The Tax Disputes and Litigation Review

Seventh Edition

Editor
Simon Whitehead

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THE TAX DISPUTES AND LITIGATION REVIEW

SEVENTH EDITION

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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 seventh edition, we have continued to add to 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.

The idea behind this book commenced in 2013 with the general increase in litigation as tax authorities in a number of jurisdictions took a more aggressive approach to the collection of tax, in response, no doubt, to political pressure to address tax avoidance. In the United Kingdom 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.

Over the past year, the focus on perceived cross-border abuses has continued with European Commission decisions against past tax rulings in Belgium, Ireland and Luxembourg, and the BEPS Project reaching a crescendo in the announcement of a 'diverted profits tax' to impose an additional tax in the United Kingdom when it is felt that a multinational is subject to too little corporation tax even in an EU context and a digital services tax in the United Kingdom introducing provisions that appear in principle to pre-empt the Commission's action in the area. The general targeting of cross-border tax avoidance now has European legislation behind it with the passage last year of the second Anti-Tax Avoidance Directive. The absence of much previous European legislation in direct tax has always been put down to the need for unanimity and the way in which Member States closely guard their taxing rights. The relatively speedy passage of this legislation (the Parent–Subsidiary Directive before it took some 10 years to pass) and its restriction of attractive tax regimes indicates the general political disrepute with which such practices are now viewed.

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.

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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 a member, 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 Joseph Irwin in the editing and compilation of this book.

Simon Whitehead
Joseph Hage Aaronson LLP
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Chapter 12

GREECE

Ioannis Stavropoulos[1]

I INTRODUCTION

Tax disputes in Greece are common and occupy a considerable part of the administrative and judicial procedures. The right of judicial protection, enshrined in Article 20, Paragraph 1 of the Greek Constitution, covers acts and omissions of organs of the state, including those of the tax administration.

The financial crisis and the corresponding need for increased public revenues have led to significant changes in the administrative taxation procedure arising from the memoranda signed between Greece and its international lenders. In 2010, there was a major reform in the administrative courts procedure with a particular focus on tax disputes with a view to discouraging exercise of unnecessary legal remedies and make the allocation of court competences more efficient. This reform has so far proven fruitful at least in terms of figures. For instance, the number of pending judicial recourses before the Administrative Court of First Instance with regard to tax disputes has fallen from 142,852 in 2012 to 29,184 in 2018, while the number of pending appeals before the Administrative Court of Appeal has fallen from 11,322 in 2012 to 8,946 in 2018, and the number of tax cases pending before the Council of State (i.e., the supreme administrative court) has fallen from 5,663 in 2012 to 3,608 in 2018.[2]

Moreover, fundamental steps were taken in the tax procedure with the introduction of a uniform Tax Procedure Code[3] (TPC), in force since 1 January 2014. This legislative initiative aimed to codify the previously dispersed provisions on all aspects of the administrative taxation procedure, including, *inter alia*, the submission of tax returns, the tax audit procedure, and the collection of taxes and penalties.

Significant changes were incorporated into the new TPC as regards the procedure for challenging acts and omissions of the tax administration. A tax dispute is now initiated by a mandatory administrative recourse before a special directorate of the Ministry of Finance, the Dispute Resolution Directorate, as a prerequisite to seeking judicial recourse before the administrative courts. The effect of this major change in the dispute resolution procedure as well as of the other provisions of the TPC remains to be evaluated in the near future when the new system will mature.

1 Ioannis Stavropoulos is the managing partner of Stavropoulos & Partners Law Office. The author would like to recognise the contribution of Elina Stavropoulou, formerly an intern at Stavropoulos & Partners, to this chapter.
2 www.ministryofjustice.gr.
3 Tax Procedure Code, L4174/2013.

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II COMMENCING DISPUTES

i The tax assessment act

In general terms, the process of tax disputes commences with the receipt of an assessment act, which constitutes a personal administrative act. The assessment act is issued based on either the tax return or data filed by the taxpayer or, in the case of a tax audit, the report of the audit.

Under the TPC, a taxpayer may file an initial tax return (Article 18, Paragraph 1), or an amending tax return if he or she becomes aware of a mistake or an omission in his or her initial return (Article 19, Paragraph 1). The TPC also provides for a tax return 'with reservation', when the taxpayer has doubts as to the existence of a tax obligation for a certain item of his or her return (Article 20, Paragraph 1). The reservation can either be accepted or rejected by the General Secretary for Public Revenue within 90 days from the filing of the tax return.

