

# *Tax Bulletin*

## **Code of Tax Procedures**

**September 2013**

***On 26.07.2013  
Law  
4174/26.07.2013  
introducing the  
Code of Tax  
Procedures was  
published in the  
Government  
Gazette  
(Government  
Gazette A'  
170/2013).  
Herein follows a  
presentation of  
the most  
important  
provisions.***



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The Code of Tax Procedures attempts to integrate into a single legislative framework all the provisions that are included in separate laws, such as mainly L.2238/1994 and L.2859/2000 (VAT Code), and that refer to the audit and collection procedures of the respective taxes.

Given that the Code of Tax Procedures regulates matters that until today were regulated by other laws, such as mainly L.2238/1994, which has however not been abolished despite the enactment of the new ITC by L.4172/2013, it is somewhat unclear how inconsistencies between the two regimes would be tackled.

In any case, taking into consideration that the Code of Tax Procedures will enter into force on the 1<sup>st</sup> January 2014, with the exception of certain provisions that apply directly from the date of publication of L.4174/2013, there is sufficient time to explicitly abolish the provisions that regulate the same matters. In a different case, the Code of Tax Procedures should replace the applicable provisions of other laws, at least for the part that a matter is regulated differently, according to the general principle that the newer law supersedes the older.

It should be noted that due to the establishment for the first time in Greece of a Code of Tax Procedures, a brief reference to all the provisions is made, even if no changes compared to the provisions of other laws regulating the same matter until today have taken place.

It is, however, worth mentioning in brief the most important amendments introduced by the new Code.

- A general anti avoidance provision introduced.
- New penalties, depending on the kind of infringement (procedural or tax avoidance) are imposed, without providing the option of their reduction in case of settlement. Aside from the penalties, interest for all cases of overdue payment of taxes (e.g. delayed or inaccurate filing of a tax return) is introduced.
- Broader competencies of the tax administration in the frame of a tax audit or collection of taxes are provided, such as (mainly) the option of an estimated or preventative assessment, stricter measures for ensuring the State's revenue (e.g. seizure without a judicial decision as security, filing of a petition of defraud of creditors), extension – under certain conditions - of joint liability to shareholders and partners of liable companies, etc.

# **A. General Provisions**

## A. General provisions (articles 1-9)

- The new Code specifies the procedure for determining, certifying and collecting public revenues namely of income tax, VAT, real estate ownership tax, every other tax, duty, contribution etc. and the monetary penalties imposed by the same Code.
- It is provided that the General Secretary of Public Revenue may transfer and assign the competencies and duties of his/her position and of the Tax Administration to other Administrative bodies.
- The method of notification of acts of tax procedure, both for individuals and legal entities, is specified. More specifically, it is provided that the notification to individuals is made:
  - a) electronically, according to the provisions on the electronic notification, as applicable at each time,
  - b) by sending a registered letter to the lastly indicated postal address of the said individual,
  - c) by service to the given individual, according to the provisions of the Code of Administrative Procedure, provided that the service is not possible in another manner.

Moreover, with regard to the notification to legal entities, this is made by delivering the act at the registered seat or establishment of the legal entity in Greece with a signed receipt note by an employee of the legal entity.

- It is provided that in case of notification of an act by registered letter, the latter is considered as legally notified following the lapse of 15 days (or 30 days in case the address is abroad) from the date of sending.

*The establishment of a presumption of legal notification following the lapse of a specific short period of time (15 or 30 days) and irrespective of examining the full knowledge by the interested party of the notified act may raise an issue of compatibility with the principle of effective judicial protection, given that the legal notification constitutes the point of commencement of deadlines for the exercise of appeals/petitions. Moreover, an issue of overlapping with the Code of Administrative Procedure may be created for certain matters concerning the service of acts.*

- The new Code allows for the option of notifying acts referring to the taxation of real estate by service to the individual that is in a legal relationship (e.g. lease agreement) with the owner or usufruct owner of the property, and is present at the real estate property, or by posting the act at the property.
- The new Code imposes an obligation of appointing a fiscal representative (without prejudice to the more specific VAT provisions) that is tax resident in Greece by a taxpayer that does not have a postal address in Greece in order for the administration to contact him/her.
- It is provided that the interpretative circulars (in contrast to individual replies) are binding for the tax administration (until their revocation or amendment) and no penalties for non submission or inaccurate tax returns will be imposed on taxpayers that have acted according to such circulars. Conversely, such circulars are not binding for taxpayers.

*It should be noted that the frame of application of this Code includes the real estate ownership tax, which has to date not been imposed. Of course, due to the entry into force of this Code on the 1.1.2014, the legislative imposition of real estate ownership tax, which will replace according to government announcements the applicable taxes imposed on real estate property, such as mainly the real estate tax, is possible.*

## **B. Tax Registry – Tax Clearance**

## **B.1 Tax Registry (article 10)**

- It is provided that every person liable to pay or withhold taxes or file any tax return is obliged to register with the tax registry, according to the manner and time that will be specified by a decision of the General Secretary.
- The tax administration may ask for a guarantee (the amount and kind of guarantee will be determined by a decision of the General Secretary of Public Revenue) from the legal entity that files a statement of registration in the tax registry, in case the shareholder or partner served during the last 5 years from the filing of the statement as a member of the Board of Directors or as a legal representative of another legal entity, or was a “related entity” according to article 2 of the ITC to another individual or legal entity that was rendered bankrupt or insolvent or the bankruptcy or insolvency resulted in the non collection or jeopardy of collection by the tax administration of due tax liabilities of at least € 15,000.
- Specific conditions for the obligation of providing a guarantee by the person filing a statement of registration to the tax registry are provided. More specifically, a guarantee may be requested only if the activities of the legal entity pose an immediate threat of causing a loss due to the non collection of future taxes.
- An obligation of the taxpayer to inform the tax administration in case of changes in the trade name, title, home address or address of registered seat, object of activity or any other information provided to the administration at the time of registering at the registry, is established.

