

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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A. Court of Justice of the European Union on the Interpretation of VAT Directive (2006/112/EC) with Regard to VAT Calculation Through Inductive Methods

1. Interpreting Article 273 of the VAT Directive, the Court of Justice of the European Union (CJEU) ruled that in the event of substantial differences between declared revenues and revenues estimated through inductive methods, the tax authorities may use extrapolation based on such methods in order to assess the taxpayer's turnover and consequently carry out tax adjustments requiring the payment of additional VAT.
2. In compliance with the principles of fiscal neutrality, proportionality and the right of defence, taxpayers may challenge the results obtained through application of this method by submitting any evidence to the contrary and exercising their rights of deduction.

B. Council of State Decision No. 2105/2018 Pertaining to Transfer of Tax Residence

1. The Council of State ruled that the tax authorities wrongfully rejected a taxpayer's request to transfer his tax residence by examining only the criterion of where his center of vital interests was.

2. The taxpayer's request was rejected on the grounds that his strong personal ties in his country of origin prevailed over the professional activities he developed abroad.
3. The Council of State stated that the tax authorities wrongfully confined themselves to examining the country of residence of the spouse and minor child of the applicant alone, and failed to take into account the supplementary information he submitted to support the transfer of his tax residence, such as his employment agreement, social security certificate and foreign tax residence certificate.
4. In particular, the tax authorities considered the applicant's personal ties to be essential in determining his tax residence, without taking into consideration his financial and social ties.
5. The Council of State considered the approach of the tax authorities to be contrary to Article 4 par. 1 of Law 4172/2013 (Greek Income Tax Code) pertaining to tax residence.
6. In this respect, the tax authorities' decision was considered by the Court as not being in accordance with the law and insufficient to substantiate the existence of the applicant's tax domicile, resulting in the annulment of their report as being inadequately reasoned. The Council of State also ruled that the Directorate of Dispute Resolution (ΔΕΔ) was incompetent to resolve this issue, as the dispute in question should be resolved through annulment proceedings.

C. Directorate of Dispute Resolution (ΔΕΔ) Decision No. 4466/2018 on Capital Registration Tax in the Case of Share Capital Increases By Way of Issuance of Above Par Value Shares

The Directorate of Dispute Resolution (ΔΕΔ), applying the argumentation of the Council of State's Decision No. 1774/2018 (as discussed in our Briefing No. 51), decided that no capital registration tax is due upon share capital increases by way of the issuance of above par value shares, on the grounds that the additional voting rights relating to the newly issued shares are obtained after the capitalization of the share premium.

Contacts



Panayotis Bernitsas
Managing Partner
E pbernitsas@bernitsaslaw.com



Fotodotis Malamas
Senior Associate
E fmalamas@bernitsaslaw.com

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