Under the TPC, a tax assessment act may be categorised as follows:

a direct tax assessment act (Article 31), known also as self-assessment: it results directly from the filing of a tax return by a taxpayer;

b administrative tax assessment act (Article 32): may be issued by the tax administration based not only on a tax return, but also on other data available at the administration;

c estimated tax assessment act (Article 33): may be issued when a taxpayer has failed to file a tax return. Upon filing of a tax return, even an overdue one, the estimated tax assessment ceases to apply and a new one is issued based on the filed return;

d corrective tax assessment act (Article 34): may be issued if, following a tax audit, a tax return is proven mistaken or inaccurate. Once a corrective tax assessment act is issued, a new corrective tax assessment act may be issued based only on the existence of 'new elements' (i.e., elements that could not have been known by the tax administration during the initial tax audit); and

e pre-emptive tax assessment act (Article 35): may be issued before the lapse of the deadline for submission of a tax return when there are specific indications that the taxpayer intends to leave the country, thus jeopardising the collection of the tax, especially through the transfer of assets to third parties. The pre-emptive tax assessment act is followed by a corrective tax assessment act within one year from the date of issuance (Paragraph 3).

The right of the tax administration to issue a tax assessment act must be exercised within five years of the lapse of the year during which the deadline for submission of the tax return expires (Article 36, Paragraph 1 TPC). This time limit might be extended under certain circumstances. In cases of tax evasion, the time limit is 20 rather than five years (Paragraph 3).

The law allows the tax administration to conduct tax audits to assess the correctness of the facts declared by taxpayers and to assess their tax liability in general. In particular, the tax administration possesses extensive powers during audits, such as the lifting of professional and tax secrecy. Following a tax audit, the tax administration serves a notice to the taxpayer containing the results of the audit and a provisional corrective assessment act. The taxpayer can state his or her views on the provisional tax correction in writing within 20 days, and the tax administration issues the final corrective tax assessment act within one month of the filing of the taxpayer's views.

Disputes can also arise from omissions of the tax administration. An omission exists where the administration, although obliged by law, fails to issue an individual administrative act to regulate a particular legal relationship. Such omission occurs with the lapse of the

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deadline provided for in the legislation for the issuance of the relevant act. When an omission takes place following a petition from the taxpayer for the issuance of a particular act, it constitutes a tacit rejection of the petition challengeable by the petitioner. In practice, a large number of disputes are generated by omissions of the administration.

ii Challenging the acts of the tax administration

Acts and omissions of the tax administration can be contested by the taxpayer before the Dispute Resolution Directorate, as provided in Article 63 TPC. As mentioned above, this is a mandatory internal review procedure (quasi-judicial action) established as a prerequisite before referring the dispute to the administrative courts in an effort to alleviate the burden of accumulated cases before the latter.

Exceptionally, the taxpayer can challenge directly before the competent administrative courts only an estimated tax assessment act without the prerequisite of the quasi-judicial action (Article 35, Paragraph 1 TPC). The exception also applies to disputes falling within the competency of the president of the Administrative Court of First Instance (see Section III.i).

The quasi-judicial action must be submitted before the competent tax administration within 30 days of the notification of the act or the tacit rejection, and is forwarded to the Dispute Resolution Directorate within seven days. The decision of the Dispute Resolution Directorate must be issued within 120 days of the day of submission. Non-issuance of a decision within the relevant time limit is considered tacit rejection of the action (and the lapse of the time limit constitutes a notification of the rejection). Although not explicitly provided for in Article 63, it is accepted that the tax administration is obliged to inform taxpayers in writing on any administrative act of the right to file a quasi-judicial action and the inadmissibility of a direct recourse to the administrative courts. An omission of the aforementioned notification means that a direct recourse might be admissible.[4]

Upon filing of the quasi-judicial action, payment of 50 per cent of the disputed amount is suspended, provided that the remaining 50 per cent is paid to the tax administration. Depending on the outcome of the case, the tax administration either refunds to the taxpayer any excess amount paid in advance or any additional payment that becomes due. A payment suspension petition may be filed for the former 50 per cent (which is immediately payable), but such suspension may be granted only on the grounds of 'irrevocable damage' to the payer. Non-issuance of a decision on the suspension application within 30 days of its submission constitutes tacit rejection.