*The obligation of providing a guarantee in case of an attempt of abusing the tax provisions, mainly by means of bankruptcy and then commencement of a new activity by the same persons, constitutes a useful tool for ensuring the State’s interests. However, a quicker method of settling disputes arising in relation to the fulfillment of the legal conditions and the amount of the guarantee requested by the tax administration could be provided, in order not to render the commencement of a business activity cumbersome in cases that a loss to the State is not probable.*

## **B.2 Tax Registration Number (article 11)**

- The granting of a tax registration number to every taxpayer, as well as to persons that are not taxpayers if required by other provisions, such as mainly persons realizing financial transactions with general government bodies and Greek credit institutions, is provided.
- It is provided that the content and method of granting a tax registration number, the cases of indicating the tax registration number on the tax returns or other documents and the cases of notifying the tax registration number will be specified by a decision of the General Secretary of Public Revenue.

## **B.3 Tax Clearance (article 12)**

- A Tax Clearance may be granted by the tax administration to a taxpayer in order to realize acts and transactions, only if it is established that the taxpayer does not have any due tax liabilities and has submitted all tax returns in the past.
- A Liability Certification, valid for one month, may be granted in order to realize acts and transactions, if the issuance of a Tax Clearance is not possible, in case the taxpayer has been included in a debt regulation program.
- A prohibition of granting a Tax Clearance or Liability Certification is provided for cases of State safeguarding measures for financial crimes.

*The provision on the non granting of a tax clearance in case of taking measures for the protection of the State against financial crimes, irrespective of the existence of due debt to the State or not, changes the nature of the measure as an indirect means of forcing debtors of the State to pay their debts, by transforming it into a sanction.*

## **C. Maintenance of Books and Records**

### **C.1 Maintenance of Books and Records (article 13)**

- An obligation of maintaining books and records that should depict in total the transactions of the enterprise according to the tax legislation (Code of Tax Recording of Transactions) and the accounting principles is specified.
- The time of keeping books and records is specified as follows:
  - for a time period of 5 continuous years,
  - until the prescription period for the right of the tax authority to issue the act of administrative estimated or corrective assessment of tax has lapsed for the cases of filing an amending tax return within the fifth year of the prescription period, of filing by a foreign authority of an application for the granting of information, of filing of a petition of an out-court-settlement in certain specific cases,
  - and until the claim of the tax administration in relation to the carrying out of a tax audit is finalized or until the claim is depreciated in full by payment.

### **C.2 Information provided by the taxpayer and third parties (articles 14-15)**

- The obligation of the taxpayer to provide within a deadline of 5 days from the receipt of a written request by the administration the required information and documents is established.
- The obligation of State services to provide the tax administration with all available information and provide the documents and other data in their possession is provided for.
- An obligation of certain third parties (e.g. banks, UCITs, notaries etc.) to provide within a deadline of 10 days to the tax administration all the required information they possess in relation to the taxpayer, with the exception of information and documents referring to criminal cases pending before the persecutors' authorities or criminal courts without the previous permission by the competent prosecutor, is provided. The above deadline may be extended for 20 more days in exceptionally complex cases.
- The lifting of the professional secrecy is provided following the written permission of the competent prosecutor for the granting of data that are covered by such secrecy. Data concerning third parties in their transactions with taxpayers are not covered by the professional secrecy and therefore an obligation of providing such data is provided.

### **C.3 Tax confidentiality – obligation of discretion (article 17)**

- An obligation of the tax administration and of all employees to keep confidential all the data and information of the taxpayer, which came to their knowledge in the frame of the exercise of their duties, is provided.
- The use of confidential information and data is permitted only to the the lowest required level for achieving the purpose of the duties for which they were granted.
- It is specified that the data that are in the possession of someone are protected by the tax secrecy and such person is obliged not to reveal such data.

## **D. Filing of Tax Returns**

## **Filing of tax returns (articles 18-20)**

- The obligation of the taxpayer of submitting tax returns to the tax administration at the time indicated by the respective tax legislation is provided.
- The General Secretary is authorized to determine the format of the tax returns, the information and data that should be declared on the tax returns and possible annexes, as well as the manner of filing the tax returns.
- The obligation of filing an amending tax return in case the taxpayer realizes that the submitted tax return includes mistakes or omissions is provided.
- It is considered that the initial and amending tax returns have been duly filed, if the amending tax return is filed within the deadline for filing the initial tax return.
- An amending tax return may be filed until the issuance of an audit order or until the prescription period of the right of the State to commence an audit has lapsed.
- A tax return under reservation, which should be specific and justified, may be filed in case the taxpayer has doubts with regard to the obligation of filing the tax return, the characterization of the taxable basis, the application of a reduced tax rate or other factors reducing the tax obligations.
- It is provided that the submission of filing a tax return under reservation does not entail the suspension of collecting tax. In case of acceptance of the reservation, the General Secretary of Public Revenue deletes the amount of tax, relating to the reservation, whilst any unduly paid tax is refunded.
- A petition may be filed before the special administrative procedure (out-of-court settlement procedure) before the Department of Internal Review of the Tax Administration in case of an explicit or silent rejection of the reservation by the General Secretary of Public Revenue.

