

Greece introduces new tax dispute resolution mechanisms

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Executive summary

L. 4714/2020 (the Law) published in the *Government Gazette* on 31 July 2020 (GG A'148) introduces two new tax dispute resolution mechanisms. First, it establishes an Out-of-Court Tax Dispute Resolution Committee, with limited application and time scope. The Law also transposes European Union (EU) Directive 2017/1852 on tax dispute resolution mechanisms in the EU into Greek legislation.

This Alert summarizes these two new tax dispute resolution mechanisms.

Detailed discussion

Establishment of the Out-of-Court Tax Dispute Resolution Committee

The Law establishes an Out-of-Court Tax Dispute Resolution Committee (the Committee) at the General Secretariat for Tax Policy and Public Property aimed at the promoting quick tax dispute resolution, decongestion of the administrative court level and increased tax revenues.

The Committee

The task of the Committee is the out-of-court resolution of tax disputes pending before the Supreme Administrative Court and the ordinary Administrative Courts.

The Committee is based in Athens, with a branch in Thessaloniki. It is divided into sub-departments, composed of former judges of the Administrative Courts and members of the Legal Council of State. Tax officers provide their opinion with no voting right.

Submission of application before the Committee

A taxpayer in a pending tax (excluding customs) dispute before the Supreme Administrative Court or the ordinary Administrative Courts may submit an application via electronic means for out-of-court resolution of the dispute before the Committee, by 31 December 2020.

The electronic submission of this application is admissible provided that the dispute is pending and no hearing has taken place as of 30 October 2020.

It is also possible to file an application to the Committee for tax disputes pending before the Dispute Resolution Directorate until 30 October 2020, on the condition that they become pending before the ordinary Administrative Courts by 30 December 2020.

Allegations contained in the application

The application before the Committee may only contain the following allegations:

- ▶ Statutory limitation of the right of the State to impose the disputed tax or penalty
- ▶ Statutory limitation of the right of the State to impose the disputed tax or penalty on the grounds of the taxpayer having obtained an unqualified tax certificate
- ▶ Incorrect assessment of the tax or penalty due to obvious lack of tax liability or numerical error
- ▶ Retroactive application of the most favorable tax sanction principle according to the case law of the Supreme Administrative Court
- ▶ Reduction of additional tax, interest, surcharges and penalties

Examination of applications

The examination of the allegations is carried out based on the jurisprudence and the established practice of the Tax Administration.

The Committee may propose full or partial acceptance or rejection of the application and then will submit a specific proposal to the applicant taxpayer. This proposal contains sufficient justification and is notified to the taxpayer.

The deadline for the acceptance of the proposal by the taxpayer is set at five working days from its notification. In the case of acceptance, out-of-court resolution minutes are drawn up, which are published on the website of the Ministry of Finance.

The minutes certify the irrevocable settlement of the pending dispute which can no longer be challenged by any legal remedy or means, if the taxpayer pays 30% of the main tax due within five working days from the minutes' signing and the remaining amount is fully paid, as follows:

- ▶ The payment of the amount resulting from the compromise following the payment of 30% is effected by reducing the corresponding additional taxes, interest, surcharges and penalties, as follows:

Number of Installments	Additional taxes etc. Discount Rate (%)
1	75
2-4	65
5-8	55
9-12	50
13-16	45
17-20	40
21-24	35

- ▶ The payment of the above installments is not surcharged with interest, stamp duty or any other amount.
- ▶ Any amounts already paid against the main tax due are taken into consideration.

In case of non-compliance with these conditions as well as in the case of non-payment of two consecutive monthly installments or delay of payment of the last two installments for the respective period, the compromise is retroactively reversed.

In the case of non-acceptance by the applicant taxpayer of the Committee proposal, minutes of cancellation of the out-of-court resolution are drawn up.

The minutes of the out-of-court resolution or the minutes of cancellation shall be notified immediately, under the supervision of the secretariat of the Committee, to the Court in which the case is pending.

In the case of non-acceptance by the applicant taxpayer of the Committee's proposal, the suspended trial is continued.

Deadline for the examination of applications

The examination of out-of-court resolution applications is completed by 28 May 2021 and the out-of-court resolution minutes are issued by 31 July 2021.

The applications that were not examined by 28 May 2021, are deemed to have been implicitly rejected and are re-submitted under the supervision of the Secretariat of the Committees to the competent Court without the issuance of minutes.

As long as the case is pending before the Committee, the trial before the Supreme Administrative Court or the competent ordinary Administrative Court is suspended.

A Decision of the Ministry of Finance shall determine any issue related with the Committee's function.

Tax Dispute Resolution Mechanisms in the EU (transposition of Directive (EU) 2017/1852)

The Law incorporates into Greek legislation the provisions of Directive (EU) 2017/1852/EU of the Council of the EU of 10 October 2017 on tax dispute resolution mechanisms in the EU.

The resolution mechanism concerns disputes between Greece and one or more EU Member States (MS) arising from the implementation of bilateral tax agreements and conventions (Double Tax Treaties – “DTTs”) and the Convention of 20 August 1990 on the elimination of double taxation in connection with the adjustments of profits of associated enterprises (90/436/EEC), which has been ratified by Law 2216/1994 (the Convention).

Dispute resolution is structured in three stages:

- ▶ Submission of complaint by the taxpayer (affected person)
- ▶ Mutual Agreement Procedure (MAP)
- ▶ Arbitration

The possibility of filing an appeal before national courts at various stages of the procedure, aimed at the full protection of the rights of the affected persons and ensuring of the dispute resolution procedure, is also provided.

The dispute resolution mechanism applies to any complaint submitted from the publication of the Law and henceforth, on disputes concerning income or capital acquired in tax years starting from 1 January 2018 onwards (with the possibility of retroactive application, upon agreement of the MS).

In short, the stages of the process are presented as follows:

Complaint on a question in dispute

- ▶ Any affected person shall be entitled to submit a complaint on a question in dispute before the Greek Competent Authority and each of the competent authorities of the MS concerned, requesting the resolution thereof, within three years from the receipt of the first notification of the action resulting in the question in dispute.
- ▶ The submission of the complaint automatically ends any other MAP under a DTT or Convention between Greece and the respective MS.
- ▶ The complaint includes, inter alia:
 - Accurate information about the facts and circumstances of the case, with all the supporting documentation and evidence
 - Explicit reference to the national rules and the rules of the relevant DTT or Convention
 - The reasons on a question in dispute
- ▶ The Competent Authority shall decide on the acceptance or rejection of the complaint within six months. After this deadline, the complaint is considered as accepted.
- ▶ If the complaint is rejected by the competent authorities of all the MS concerned, the affected person is entitled to file an appeal against the rejection decision.
- ▶ If the complaint is rejected by at least one but not all of the MS concerned, the affected person may apply to the Competent Authority for the convocation of the Advisory Commission (under specific conditions). The Advisory Commission may initiate the MAP.

Mutual Agreement Procedure

- ▶ The Competent Authority and the competent authorities of the MS concerned endeavor to resolve the dispute within two years, with the possibility of extension for one year.
- ▶ If the competent authorities of the MS concerned reach an agreement and the affected person accepts this agreement and waives the right to use any remedy, a decision of mutual agreement is issued.

Arbitration stage

- ▶ If no agreement is reached between the MS concerned, the affected person may request the establishment of an Advisory Commission in order to provide an opinion on how to resolve the question in dispute.

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