III THE COURTS AND TRIBUNALS

i Composition and role of each tribunal – competent courts

Tax disputes fall within the competency of the ordinary administrative courts, which are made up of two degrees, the Administrative Court of First Instance and the Administrative Court of Appeal.

4 Pol 1069/4 March 2014.

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From 2016 onwards, tax disputes up to the amount of €60,000 fall within the competency of the single-member Administrative Court of First Instance.[5] Its decisions are subject to appeal before the single-member Administrative Court of Appeal. Tax disputes ranging between €60,000 and €150,000 fall within the competency of the three-member Administrative Court of First Instance. Its decisions are subject to appeal before the three-member Administrative Court of Appeal. Tax disputes exceeding €150,000 fall within the sole competence of the three-member Administrative Court of Appeal, and hence taxpayers in these disputes are limited to one level of jurisdiction; this has been heavily criticised in theory. The object of the tax dispute is determined on the basis of the amount of the main tax and not the total imputed amount.

Furthermore, non-pecuniary tax disputes (e.g., the non-issuance of a tax clearance certificate, the refusal of approval of tax books and records) as well as tax disputes stemming from the application of conservatory measures in urgent cases (under Article 46 TPC) fall within the competency of the President of the Administrative Court of First Instance, whose decisions are irrevocable.

A basic principle of Greek constitutional law is the separation of powers (Article 26, Constitution). This means that the administrative courts are totally independent to rule upon any decision falling within their competence.

ii Judicial recourse

Upon an explicit negative decision or tacit rejection (due to the lapse of the deadline for issuance of a decision) by the Dispute Resolution Directorate, the taxpayer has the right to file a judicial recourse before the competent administrative courts (Article 63, Paragraph 8 TPC) in accordance with the Code of Administrative Courts Procedure.[6] The judicial recourse must be filed within 30 days of the notification of the decision or the lapse of the 120-day time limit for the issuance of a decision by the Dispute Resolution Directorate. The deadline is extended to 90 days if the taxpayer resides abroad and the time limit is suspended from 1 to 31 August.

iii Right to appeal

A decision of the Administrative Court of First Instance, if the relevant dispute exceeds €5,000, may be subject to an appeal before the Administrative Court of Appeal filed either by the taxpayer or the tax administration. An appeal must be filed within 60 days of the day that the decision of the Administrative Court of First Instance is served to the party entitled to appeal. In any case, the appeal cannot be filed after three years as from the publication of the first instance decision.

The decision of the Administrative Court of Appeal may be subject to a petition for the cassation of the case before the Council of State. A petition for the cassation of the case may even be filed in respect of cases that are resolved at first and only degree by the three-member Administrative Court of Appeal (i.e., disputes exceeding €150,000 that fall within the sole competence of the three-member Administrative Court of Appeal). The relevant dispute for such a petition to be admissible must exceed €40,000.

5 Article 6, Paragraph 2 Code of Administrative Courts Procedure (L2717/1999), as amended by Article 18, Paragraph 2 L4446/2016.

6 Ibid.

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iv Scope of judicial control

The competence of the administrative courts is not limited to a legality control of the contested act, but they review the contested acts both in relation to substance and legality, within the limits of the judicial recourse (Article 79, Paragraph 5 Code of Administrative Courts Procedure). The limits of the judicial recourse are determined by the claim as well as the grounds set out in it. In relation to the review of the substance of the contested act, the court is limited by the judicial recourse and is prohibited from worsening the position of the claimant (*non reformation in pejus*). In relation to the review of the legality of the contested act, the court has the authority, on its own initiative, to examine infringement of *res judicata* even if such a request is not included in the recourse. In the framework of a petition of cassation, the Council of State may examine grounds related solely to the legality of the act.

IV PENALTIES AND REMEDIES

Infringements of the tax legislation can result in administrative and criminal penalties.

i Administrative penalties

Administrative penalties mainly consist of fines and are provided for in the TPC (Chapter 10). In some cases, the legislator provides for penalties in the form of deprivation of rights, such as the right to file a lawsuit in the case of failure to declare income from real estate.