## **E. Transfer pricing**

## **E.1 Transfer Pricing Documentation File (article 21)**

- The obligation of related parties according to the ITC to maintain a transfer pricing documentation file in relation to their transactions and transfer of operations of article 51 of the ITC, is integrated into the Code of Tax Procedures.
- An exemption from maintaining a transfer pricing documentation file is provided, if:
  - (a) the above transactions or transfer of operations amount to up to € 100,000 annually and in total in case the turnover of the liable party does not exceed the amount of € 5m annually,
  - (b) the above transactions or transfer of operations amount to up to € 200,000 annually and in total in case the turnover of the liable party exceeds the amount of € 5m annually.
- It is specified that the transfer pricing documentation file is accompanied by the “Summarized Table of Transfer Pricing Information” which is submitted electronically to the tax administration within 50 days from the end of each calendar year.
- The transfer pricing documentation file is kept at the registered seat of the liable party for the whole time period that the books and records are required to be kept, and should be provided at the disposal of the Tax Administration within 30 days from the receipt of the relevant request.
- The obligation of updating the respective transfer pricing file is provided in case of a change of market circumstances that affect the data included therein. The update is made in the tax year in which the change takes place

*The obligation of documenting the prices of intra-group transactions had already been established by L.3775/2009, which had been amended by various laws and more specifically L.3842/2010, L.4046/2012, L.4046/2012, L.4110/2013 and L.4170/2013.*

*To be noted that L.4172/2013 provided for the drafting the transfer pricing documentation file and filing the Summarized Table of Transfer Pricing Information until the 16<sup>th</sup> August 2013 in relation to the accounting period ending on the 31-12-2012, irrespective of its time of commencement.*

*However, according to a press announcement issued by the Ministry of Finance the deadline for drafting the transfer pricing documentation file and for filing the Summarized Table of Transfer Pricing Information has been extended until the 20-09-2013.*

## **E.2 Advance Pricing Arrangements (article 22)**

- The option of obtaining an Advance Pricing Arrangement of the methodology of specific future intra-group transactions with related parties is integrated in the Code of Tax Procedures. Object of the Advance Pricing Arrangement constitutes the total of the criteria used for the determination the prices of intra-group transactions during a specific time period, which include mainly the transfer pricing methodology used, comparable or reference data and the respective adjustments, as well as the critical assumptions on future developments. Object of the Advance Pricing Arrangement may constitute every other specialized matter concerning the pricing of transactions with related parties.
- It is provided that the validity of the Advance Pricing Arrangement Decision cannot exceed 4 years, while it cannot enter into force retroactively (tax year that has lapsed at the time the application for the Advance Pricing Arrangement has been submitted). The issuance of the Advance Pricing Arrangement Decision does not impede the subsequent application of a mutual settlement procedure according to the at each time applicable double tax treaty.

- It is provided that the Advance Pricing Arrangement decision may be renewed, revoked or cancelled by a decision of the tax administration, provided that the legal conditions are met.

*The Advance Pricing Arrangement of intra-group pricings had already been established by article 11, par.4 of L.4110/2013, whilst according to par.19 of the same article it applied from 1.1.2014 onwards. Given that the new Code will enter into force from 1.1.2014, the submission of Advance Pricing Arrangement applications to the General Secretary of Public Revenue in relation to the methodology of future transactions will be possible from the aforementioned date onwards, although additional clarifications and guidance are required for the practical application of these provisions.*

## **F. Tax Audits**

### **F.1 Rights of the tax administration (articles 23-25)**

- The rights of the tax administration in relation to auditing the compliance with the tax obligations of taxpayers, as well as the kinds of tax audit (on site audit or from the offices of the Tax Administration) are specified in this section of the Code.
- It is provided that the tax administration performs a tax audit from its offices on the basis of the financial statements, tax returns and other documents that are submitted by the taxpayer, as well as the documents and information in its possession.
- The performance of a complete on-site tax audit, which should be notified to the taxpayer by a previous written notification, is also provided.
- It is provided that a complete on-site tax audit is performed without prior notification in cases where indications of tax avoidance exist.
- The tax administration may have access to the books and records and to other documents of the taxpayers, as well as to the receipt of copies thereof. The tax administration has the same rights with regard to books and records that are kept electronically.
- It is clarified that for the performance of an on-site audit, an order for a tax audit and the demonstration thereof and of the identification of the auditor to the taxpayer shall be required. Moreover, this audit should be performed during the official office hours of the tax administration.
- It is specified that an extension of the on-site tax audit may be granted once for 6 months, as well as for another 6 months in extraordinary cases.
- The right for a new audit of a tax period already audited is provided only in case new data arise, which affect the calculation of the tax liability. “New data” is defined as every data which could not have been known to the tax administration upon the commencement of the original tax audit.

