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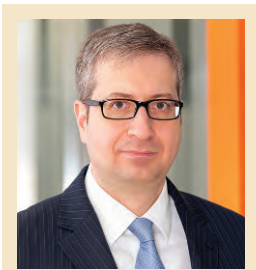
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The mainly substantive nature of tax litigation according to Greek law of administrative court procedure



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In the Greek legal order tax litigation is a subcategory of the so-called ‘administrative litigation’. This is because one of the litigant parties is an administrative (tax) authority that serves the public interest and exercises sovereign powers in connection with the application and enforcement of tax legislation – such as the conduct of tax audits, the assessment of taxes, the imposition of administrative sanctions and the collection of public revenues through the issuance of administrative acts that directly affect the legal and financial situation of the taxpayers concerned. The administrative acts issued by the tax authorities are presumed valid and are, by default, wholly or partially enforceable on taxpayers unless they get annulled or suspended either by a competent administrative authority or by the competent independent administrative courts.

Tax disputes are traditionally considered substantive in nature. Substance means different things in different contexts. In the realm of the Greek law of administrative court procedure, which is relevant to tax disputes, substance relates to the scope of judicial review of the acts issued by the tax authorities. A substantive tax dispute is a dispute that, due to its nature (i.e. directly affecting a specified taxpayer by assessing a specified amount of taxable base or tax liability, or imposing a sanction for breach of tax laws, or rejecting a tax refund application, or imposing an obligation to file tax returns for a specified taxable base), triggers a full-scope judicial review of both points of law and matters of fact (with the exception of a potential final-instance cassation recourse to the Greek Supreme Administrative Court, which triggers a limited judicial review of points of law only). In the context of a substantive tax dispute the court is empowered and obliged to examine all points of law and all matters fact raised

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by the litigant parties, and to make its own ultimate determination of both the law and the legally relevant facts of the case at hand.

In the context of substantive tax disputes the court may not annul a disputed administrative act merely because it is based on an inadequate or legally flawed reasoning (other than the lack of any essential elements, which according to the law constitute the minimum formal content of a valid tax assessment act or of the accompanying tax audit report). The court is required to carry out its own examination and to formulate an independent, reasoned and firm conclusion as to whether the legally significant facts exist or not in the specific case, in the light of all formally admissible pieces of evidence submitted to it by the litigant parties and of such additional evidence as the court may request to be submitted to it by virtue of a relevant preliminary judgement. The court is obliged to also conjunctively evaluate all available pieces of evidence, instead of evaluating each piece of evidence separately and independently from the other pieces of evidence, especially in cases of tax fraud and serious bookkeeping infractions where a global assessment of various circumstances is required. The court may rely on common experience in order to draw a conclusion about the existence or not of a specific circumstance based on evidence proving the existence of another circumstance. Finally, the court may allocate the burden of proof among the litigant parties, in which case the litigant party bearing the burden of proof will assume the risk of the court's doubt. Whilst procedurally each litigant party bears the burden of proving the factual arguments it raises, the wording and purpose of the provisions of the tax law, which are applicable in each particular case, play an important role in determining who (the tax authority, the taxpayer or both) will bear the burden of proof, and to what extent.

In exercising its full-scope jurisdiction, the court is empowered to directly and ultimately determine and formulate the substantive content of the tax assessment, and of the taxpayer's right, obligation or situation arising therefrom, and for this purpose it may not only annul, wholly or partially, but also modify the disputed tax assessment act. There are, though, certain limits in the power of the court to determine the applicable laws and to verify facts, which are set by the legal/factual base of the disputed tax assessment act and by the relevant requests and arguments (both legal and factual) raised by the taxpayer in a formally admissible manner before the court. In addition, the factual arguments raised by the taxpayer, in the context of a mandatory pre-court administrative re-examination procedure before a special dispute resolution unit of the tax administration, circumscribe in principle the scope of the judicial review in the case the dispute is subsequently brought to the court.

Tax disputes concerning the formal-registration status of a taxpayer (e.g. tax residence status of an individual) without involving a specified amount of taxable base, tax liability or tax receivable, or the obligation to file tax returns in connection with a specified taxable base, are not considered substantive. In these disputes, an administrative act may be annulled, wholly or partially, by the court on specified grounds, among which are the illegal/inadequate reasoning of the disputed act or the tax authority's mistaken perception about the existence or non-existence of the facts on which the disputed act was based. The elaboration of the aforementioned grounds for annulment heavily relies on facts and evidence. Following the annulment of an administrative act on either of these grounds the file is returned by the court to the tax authority so that the latter re-examines the case and arrives at a new lawfully/adequately

reasoned and well-informed decision, in conformity with the criteria or instructions contained in the court's judgement.

In view of the above, the availability of suitable and formally admissible (i.e. compliant with the Greek rules of procedure) evidence is as important as legal argumentation in determining the outcome of tax litigation, in the context of the mainstream domestic administrative court procedure.

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Georgios Katrinakis is a barrister at the Athens Bar Association and he joined PwC Greece in 2014 to lead its tax litigation practice and as a Partner of the PwC network member law firm “M. Psylla – V. Vizas – G. Katrinakis”.

Georgios has more than 20 years of experience in handling complex litigation and ADR in virtually all areas of taxation, including corporate taxation, PE and TP disputes, indirect taxes (VAT, stamp duties, customs and excise duties), individual and wealth taxation, either defending clients against tax and penalty assessments after the conduct of audits or reclaiming the refund of taxes unduly paid. Georgios also assists criminal defense lawyers in cases of alleged criminal tax evasion.

During the first 4 years of his career he has conducted commercial litigation at an Athens-based law firm, specializing in banking and financial law. Subsequently he has served as one of the leading tax litigators in a major Greek law firm for 11 years before joining PwC Greece. Georgios has represented over the years a multitude of multinational and Greek companies, as well as individual taxpayers before all Greek court instances (including the Greek Supreme Administrative Court) and before the Court of Justice of the European Union.

Georgios is a graduate of the Law School of the Athens National and Kapodistrian University and holds an LL.M. in European & International Law (University of Durham, UK) and PG Certificates in Tax Law and Accounting (Athens University of Economics & Business). He has been a regular author of technical articles on substantive tax and tax / court procedure issues, which have been published with some of the most reputable tax and business law reviews in Greece. He speaks Greek (native), English and French.



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