The TPC distinguishes between penalties relating to procedural infringements (Articles 54 and 56) and penalties relating to substantive infringements (i.e., non-compliance with substantive obligations stemming from the tax legislation that result in the non-payment or late payment of tax (Articles 58, 58A and 59)). In addition, if any amount of tax is not paid by the due date, the taxpayer is obliged to pay interest on such amount for the period from the due date to the date the tax is actually paid. The interest rate is currently set at 8.51 per cent annually (Article 53).

Procedural infringements include, *inter alia*, non-filing or late filing of tax returns, non-compliance with the bookkeeping requirement and non-issuance of a receipt. Penalties for procedural infringements can range between €100 and €2,500, and can be quadrupled in cases of repetition. Penalties are also provided for procedural transfer pricing infringements (Article 56). These include late, incomplete or inaccurate filing, or non-filing of the summary information memorandum or the transfer pricing file, and the relevant fines range between €500 and €2,000.

If, following a tax audit, the amount of tax shown on the tax return understates the amount of tax required to be shown as per a corrective tax assessment performed by the tax administration, then the taxpayer is subject to a fine ranging from 10 to 50 per cent of the understated amount according to the size of the understatement as compared with the total tax due by the tax return. There is a special provision for the calculation of such fine on the understated amount in relation to VAT and withholding taxes (Articles 58A and 59). Further, in cases of failure to file a tax return, the fine amounts to 50 per cent of the amount of tax not paid. If following the audit, more than one fine is applicable pursuant to procedural as well as substantive infringements, the larger fine is imposed.

The imposition of administrative penalties falls within the competence of the General Secretary for Public Revenue and the relevant tax administration upon authorisation. The administrative act imposing the relevant penalty can also be contested by the taxpayer before the Dispute Resolution Directorate by filing a quasi-judicial action (see Section II.ii).

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The tax administration has the authority, in urgent cases and in cases where the collection of tax is at risk, to take all necessary measures on the basis of a title provided for in the TPC, even before the debt maturity, to secure the collection of taxes. Such measures include the imposition of a seizure of movable assets, real estate, property rights and claims, and in general all assets of the debtor, either held by the debtor or held by third parties on behalf of the debtor.

The tax administration may proceed with enforced collection methods provided for in the Code of Collection of Public Revenue[7] 30 days after notification to the taxpayer that he or she is in default of tax obligations or tax fines. The notification obligation does not apply in cases of seizure of money or monetary claims held by the debtor or any third party. In cases of suspicion that the taxpayer is transferring assets to another person or preparing to flee the jurisdiction, or take any other action that will jeopardise the collection of the tax, the tax administration is entitled to proceed with enforced collection methods or to write a mortgage prior to the deadline for the payment of taxes or the notification of default or the lapse of the aforementioned 30-day period from the notification of default.

ii Criminal penalties

Pursuant to the provisions of the TPC, liabilities and criminal penalties may be imposed for the following acts or omissions:

a wilful tax evasion of income tax, special real estate tax and unified real estate possession tax by concealing net income or revenue from any source, especially by failing to file tax returns, filing inaccurate tax returns or making false registrations of transactions in the accounting books (Article 66, Paragraph 1(a));

b wilful tax evasion by failing to pay VAT, withholding taxes, duties and contributions, by not paying the correct amounts or offsetting amounts due, or making false returns in relation to the amount of the above taxes and as a result receives a refund (Article 66, Paragraph 1(b));

c wilful tax evasion by failing to pay shipping tax (Article 66, Paragraph 1(c)); and

d issuing or accepting false or fictitious invoices or forging invoices, irrespective of whether payment of tax has been avoided (Article 66, Paragraph 5).

In cases of these tax evasion offences, the following criminal penalties are provided in law:

a a minimum period of two years' imprisonment for evading tax amounting over €100,000 per year, or €50,000 in the case of VAT;

b incarceration (a minimum of five years' and a maximum of 20 years' imprisonment) for evading tax amounting over €150,000 per year, or €100,000 in the case of VAT; and

c a minimum of three months' imprisonment for issuing or accepting false or fictitious invoices, or forging invoices. If the total amount of fictitious invoices exceeds €75,000, the imprisonment sentence increases to a minimum of one year, and incarceration of five to 10 years if the total amount of fictitious invoices exceeds €200,000.

The TPC provides that with the completion of the tax audit and the issuance of the final corrective tax assessment act, the tax administration shall refer to the criminal prosecutor

7 Code of Collection of Public Revenue (L356/1974).

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such acts that constitute a tax evasion offence in accordance with Article 66. Further, criminal proceedings are not affected by the filing of a quasi-judicial action or judicial recourse before the administrative courts.