### **F.2 Election of cases subject to audit (article 26)**

- The election of the cases subject to audit will be made on the basis of risk analysis criteria. Exceptionally, cases may be elected on the basis of other criteria, according to a decision of the General Secretary of Public Revenue.

### **F.3 Audit methods and results (articles 27-28)**

- The tax administration may use audit techniques for the indirect determination of the taxable basis:
  - a) the proportionality principle,
  - b) the analysis of the liquidity of the taxpayer,
  - c) the net position of the relation between the sales price to the total turnover and
  - d) the amount of bank deposits and expenses in cash.
- The procedure of notification of the taxpayer of the results of the tax audit is provided. More specifically, a temporary corrective assessment of tax is issued in case a differentiation of tax arises on the basis of the tax returns of the taxpayer and the results of the audit. Following the submission of such decisions and within 20 days from the receipt of the notification thereof, the taxpayer may submit its views in writing, whilst after that point a final corrective assessment of tax sheet is issued, which is notified to the taxpayer.

## **G. Assessment of Tax**

## G.1 Types of tax assessment (articles 30-35)

*The meaning of “tax assessment” is defined and categories of tax assessment acts that the tax administration may issue are provided.*

- **Direct assessment of tax:** arises without a further action by the administration, simultaneously with the submission by the taxpayer of his/her tax return. The taxpayer also has the right to amend the tax return by paying the respective difference in tax or, by establishing his rights for a refund of tax paid in excess according to the amended tax return.
- **Administrative tax assessment:** arises without the previous audit by the tax administration, when it is entitled to issue an act of administrative assessment of tax that is based on data that have been provided by the taxpayer in a tax return or every other data available to the tax administration.
- **Estimated tax assessment:** the tax administration issues an act of estimated tax assessment in case the taxpayer does not file a tax return whilst having the respective obligation, on the basis of every data available. If the taxpayer subsequently files a tax return, the act of estimated assessment automatically ceases to exist. The issuance of a decision by the General Secretary of Public Revenue in relation to the method of determining the estimated tax base in this case is provided.

*According to the Scientific Committee of the Parliament, the legislative authorization provided to the General Secretary of Public Revenue for determining the estimated tax base in case of non submission of a tax return by a taxpayer, infringes the constitutional principle of tax legality, since such decision indirectly determines the tax object.*

- **Corrective tax assessment:** the tax administration proceeds to the issuance of a corrective tax assessment act in relation to any previous direct, administrative, estimated or preventative tax assessment, provided that it justifiably emerges from the audit that the previous assessment of tax was inaccurate or mistaken. This assessment is subject to a subsequent further correction only if new data arises. Moreover, the taxpayer may request the issuance of a corrective tax assessment act in case of filing an amending tax return for which an administrative assessment tax act has been issued, and the tax administration is obliged to issue such corrective tax assessment if the amending tax return is accepted.
- **Preventative tax assessment:** it is realized when there are indications that the taxpayer intends to leave the country, putting the collection of tax at risk, especially through the transfer of assets. The preventative tax assessment act is issued following the commencement of the tax period but prior to the lapse of the date for submitting the respective tax return. The taxpayer either pays in a lump sum the tax liability indicated on the preventative tax assessment or secures the latter's payment by providing a guarantee or by accepting the recording of a lien of property in favor of the tax administration for the total amount of tax liability. The preventative tax assessment is followed by a corrective tax assessment within 1 year from the date of issuing the preventative tax assessment act.

## G.2 Prescription period of the right to impose taxes (article 36)

New cases of application of the prescription period of the right to impose taxes are provided, as follows:

Issuance of an administrative, estimated or corrective tax assessment	5 years from the end of the tax year
Extension of the 5-year prescription period	For a period of 1 year from:
a) The submission of an amending tax return within the 5 <sup>th</sup> year of the prescription period	- end of the five-year period
b) Application for the granting of information from abroad	- its receipt by the tax authority
c) Filing of an out-of-court settlement petition/judicial appeal/petition	- the issuance of a decision which is not subject to petition/appeal
Issuance of a tax assessment for cases of tax avoidance	20 years from the end of the tax year

- It is provided that in case of a corrective tax assessment resulting in an amendment of the tax assessment act for a year for which the prescription period of the State's right to audit has lapsed, the adaptation is made to the last year for which said right has not been prescribed (article 36, par.4).

*The new provisions on the prescription period may prove to be more open ended if it is considered that the 20 year prescription period applicable to cases of tax avoidance also applies to every case of filing an inaccurate tax return. This will depend to a great extent from the interpretation of the term "tax avoidance" (please refer to relevant section below). In such case, the 5 year prescription period will only apply to procedural infringements. In any case, the provision of the option of a corrective tax assessment, despite the lapse of the prescription period for the State's right to audit, seems to infringe the provisions on the prescription period and therefore legal certainty. In this respect, the interpretation of par. 4 of art. 36 is not that clear.*

### G.3 General anti avoidance provision (article 38)

**A general anti avoidance rule is introduced for the first time into the Greek tax legislation. More specifically, it is provided that the tax administration may disregard any artificial arrangement or arrangements that have been concluded for the principle purpose of tax avoidance and leads to a tax benefit.**

- The meaning of “arrangement” is defined, which may include more than one stage. An arrangement is considered as artificial if it lacks commercial substance and aims at the evasion of taxation or to a tax benefit.
- For determining whether the arrangement has led to a tax benefit, the amount of tax due by a person subject to tax, taking into consideration the arrangement/arrangements, with the amount of tax due by the same person under the same circumstance and in the absence of the arrangement, are compared.

