administrative enforcement

Pursuant to the provision of the Administrative Procedure Code and Code for Collection of Public Revenue, the enforceable orders on the basis of which the Administration may proceed to the enforcement of collection of tax debts are explicitly enumer-

ated. In extraordinarily urgent cases, and in cases in which the collection of the taxpayer's respective tax is at risk, the Administration may proceed, on the basis of the enforceable orders provided by the Code and without a judicial decision, to the imposition of a seizure of moveable assets, real estate, property rights, claims and in general of all assets of the debtor of the state, either held by the taxpayer or by third parties.

Based on the above conditions, the Administration may also proceed to taking the appropriate interim or pre-emptive measures on the basis of the enforceable order. The measures are ordered without summoning the taxpayer (e.g., seizure of an amount in relevant banking accounts – Article 14, Law 2523/1997).

In general, the Administration is obliged to send an individual notice to the taxpayer to inform him or her to pay the debt before enforcement action begins. In case of non-payment of the amount due within 30 days of the serving of the default notice, the competent body may proceed to measures of enforcement.

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

iii Criminal penalties

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

a wilful tax evasion by concealing net income or revenue from any source, failing to file tax returns, filing false tax returns or making false registrations of transactions in the accounting books (Article 17);

b wilful tax evasion by failing to pay VAT, any withholding taxes, duties and contributions, by not paying the correct amounts or offsetting the amounts due, or making false returns in relation to the amount of the above taxes which are due and as a result receiving a refund (Article 18); and

c issuing or accepting (or forging) false or fictitious invoices, irrespective of whether the taxpayer avoids paying tax or not (Article 19).

In particular, the following penalties may be imposed on a taxpayer for the offence of Article 17 of Law 2523/1997:

a a minimum of one year of imprisonment if the tax corresponding to the concealed net income or revenue exceeds €15,000 in a tax year; and

b five to 20 years of imprisonment if the tax corresponding to the concealed net income or revenue exceeds €150,000 in a tax year.

And respectively, for the crime of Article 18 of Law 2523/1997:

a 10 days to five years of imprisonment if tax which was not paid does not exceed €3,000 on a yearly basis;

b a minimum of one year of imprisonment if the tax which was not paid exceeds €3,000, but not €75,000; and

c five to 20 years of imprisonment if the tax which was not paid exceeds €75,000.

When the offence captures more than one type of the taxes set out in Article 18 of Law 2523/1997, the above penalties apply for each such type of tax separately.

The following penalties may be imposed for the offences of Article 19 of Law 2523/1997:

a a minimum of three months of imprisonment for issuing or accepting false invoices or for forgery of the same; and

b a minimum of one year of imprisonment for issuing or accepting (or forging) false invoices in relation to an inexistent transaction if the total amount of the false tax records exceeds €3,000, and five to 20 years of imprisonment if the total amount of the false tax records exceeds €150,000.

Furthermore, penalties may be imposed for the crime of non-payment of monetary amounts or debts owed to the Greek State (Law 1882/1990, Article 25):

a a maximum of one year of imprisonment if the total amount of debt owed exceeds €5,000;

b a minimum of six months of imprisonment if the total amount of debt owed exceeds €10,000;

c a minimum of one year of imprisonment if the total amount of debt owed exceeds €50,000; and

d a minimum of three years of imprisonment if the total amount of debt owed exceeds €150,000.

V TAX CLAIMS

i Recovering overpaid tax

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

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

ii Challenging administrative decisions

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

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

iii Claimants

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

With respect to VAT in particular, the taxpayer who charges the tax (i.e., the supplier of the goods or services) is, in principle, entitled to ask for the refund since such a person also bears the obligation to remit VAT to the state through the relevant returns. Nevertheless, Greek case law (Decision No. 225/2012 of the Administrative Court of First Instance of Heraklion) has recently dealt with the issue of whether the customer is also entitled to request for the refund of unlawfully paid VAT in light of the ECJ jurisprudence (C-94/10, *Danfoss A/S and Sauer-Danfoss ApS v. Skatteministeriet*) due to the fact that the customer has suffered the VAT burden, and has ruled in favour of the customer's privilege to ask for the refund.

VI COSTS

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

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

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

VII ALTERNATIVE DISPUTE RESOLUTION

In 2011, a piece of legislation was enacted on the basis of which arbitrations proceeding could also apply to tax disputes further to a specific agreement between a taxpayer and

the competent tax authorities. Nevertheless, the respective provisions were never activated and thus remain inactive.

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

VIII ANTI-AVOIDANCE

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

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

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

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

IX DOUBLE TAXATION TREATIES

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

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

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

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

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

X AREAS OF FOCUS

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

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

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

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

In the coming years, transfer pricing is likely to emerge as a hot topic for the Greek tax authorities, although they currently appear to be unfamiliar with the mechanics of such legislation. In fact, there are limited cases whereby a transfer pricing issue was raised by the Greek authorities, but this should change in the future. Additionally, some cases at the end of 2014 which involved transfer pricing adjustments were treated by the Greek tax authorities as disputes referring to the productivity of expenses, although such adjustments actually related to transfer pricing. Thus, the authorities disallowed the charges relating to such adjustments on the grounds of the lack of productivity criterion.

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

XI OUTLOOK AND CONCLUSIONS

In recent years, the inherent complexity and formalism of the taxation system in Greece has consistently created difficulties in following up legislative developments, and at the same time it has fed the aggressiveness of the tax authorities when they had to execute a tax audit.

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

At the same time, the inclination of the administrative tribunals and to some extent of the courts upon dealing with a tax dispute is basically to reject the taxpayer's requests since the state argues that the non-payment of taxes has a detrimental impact on the achievement of its budgetary goals, and thus the prevailing public interest is not served in this respect (an assumption already sustained by the plenary of the Council of

State). However, today the priority is for the state to collect as many taxes as possible so as to handle the strikingly unprecedented financial crisis.

Also, upon detecting cases of tax fraud the tax authorities are now more eager to activate the relevant criminal proceedings, which have become more severe in the last couple of years, and at the same time they are ready to use the means provided by the anti-money laundry provisions.

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

Appendix 1

ABOUT THE AUTHORS

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Panagiotis is the partner heading the tax department of Kyriakides Georgopoulos Law Firm.

His fields of expertise include corporate taxation, tax structuring of foreign investments, tax incentive legislation in mergers and acquisitions, tax audits, and litigation before the administrative courts. Panagiotis acts primarily for international investors in cross-border transactions (with a focus in the energy and construction sectors) and advises major Greek enterprises and subsidiaries of MNEs in various industries (financial, insurance, pharmaceutical, automotive, telecommunications, manufacturing, and retail) regarding all aspects of Greek taxation. He also has experience in advising bidders in the context of major public private partnership and concession projects, while representing major petroleum and trading corporations before the tax authorities and courts of law.

Before joining the firm, he was a senior manager in the tax department of one of the 'big four' audit firms in Athens, and prior to this he was a senior associate in the tax department of a highly respected law firm.

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

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Nina is an associate working in the tax department of Kyriakides Georgopoulos Law Firm.

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

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

She graduated from the law faculty of Aristotle University of Thessaloniki in 2006 and holds a Master II in Public Law from the University of Aix-Marseille (2008) and an Intensive LLM in European Public Law (2014) from the European Public Law Organization (EPLO). Nina has also earned a Post-graduate Diploma in Taxation (2013) from the Athens University of Economics and Business.

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