Finally, non-payment of monetary debts owed to the state for a time period exceeding four months is considered a criminal offence, punishable with imprisonment. The relevant penalty is a minimum period of one year of imprisonment if the total amount owed exceeds €100,000 and a minimum period of three years of imprisonment if the total amount owed exceeds €200,000.[8]

V TAX CLAIMS

i Recovering overpaid tax

In cases where a taxpayer has paid tax that is not due, he or she is entitled to a tax refund after making, to that effect, a written claim to the competent tax administration. A party entitled to a refund might be the taxpayer who paid the tax, but also, in cases of withholding taxes, the third party on behalf of whom the tax was withheld (Article 42 TPC).

If the taxpayer is entitled to a refund, the tax administration first offsets the refundable amount against the taxpayer's liability for any other taxes and then refunds the remaining excess balance to the taxpayer within 90 days of the written request. Exceptionally, for claims regarding the refund of VAT payments from taxpayers not resident in Greece, the deadline is extended to four months. It should be noted that the taxpayer may agree, by a written statement included in the claim for refund, that the tax administration withholds any remaining excess balance to offset it against the taxpayer's future tax liabilities. The right to claim a tax refund lapses at the same time that the right of the tax administration to issue a tax assessment act lapses. Finally, in cases of an overpayment of tax, interest is paid to the taxpayer from the date of application for a refund to the date on which the notification of the refund is made, unless the refund is made within the prescribed 90-day period.

ii Challenging administrative decisions

In accordance with Article 9 of the TPC, public rulings (circulars) issued by the tax administration that set out the administration's interpretation of the application of tax legislation are binding on the tax administration itself until revoked or superseded by legislation. However, such rulings are not binding on taxpayers.

With the exception of public rulings, other statements or interpretations concerning a taxpayer's liability made by an officer of the tax administration are not binding.

iii Claimants

The persons entitled to submit a quasi-judicial action based on Article 63 TPC (see Section II.ii) include the person against whom the tax assessment act has been issued, and any third parties being jointly and severally liable with the liable person.

With regard to judicial recourses, in accordance with the Code of Administrative Courts Procedure (Article 64), the right to file recourse is granted to those having a direct, personal and existing legitimate interest or being entitled to such a right by a special provision of the law. This provision covers primarily the persons and legal entities against whom the

8 Article 25, L1882/1990 as amended.

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tax assessment act was issued, but persons with joint and several liability for the payment of the disputed amount, including directors and administration liquidators, are also granted the *locus standi* to challenge the tax administration's act (Article 50 TPC).

VI COSTS

Proceedings before the administrative courts are subject to fees that must be paid for the action to be admissible.

In the case of pecuniary disputes, for the filing and hearing of a case, the applicant must pay a fee equal to 1 per cent of the disputed amount, with a ceiling of €15,000 (Article 277, Paragraph 3 Code of Administrative Courts Procedure, as amended by Article 37, Paragraph 5 L4446/2016). One-third of this fee must be paid upon filing of the recourse, and the remaining two-thirds by the day of the hearing, otherwise the recourse is rejected as inadmissible. If the amount of the fee exceeds €3,000, then by the day of the hearing €3,000 is payable, and the remaining amount, up to the ceiling of €15,000, becomes payable with the final decision of the competent court if the recourse is rejected (if the recourse is accepted, the amount already paid is refunded to the applicant). The aforementioned fee is payable both in cases of a judicial recourse as well as an appeal before the competent courts. It should also be noted that a prerequisite for the admissibility of the appeal is that the appellant has paid 20 per cent of the disputed amount before the day set for the hearing of the appeal unless the appellant has been granted a suspension of the execution of the first instance decision.

In accordance with the Code of Administrative Courts Procedure, if the judicial recourse or appeal is partially accepted, the court fee is payable in part, upon the discretion of the court (Article 277, Paragraph 9 Code of Administrative Courts Procedure). In addition, it is up to the discretion of the court to order the refund of the court fee even if the recourse is rejected based on the individual circumstances (Article 277, Paragraph 10 Code of Administrative Courts Procedure).

VII ALTERNATIVE DISPUTE RESOLUTION

In 2011, an arbitration procedure for tax disputes was introduced for the first time as an alternative to judicial recourse.[9] In that regard, provision has been made for the creation of a new independent body: the Body of Tax Arbitrators. However, the arbitration procedure remains a future aspiration, as it has not been activated to date.