*By this provision, a general anti avoidance provision according to the Recommendations of the European Commission of 6.12.2012 is integrated into the Greek legislation. Due to the lack of experience of the tax administration, an issue may be created in relation to the interpretation and application of this provision. As also pointed out by the Scientific Committee of Parliament, the new provision will cause a number of interpretative disputes due to the generality in which it is formulated, as well as with regard to the very broad discretion conferred to the tax administration. According to the Committee the choice of criterion of a purely “artificial arrangement”, as developed by the ECJ case law, for determining the artificial or not character of a transaction, would be preferable. In any case, the competent audit authorities should, in application of the new provision, limit themselves to the combating of artificial arrangement having the scope of tax avoidance.*

# H. Collection

## **H.1 Collection (articles 40-44)**

- It is specified that the collection of taxes constitutes a competency of the General Secretary of Public Revenue, although the collection may be assigned to every other public authority or credit institutions.
- The manner, time and deadlines in which the assessed tax is payable are determined. In case of a corrective tax assessment, the tax due is payable within 30 days from the notification of the tax assessment act to the taxpayer. In case of an estimated or preventative tax assessment, the tax is payable within 3 days from the notification of the assessment act.
- A deadline of 90 days for the refund of unduly paid taxes is provided, which commences from the submission by the taxpayer of the claim for refund of taxes, unless a shorter time period is provided by other provisions.
- The taxpayer may ask by a written application the tax administration to keep the amount of tax for refund in order to be set off against the taxpayer's future liabilities.
- A program of debt regulation (partial payment of debt by installments) may be granted by the tax administration in case of invocation by the taxpayer of his/her financial difficulties for the payment of tax within the legal deadline.
- The legal order of payment of tax debts is provided.
- The option of being included in the program of partial payment of tax liabilities, which is approved by the tax administration, is provided exclusively when the conditions of financial inability of duly paying the tax and of consistent application of the program are met.

## **G.2 Enforcement (articles 45-49)**

- The enforceable orders on the basis of which the tax administration may proceed to enforcement for the collection of tax debts are enumerated.
- In extraordinarily urgent cases and in case where the collection of the taxpayer's respective tax is at risk, the tax administration may take measures and proceed on the basis of the enforceable orders provided by the Code and without a judicial decision, to the imposition of a seizure of movable assets, real estate, property rights, claims and in general of all assets of the debtor of the State, either held by the taxpayer or by third parties. Moreover, on the basis of the above conditions, the tax administration may proceed to the appropriate conservative measures (injunction) on the basis of the enforceable order by analogous application of article 691 of the Code of Civil Procedure.
- The new Code introduces a restriction in applying setoff of claims of taxpayers against the State's receivables for taxes covered by the Code, as such set off right is up to date included in article 83 of the Code of Collection of Public Revenue.
- It is established that in case of non-payment of amounts indicated in the tax assessment act, the tax administration sends to the taxpayer a default notice of paying the liabilities due prior to proceeding to any enforcement action. In case of non-payment of the amount due within 30 days from the serving of the default notice, the competent body may proceed to measures of enforcement.
- The option of taking enforcement actions or writing a mortgage prior to the legal deadline for the payment of taxes or default notice or the lapse of 30 days from the aforesaid default notice is provided in case of a suspicion of fraud (transfer of assets) that endangers the collection of taxes. The previous opinion of the Financial Prosecutor is required for the adoption of such measures by the tax administration.
- The option of filing a petition of defrauding of creditors by the tax administration is provided in accordance with the similar Civil Law provisions of the Greek Civil Code.

### **G.3 Joint liability (article 50)**

- The article of the ITC on the joint liability of managers of legal entities, both at the time of their operation and dissolution, is re-worded, while other persons that are jointly liable are added.
- The new Code introduces also the joint liability of shareholders or partners at the time of dissolution of legal entities, which at the time of dissolution have not paid their tax liabilities, on the condition that they participate in the legal entity at a percentage of at least 5. The liability of such persons for paying the taxes due by the legal entity is limited to the amount of profits paid during the last three years prior to the dissolution of the legal entity due to their capacity as shareholders or partners.

Similarly, the Code also imposes a joint liability of shareholders or partners during the last 3 years prior to the time of dissolution of the legal entity, for the payment of the tax due at the time of dissolution, on the condition that these participate in the legal entity at a percentage of at least 5% and only if the debt concerns the period they were shareholder or partners, and in such case the liability is limited to the payment of their debt to the amount of the paid profits.

In both cases, an exception applies for legal entities that are listed on the Athens Stock Exchange or another recognized Stock Exchange of the EU.

### **G.4 Prescription period (article 51)**

- A five-year prescription period for the State's right to collect taxes covered by the Code is provided.
- It is provided that in case of an interruption of the five year prescription period, the State maintains its right without any time restrictions to proceed to enforcement.

