VAT on Bad Debts Case: A Good Paradigm

— BY —
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As one of the lawyers who co-represented the major litigant in the famous, by now, case regarding the VAT on Marinopoulos Group's bad debts, I am tempted to comment upon the merits of the case.

Yet the value of this case lies also in the procedure itself, which constitutes a paradigm of coordination between the business community, the administration, and the courts.

The case is well known. The Greek legislation on the recovery of VAT did not allow recovery of the VAT that Marinopoulos Group's suppliers had paid, even though the underlying debts had been written off in the course of the insolvency procedure and EU legislation was far from clear on the matter.

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For this reason, a number of companies decided to pursue the case through legal means while business associations applied pressure to the tax administration to resolve the matter through guidelines. It must be said, however, that this was a matter hardly possible to resolve through administration guidelines, because authentic interpretation of legal provisions, which was needed in this instance, falls under the competence of the courts.

The tax administration however made use of the so-called "pilot-case" procedure that was introduced in 2011 (Law 3900) with a view to accelerating a decision by the Supreme Court on disputes with widespread impact.

This initiative of the administration, which also sought certainty on the matter, must be appraised especially in view of the likelihood of a result that would cost to the public treasury.

The Supreme Court responded positively to the request for a pilot case and arranged for a hearing within a period of just a couple of months; the decision too was issued in a timely fashion and within a very reasonable timeframe given the complexity of the case.

Apart from this time efficiency, the Supreme Court issued a high-quality decision that dealt thoroughly with rather delicate questions of both tax and commercial law and resolved the matter in a definite and clear way.

The whole experience is a bright example of how the system can work well when there are appropriate mechanisms in place and, more importantly, when there exists a will for matters to be progressed. And we have in place modern laws, an eager tax administration, and a responding judiciary.

As regards the substance of the case, as the court held, the proper interpretation of the Greek VAT law provision, in light of EU law and the jurisprudence of the European Court, dictates that the VAT on bad debts that are definitely not payable based on a procedure described in law should be recoverable by the supplier who was burdened with this tax upon issuance of his invoice. It might sound obvious, but according to the applicable provisions, it wasn't.

Thanks to the harmonized actions of certain companies, the business associations, the tax administration and the Supreme Court, the matter is now clear. It took some time and effort, but in any event, according to the Supreme Court, the refund of the VAT will be interest bearing.