Although there is no general advance clearing or ruling system in Greece, there are special provisions with regards to affiliated persons as defined in the Income Tax Code[10] (Article 22 TPC). In particular, affiliated persons may request an advance pricing agreement by the tax administration regarding the application of the tax legislation and the determination of the arm's-length condition for certain future transactions.

Furthermore, by virtue of L2216/1994, Greece has implemented the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises[11] (Convention 90/436/EEC) and the mutual agreement and arbitration

9 Article 47, L3943/2011.

10 Income Tax Code (L4172/2013).

11 Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC).

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procedures provided for therein. Through a recently voted amendment (Article 59, Paragraph 2 L4438/2016) to the TPC, the details of the procedure of mutual agreement provided for in Convention 90/436/EEC and in the majority of double taxation conventions concluded by Greece are set out. In particular, Article 63A,[12] added to the TPC, provides that such mutual agreement procedure shall be conducted by the tax administration, and its outcome shall be published as a decision of mutual agreement, which is serviced to the taxpayer. The taxpayer can accept the decision within 60 days of its service; upon acceptance, the decision is not challengeable by means of a quasi-judicial action or any other recourse.

VIII ANTI-AVOIDANCE

A general anti-abuse rule was introduced in Greece with the revised TPC (Article 38), following the model of the EU Commission's Recommendation for Aggressive Tax Planning.[13] Under Article 38, the tax administration can ignore during the tax assessment any artificial arrangement or series of arrangements aiming to avoid taxation that lead to a tax benefit.

According to the wording of the provision, arrangements are considered artificial if they lack financial or commercial substance. The tax administration, in examining the potential artificiality of an arrangement shall examine whether:

a the legal characterisation of the individual steps that an arrangement consists of is inconsistent with the legal substance of the arrangement as a whole;
b the arrangement is carried out in a manner that would not ordinarily be employed in what is expected to be reasonable business conduct;
c the arrangement includes elements that have the effect of offsetting or cancelling each other;
d the arrangements are circular in nature; and
e the tax benefit is not reflected in the business risks undertaken by the taxpayer or its cash flows.

Since the Greek tax legislation was radically reformed in 2014, many of the issues arising in the context of the OECD base erosion and profit shifting (BEPS) project have already been addressed. Nevertheless, the competent authorities are in an ongoing process of reviewing and amending the domestic legislation as needed, as evidenced below.

Recent developments in respect of the OECD BEPS project involve implementation of Council Directive (EU) 2016/881, amending Directive 2011/16/EU, into domestic law by means of L4448/2017 in the context of Action 13 regarding country-by-country reporting. Specifically, L4484/2017 added Article 9AA to the provisions of L4170/2013, which had previously implemented Directive 2011/16/EU into domestic law, providing for the scope and the requirements for the filing of country-by-country reports in Greece by multinational enterprises and the automatic exchange of information received among the competent authorities. In the same context, L4490/2017 recently ratified the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC

12 Pol 1129/30 August 2017 and Pol 1049/7 April 2017 further clarify the application of Article 63A of TPC.
13 European Commission, Commission Recommendation on aggressive tax planning, C(2012) 8806 final (6 December 2012), Paragraph 4.2.

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MCAA), which was signed by Greece in Paris in January 2016.[14] On 15 June 2018 the Independent Authority for Public Revenue (IAPR) published a circular where it listed the jurisdictions with which Greece intends to implement the CbC MCAA. The first exchange of report with respect to the fiscal year ending 31 December 2016 was due in June 2018, while for the following year ending 31 December 2017 the report is expected to be exchanged by 31 March 2019.

Additionally, Greece recently signed the Multilateral Instrument (MLI) on 7 June 2017 in Paris. It should be noted that while Greece notified its intention to apply the MLI in respect of all double taxation treaties currently in force with other OECD members, it opted out of the provisions regarding hybrid mismatches (Articles 3–5), dividend transfer transactions (Article 8) and the artificial avoidance of PE status (Articles 12–15).

Greek tax legislation covers most of the issues raised in the Anti-Tax Avoidance Package, namely a general anti-abuse rule, as mentioned above, a controlled foreign corporations (CFC) regime, rules concerning interest deductions, rules on exit taxation and anti-avoidance measures in respect of affiliated companies. Implementation of Directives (EU) 2016/1164 and (EU) 2017/952 is expected until the end of year 2018 and 2019 respectively along with any amendments needed in the present Greek tax legislation.

