



Tax Alert

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Greek Supreme Administrative Court issues landmark decision on Tax certificate in pilot trial

STAVROPOULOS & PARTNERS
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The Greek Supreme Administrative Court rendered yesterday its landmark decision 320/2020 in a pilot case dealing with the power of the Greek Tax Administration to perform tax re-audits to undertakings which had obtained a clean (without remarks) annual tax certificate following a tax audit conducted by independent auditors in the context of Ministerial Decision POL 1159/2011; according to the Court, in such case and following lapse of the envisaged 18-month time frame, the tax case should be considered as “closed” for tax audit purposes.

The Supreme Court’s judgement has, *inter alia*, largely endorsed our argumentation put forward in the pilot trial where we intervened on behalf of a corporate client, as to that Ministerial Decision POL 1159/2011, which established a specific limitation period for a tax re-audit following issue of a clean tax certificate and finalization of the tax case, was ratified by subsequent law provisions (l. 4110/2013 and l. 4254/2014), dismissing, thus, the Greek State’s argument that this Ministerial Decision was lacking prior delegated legislative power.

The Supreme Court clarified that, in principle, the assignment of the tax audit tasks to private audit firms is not excluded by the Greek Constitution on the condition that the Greek Tax Authorities retain their re-audit power which should be exercised under a specific procedure and within a reasonable time frame, beyond which the tax case is considered “closed”. According to the Court, although the general statute of limitations as prescribed in law may not be altered, the provisions of the Ministerial Decision POL 1159/2011, which defined the extent of the tax audit and established a type of “tax finalization” under certain conditions, were found to be compatible with the Greek Constitution.

In addition, the Court held that the attempted reversal of the “tax finalization” results through a subsequent amendment of the Ministerial Decision POL 1159/2011 with Circular POL 1034/2015 was not lawful due to lack of legislative power with regard to the latter. Further to this, the Court relying on judicial precedents on the fundamental principles of legal certainty and protection of legitimate expectations of the taxpayer observed that any retroactive reversal of the “tax finalization” results should be considered as precluded by such principles.

Decision 320/2020 is of profound importance for a great number of undertakings which hold a clean tax certificate issued in the context of Ministerial Decision POL 1159/2011 and which are confronted with high tax assessments further to tax re-audits conducted after the lapse 18-month period provided in (ratified by law) Ministerial Decision POL 1159/2011. It should be mentioned that as from 1.1.2014 the provisions on the finalization of the tax audit within 18 months in case of a “clean” tax certificate have been abolished.



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