# **I. Interest and Penalties**

## **I.1 Interest for late payment – procedural infringements - infringements of tax evasion – penalties (articles 53-61)**

- It is provided that in case of a late payment of tax, the taxpayer is obliged to pay interest for the time period from the end of the legal deadline until the date of payment of the tax. Conversely, it is provided that in case of payment of excess tax on behalf of the taxpayer (undue payment), the tax authorities are obliged to pay interest for the time period from the date of the payment of the excess amount until the date of its refund, unless the refund of tax takes place within 90 days from the refund claim.
- The determination of the interest rate will be made by a decision of the General Secretary of Public Revenue.
- It is provided that infringements of the tax legislation are distinguished between procedural infringements and infringements with the purpose of tax evasion.
- The meaning of tax evasion is introduced, which is defined as a concealment of net income derived from any source by not submitting or by inaccurately submitting a tax return with the purpose of non payment of income tax, non payment, inaccurate payment, set off or submission of an inaccurate tax return with the purpose of non payment of the above taxes, duties or contributions that fall within the legal framework of the Code.
- More specifically, tax evasion is considered to arise in the following cases:
  - Concealing of net income derived from any source by submitting a tax return or submitting an inaccurate tax return with the purpose of not paying income tax.
  - Non payment, inaccurate payment, set off, deduction or keeping of VAT and withholding or imposed taxes, duties or charges.
  - The collection of a refund of taxes from the tax administration following the deceit of the tax administration by representing false facts as true or by unlawful concealment of true facts.
  - The issuance of false tax records, as well as the alteration of tax records.
  - The issuance of fictitious tax records and acceptance thereof.

*To be noted that the tax records indicating a transaction value lower than the real value are always considered, for the purposes of the present law, as inaccurate, while the tax records that indicate a value higher than the real value are considered as fictitious for the part of the exceeding value.*

*Due to the very broad definition of the meaning of “tax evasion” an issue is created with regard to evidencing the infringement in case of a tax audit establishing tax adjustments on the tax return. However, the legal requirement of malice by the taxpayer (“with the purpose of non payment of tax”) may be considered to exclude the cases in which the arising difference of tax is due for example to an erroneous interpretation of the applicable provisions. In any case, the tax administration should sufficiently justify the decision of imposing penalties for infringements of tax evasion in order to be able to also judicially ascertain the existence of an intention of not paying taxes.*

## I.2 List of Procedural Infringements (article 54)

List of Procedural Infringements
<b>Non submission or delayed submission</b> of a statement of informative character or tax return or withholding tax return
<b>Non compliance</b> with a request of the tax administration for the provision of information or data
<b>Non cooperation</b> during a tax audit
<b>Non notification</b> to the tax administration of the appointment of a tax representative
<b>Non registration</b> before the tax registry
<b>Non-compliance</b> with an obligation regarding the keeping of books and issuance of records according to the Code of Tax Recording of Transactions

## I.3 Penalties for procedural infringements (article 54)

Procedural Infringement	Penalty
<b>Non submission or delayed submission</b> of a statement of informative character or tax return (no tax arises)	€100
<b>Other infringement</b> where the taxpayer is not liable to maintaining accounting books	€100
<b>Other infringement</b> where the taxpayer is liable to maintaining accounting books on the basis of simplified accounting principles	€1,000
<b>Other infringement</b> where the taxpayer is liable to maintaining accounting books on the basis of accounting principles	€2,500
<b>Not registering</b> at the tax registry	€2,500
<b>Repetition</b> of the above infringement within 5 years	Double penalty
<b>Second repetition</b> within 5 years	Quadruple penalty

## I.4 Penalties of infringements of tax avoidance (article 55)

Actions of tax avoidance	Amount of penalty imposed on the value of the infringement
<b>Non issuance or incorrect issuance of a record</b> resulting in the dissimulation of the transaction or part thereof for a value exceeding € 5,000	40% of the value of the concealed transaction and a minimum penalty of € 2,500
<b>Issuance of counterfeit tax records</b>	100% of the value of the tax record
<b>Issuance of fictitious tax records or the receipt of fictitious tax records</b>	50% of the value of the tax record
<b>Issuance of fictitious tax records or the receipt of tax records</b> with a partly fictitious value	Imposition of penalty for the part of the fictitious value
<b>Impossible determination</b> of the partly fictitious value	25% of the value of the tax record
<b>Fictitiousness</b> exclusively attributable to the person issuing the tax record	25% of the value of the tax record
<b>Receipt of a fictitious record</b> provided that the receipt did not result in the reduction of income tax	15% of the value of the tax record
<b>Fictitiousness</b> of the record concerning the <b>characterization of the indicated transaction</b> , which refers to a different transaction without resulting in the loss of profits	€500 per fictitious record and a maximum penalty of € 50,000 per tax year (penalty for the issuance of an incorrect tax record)
<b>Deducting output tax</b> or the receipt of a refund due to the alteration of a tax record or non payment of tax on the basis of false, fictitious and altered tax records	50% of the value of the tax record that was deducted or received as a refund, irrespective of whether tax is payable or not

## I.5 Penalty for the delayed submission or non submission of the Summarized Table of Transfer Pricing Information or the Transfer Pricing Documentation File (article 56)

