



Recent Greek Tax Highlights

Reduction of Corporate Income Tax rate:

On 30 November 2018, the Greek Parliament, by virtue of the article 23 of Law 4679/2018, amended the article 58 of the Greek Income Tax Code (Law 4172/2013) with regards to the statutory corporate income tax ("CIT") rate. Such amendment provides for the gradual reduction of the Greek statutory CIT rate from 29% today to 25% for the fiscal year 2022 onwards. In particular, all legal persons and legal entities, apart from credit institutions (still subject to a 29% CIT rate), will be subject to the following statutory CIT rates:

- 28% for the fiscal year 2019;
- 27% for the fiscal year 2020;
- 26% for the fiscal year 2021;
- 25% for the fiscal year 2022 onwards.

This recent tax reform is in line with the global trend of reducing the statutory CIT rates, a phenomenon most evident among the EU and OECD member states. Most notably, high-tax jurisdictions like US, France and Belgium reduced their statutory CIT rates during the last 12 months. The reform of the Greek statutory CIT rate follows this trend; however, it can be characterized as rather modest. For the calendar year 2018, Greece had the 8th highest statutory CIT rate among the OECD member states and the 6th highest among the EU member states (including sub-governmental taxes and surtaxes on

corporate income)^[1]. Such ranking is not expected to change dramatically after the abovementioned reduction. Further, the average statutory CIT rate is 23,7% in the OECD, 21,9% in the EU and 24,1% in the Eurozone. Those statistics highlight that the recent reform will not affect the character of Greece as a high-tax jurisdiction, as far as corporate taxation is concerned, particularly if someone considers that Greece applies a rather broad corporate income tax base.

Seminal court decision on the relationship between the Special Solidarity Contribution and the Greek-UK Double Tax Treaty:

On 21 November 2018, the Greek Council of State (the court of last resort for administrative and tax law matters) published its decision 2465/2018, regarding the relationship between the Special Solidarity Contribution provided for in article 29 of Law 3986/2011 and the Greek-UK Double Tax Treaty. The Special Solidarity Contribution was introduced back in 2011 as a temporary countermeasure to the Greek sovereign debt crisis, and is imposed on the total income of individuals, on top of the personal income tax. Such contribution,

¹ See:

https://stats.oecd.org/index.aspx?DataSetCode=Table_II1,
https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_trends_report_2018_statutory_rates.xlsx

which since 2016 has been incorporated in the text of the Greek Income Tax Code (article 43A of Law 4172/2013), is currently imposed at progressive rates of up to 10%.

According to the settled case law of the Greek Council of State and the ordinary administrative courts, the tax base of the special and extraordinary contributions (such as the Special Solidarity Contribution) is not the income of the taxpayer, but his/ her tax capacity, which is determined according to the taxpayer's income (e.g. Plenary Session of the Council of State 2563/2015). Additionally, the Council of State has repeatedly ruled that the special and extraordinary contributions imposed on the tax capacity of a taxpayer are not covered by the application of the Double Tax Treaties on income and capital that have been signed by Greece (e.g. Council of State 153-4/2018). This position has been adopted by the Legal Council of State (the legal counsel of the Administration) in its Advisory Opinion 13/2018, that has been upheld by the Governor of the Independent Authority of Public Revenue through the Circular POL. 1099/2018.

The Council of State departed from this precedent, ruling that the Special Solidarity Contribution is considered as a tax covered by the scope of the Greek-UK Double Tax Treaty. The court held that the contribution is of a character substantial similar to the taxes on which such Double Tax Treaty is applicable on. In order to conclude this argument, the Council of State interpreted the nature of the Special Solidarity Contribution according to the meaning of the Greek-UK Double Tax Treaty, ignoring the previous case law of the Greek courts. Further, it took into account the fact that this fiscal burden has now been fully integrated into the Greek tax system, despite the fact that upon its introduction it was intended to be an 'extraordinary' measure. Therefore, it ruled that this contribution is essentially similar to income tax, thus should be covered by the Greek-UK Double Tax Treaty.

The outcome of this decision is rather important, because it is recognized that the Special Solidarity Contribution is effectively an additional income tax, at least for Double Tax Treaty purposes. Although the Greek-UK Double Tax Treaty predates the Model Tax Treaty of the OECD, upon which all but a handful of the 57 Double Tax Treaties signed by Greece have been based, the critical provisions of the former are very similar to those of the other Double Tax Treaties of which Greece is a party. Thus, this decision indicates that the Special Solidarity Contribution should be taken into account by the Greek Tax Administration when granting relief from double taxation based on a bilateral agreement.

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