IX DOUBLE TAXATION TREATIES

To date, Greece has concluded double taxation conventions with 57 states.[15] These bilateral conventions are transposed into national law by a legislative act and override domestic legislation by virtue of a constitutional provision. They are primarily based on the OECD's Model Convention on Income and Capital.

Double taxation conventions are interpreted according to the wording of the conventions as well as relevant commentary, and not according to domestic legislation. As international agreements, double taxation conventions shall be interpreted in accordance with the Vienna Convention on the Law of Treaties (1969). In relation to the double taxation conventions drafted in accordance with OECD's Model Convention, the OECD Guidance provides a useful soft law tool.

In general terms, the Greek courts respect and interpret properly the provisions of double taxation conventions. For example, in a fairly recently issued judgment,[16] the Council of State, by taking into consideration the provisions of the commentary of the OECD Model Convention, ruled that a resident of Germany whose spouse was a resident of Greece was not required to file a joint tax return with his spouse in Greece despite the express opposite provision of the Greek law.

X AREAS OF FOCUS

Regarding business income taxation, apart from classic items such as the determination of the taxable base through the deduction of business expenses, transfer pricing is becoming a hot issue for the tax administration. Particularly from 2014 onwards, the tax administration

14 Pol 1131/24 August 2017 and Pol 1184/22 November 2017 provide further clarifications and guidelines on the procedure of filing and automatic exchange of country-by-country reports.

15 A list of these can be found on the website of the International Economic Relations Directorate.

16 No. 1445/2016.

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has issued additional guidance on the application of the transfer pricing documentation rules and the implementation of the procedure of an advanced pricing arrangement. Further, there has been a large number of ministerial circulars regarding the implementation of transfer pricing legislation, and recently the new tax rules ratified on 1 August 2016[17] concerning transfer pricing compliance rules and audits. Importantly, as of 1 January 2014, the transfer pricing documentation requirements apply to all intercompany transactions, even those of an immaterial nature. Transfer pricing issues are also likely to draw more attention in corporate tax audits.

Moreover, there has been an increasing emphasis by the tax administration on individuals, and particularly high net worth ones. In particular, extensive income tax audits have recently been conducted by the tax administration by applying indirect audit methods. The Income Tax Code (Article 28) and TPC (Article 27) make provision for the use of indirect audit methods for the calculation of the income of individuals and legal entities. To date, ministerial guidance has been provided for the use of three of the five available indirect audit methods, and only with regards to individuals. Those methods have been widely used by the tax administration in relation to audits stemming from remittances of huge amounts by Greek residents abroad, a practice widely followed in recent years due to the uncertainty created by the crisis.

XI OUTLOOK AND CONCLUSIONS

An important development in tax administration is the creation of an autonomous revenue agency. By virtue of L4389/2016, from 2017 onwards the tax administration is no longer a division of the Ministry of Finance (as has been the case in the past), but is a body with functional independence as well as administrative and financial autonomy, not subject to the control of other public bodies. Despite the complexity and length of the relevant legislative acts setting out the details of the functioning of the new autonomous body, the transition has gone smoothly.

17 L4410/2016.

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Ioannis Stavropoulos, managing partner of Stavropoulos & Partners Law Office, was admitted to Athens Bar in 1986 and to the Supreme Court of Greece in 1997. He studied at the Law School of the University of Athens (LLB, 1983) and the University of Kent, UK (LLM, 1985). As a tax consultant or tax attorney, he has dealt with numerous cases concerning the application of double taxation treaties, transfer pricing and EU direct taxation and VAT legislation. A number of his cases constitute leading jurisprudence published in Greek and international legal and tax journals. He has participated in legislative and scientific committees either as an expert or representing various organisations. During 2012 to 2014 he actively participated, as an expert, in the tax reform committee that redrafted all the major tax legislation and codes in Greece. As a business lawyer, he has taken part in major merger and acquisition projects, domestic and international share and asset transactions as well as antitrust cases. He has published articles on various tax issues and has participated as a speaker in numerous conferences. He participates in the Taxation Committee of the American Hellenic Chamber of Commerce as well as in tax and legal committees of various federations and chambers.

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