Infringement	Amount of penalty imposed on the value of the infringement
<b>Delayed submission</b> of the Summarized Table of Transfer Pricing Information (art.21, par.3) and of the Transfer Pricing Documentation File	calculated at a percentage 1/1000 of the declared gross profits (not below €1,000 and not exceeding €10,000)
<b>Non submission</b> of the Summarized Table of Transfer Pricing Information or not providing the Transfer Pricing Documentation File (art. 21, par.1) or incomplete or insufficient content	calculated at a percentage 1/1000 of the declared gross profits (not below €10,000 and not exceeding €100,000)
<b>Repetition</b> within 5 years of the first infringement	Double the initial penalty
<b>Second repetition</b> within 5 years from the first	Quadruple of the initial penalty

## I. 6 Other penalties (articles 58-61)

Infringement	Penalty
Delayed payment of tax (lapse of a two month deadline from the legal deadline)	10% of the not duly paid tax
Delayed payment of tax after 1 year	20% of the tax
Delayed payment of tax after 2 years	30% of the tax
Inaccurate tax return with a difference in tax of 5%-20%	10% on the amount of the difference between the tax assessed on the basis of the tax return and the corrective tax assessment
Inaccurate tax return with a difference in tax of 21%-50%	30% on the amount of the difference
Inaccurate tax return with a difference in tax exceeding 51%	100% on the amount of the difference
Non filing of a tax return	Penalty equal to the amount of tax
Non payment of withholding taxes	Penalty equal to the amount of not paid tax
Distortion or attempt to distort the works of the tax authorities or harboring or accessory to an infringement	Same penalty as the penalty imposed on the taxpayer

- It is provided that the taxpayer may submit to the General Secretary of Public Revenue an application for the exemption from interest and penalties in case of force majeure is provided, with the exception of the provisions on inaccurate tax returns or infringements of tax avoidance.
- Prior to the issuance of acts of interest assessment or imposition of penalties the taxpayer may be invited to provide his/her views at least 30 days prior to their issuance, with the exception of acts referring to procedural infringements.
- Interest and penalties are paid lump sum until the 30<sup>th</sup> day following the notification of the interest assessment or imposition of penalty acts.

# **J. Out-of-court settlement petition**

- The new Code provides for the filing of an out-of-court petition (ενδικοφανής προσφυγή) by the taxpayer with the claim of reviewing the tax assessment act by the Department of Internal Review of the tax administration, in case the content of the tax assessment act is questioned within a deadline of 30 days from the notification of the act.
- It is provided that the direct filing of a petition before the competent administrative courts against acts of the tax administration is inadmissible. Exceptionally, the direct petition before the competent administrative courts against a preventative tax assessment act is permitted (challenging the fulfillment of the conditions for issuing this act) (article 35, par.1).
- It is provided that by filing the out-of-court petition (ενδικοφανής προσφυγή) 100% of the questioned tax is assessed directly. Moreover, an obligation for the payment of 50% of said tax is created, while the mandatory payment of the remaining 50% is suspended.
- Taxpayer may still maintain the option of filing a claim for the suspension of the payment of the 50% of the questioned tax before the Department of Internal Review. The suspension is only provided in case that the payment would result irreparable damages caused to the taxpayer. The claim is considered as silently rejected in case a decision is not issued within 20 days.
- The summons to a hearing of the taxpayer is possible if it is deemed as necessary by the Department of Internal Review, and exceptionally mandatory if new data arises or the taxpayer refers to new data.
- The Department of Internal Review must issue a decision which is communicated to the liable party within 60 days from the filing of the out-of-court petition. In case of non issuance of a decision within the deadline, that the out-of-court petition is considered as having been silently rejected. Exceptionally, the deadline is extended to 120 days in case of out-of-court petitions that are submitted before the tax authorities up to 28.2.2014. The filing of a further petition before the administrative courts is made on the basis of the applicable provisions on administrative procedure.
- It is provided that the taxpayer bears the burden of proof of the legal defect of the tax assessment act in case of its challenge in the frame of an out-of-court settlement petition.

*The special administrative procedure of an out-of-court petition before the Department of Internal Review had already been established by L.4152/2013, by which article 70B was added to L.2238/1994 (ITC). Paragraph 11 of said article provides that the new procedure will apply for actions that are issued from 1.8.2013 onwards. However, this Department has until today not been established at the Ministry of Finance, which generates questions, at least with regard to its entry into force.*

*It derives from the formulation of this provision that the competency of the Department of Internal Review is broader than the respective competency of the Committee of article 70A of the ITC. More specifically, whilst the latter was competent for the settlement of tax disputes of every object arising after an audit (acts of tax assessment or imposition of penalties for infringing the tax legislation), the new Department will be competent for the settlement of disputes arising due to the issuance by the tax administration of any act against the taxpayer and therefore not only those arising after a tax audit.*

## **K. Entry into Force**

## K.1 Entry into Force of the Tax Procedures Code

**The provisions of the present Code enter into force from the 1<sup>st</sup> January 2014**, with the exception of the following cases:

- The provisions of the 7<sup>th</sup> chapter of the Code on tax audits (rights of the tax administration, tax assessment acts) apply to all fiscal years for which, at the time of entry into force of the Code, no audit order has been issued or an audit order has been issued but the audit has not commenced.
- The provisions of the 10<sup>th</sup> chapter of the Code on penalties (interest, infringements and penalties) apply to infringements committed from its entry into force, namely the 1.1.2014, with the exception of the provisions of article 55, par.2 concerning the penalties on the infringement of tax evasion that apply to infringements committed from the publication of the law, namely on the **26 July 2013**. Moreover, these provisions also apply to infringements that were committed prior to the publication of the Code, provided that:
  - a) irrespective from their time of ascertainment, such infringements invoke the penalties of articles 5, par.10 and 6 of L.2523/1997, namely penalties for specific infringements of the CBR (autonomous infringements of non issuance or inaccurate issuance of records specified in the CBR and that result in the concealment of a transaction in case the concealed value exceeds €1,200 and of the issuance of false or fictitious tax records, the receipt of fictitious records and falsifying thereof, as well as misuse of books of purchase or expenses that have not been realized and no tax record has been issued, when exceeding €1,200), as well as VAT penalties for false, falsified or fictitious tax records.
  - b) the new regime is adopted within the provided deadline from the liable part as more beneficial for the total of infringements included in the same act or decision of imposing penalties, according to the below table.

## K.2 Election of the more beneficial regime of L.4174/2013

Final date for submitting the application	Case category	Consequences of falling within the beneficial regime of L.4174/2013
Within a subversive deadline of 15 days from the notification of the Decision for Imposing Penalties	For cases for which a Decision for Imposing Penalties has not been issued until the publication of the Code (26.7.2013)	Issuance of a penalty imposition act on the basis of the more beneficial regime by the Head of the Authority that issued the act. The provisions on settlement are not applicable against such act.
Within a subversive deadline of 45 days from the publication of the Code (26.7.2013), namely until 9.9.2013.	For cases for which a) a Decision for Imposing Penalties has been issued until 26.7.2013 and b) are not in a stage of out-of-court settlement of the dispute following the submission of an application of out-of-court-settlement or out-of-court-settlement petition.	Issuance of a penalty imposition act on the basis of the more beneficial regime by the Head of the Authority that issued the act. The provisions on settlement are not applicable against such act.
Within a subversive deadline of 45 days from the publication of the Code (26.7.2013), namely until 9.9.2013.	For cases that are in the stage of an administrative settlement of dispute.	Application of the more beneficial regime in the frame of the out-of-court-settlement or out-of-court-settlement petition. The reduction of penalties on the basis of the applicable legislation is not possible.
Within a subversive deadline of 45 days from the publication of the Code (26.7.2013), namely until 9.9.2013 or 30 days from the publication of the decision in case that the case was heard before court but the issuance of a decision was pending at the time of publication of the code (26.7.2013).	For cases that are pending at the time of the publication of the Code (namely on 26.7.2013) before the administrative courts or the Council of State.	Abolition of the trial (articles 142 and 143 of the Code of Administrative Procedure) following the submission of a copy of the minutes of settlement before the competent Courts.

- The application for falling within the beneficial regime is submitted before the competent authority that issued the Penalty Imposition Act or before the Competent Committee of article 70A and B of L.2238/1994 (ITC), as applicable in each case.
- The General Secretary of Public Revenue may issue a decision on the determination of the procedure of certifying and paying the amounts arising following the re-calculation of the penalties on the basis of the more beneficial regime of L.4174/2013.
- The provisions on judicial and administrative settlement will not apply for cases falling within the beneficial provisions of L.4174/2013.
- In case amounts have been paid in excess of those arising from the beneficial regime of re-calculating, penalties are not refunded.
- The provisions of par.5 of article 10 in relation to the tax return for real estate income and VAT penalties for the issuance of counterfeit or fictitious tax records, as provided by L.2523/1997, are abolished.
- It is specified that the provisions in relation to the allocation of a Tax Registration Number of par.3 of article 11 of the Code to persons that are not taxpayers, provided this is required by other legal provisions, apply from **August 1<sup>st</sup> 2013**.

- The application of the provisions of the present Code for infringements relating to the fictitiousness of the record concerning the characterization of the indicated transaction which is proven to refer to another hidden transaction of the provision of case dd) or par.c) of article 55, may apply, provided that these are more beneficial than the older provisions, even if the infringements occurred prior to the time of entry into force of the Code.

*It is clarified by the provisions of L.4174/2013 that the judicial or administrative settlement is not possible in case of falling within the more beneficial provisions of this law. Obviously, reference is made to article 9, par.6 of L.2523/1997 providing the limitation of penalties to 1/3 or 1/2 depending on the case at hand. This clarification is necessary due to the non abolition of article 9 of the Code of Tax Sanctions (L.2523/1997).*

# **L. Anti-Money Laundering**

## Anti-Money Laundering (article 68)

- The amendment of L.3691/2008 with regard to the basic offences is provided. The non payment of VAT up to €3,000 (article 18, par.1, case a' of L.2523/1997) and the issuance/receipt of fictitious tax records (article 19, par.1, first sentence of L.2523/1997) no longer constitute basic offences.
- The General Secretariat of Public Revenue may request from the Anti-Money Laundering Authority information relevant to the performed tax or customs audit or to the attempted collection of debt to the State. The Authority cannot refuse the provision of information, unless their provision would endanger an on-going and in any case not exceeding 6 months, investigation by the Authority.

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*This information is intended only as a general update for interested persons and should not be used as a basis for decision making. For further details please contact PwC:  
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