Tax Flash

3 December 2018

The Supreme Administrative Court overrules current position of the Greek Tax Authorities that the solidarity contribution does not fall within the scope of Double Taxation Treaties (DTTs) (Decision 2465/2018).

Grounds of the decision

According to the Supreme Administrative Court, the solidarity contribution of article 29 of Law 3986/2011, which has been imposed on income of individuals for six consecutive tax years (2010-2015), cannot be defined as extraordinary or temporary.

The regular/ordinary character of the solidarity contribution is also confirmed by its incorporation into the Income Tax Code (article 43^{A} of Law 4172/2013) and its imposition without time limit.

Consequently, the solidarity contribution falls within the scope of DTTs.

Even though the abovementioned decision referred to the DTT between Greece and the United Kingdom, the Supreme Administrative Court's judgement is likely to apply to all DTTs signed by Greece, which include a similar definition of the taxes that fall within their scope.

It should be pointed out that, recently, the Legal Council of State had adopted a contrary Opinion (no. 13/2018), namely that the solidarity contribution does not fall under the category of 'identical or substantially similar, to the income tax, taxes', which are covered by the existing DTTs signed by Greece and, therefore, does not fall within their scope. The Tax Administration had accepted this opinion by issuing the Circular no. 1099/2018.

The takeaway

In case a foreign tax resident individual acquires Greek source income, which is not taxable in Greece based on the existing DTT, no solidarity contribution should be imposed thereon.

Individuals that have already paid solidarity contribution on income that is not taxable in Greece, based on an existing DTT, may examine the possibility to ask for a refund of the amounts paid, subject to statute of limitation rules.

The decision may also affect Greek tax resident individuals that were unable up to date to credit foreign income taxes against the solidarity contribution, to the extent that the foreign tax exceeded the Greek income tax.

It is important to note that each individual case needs to be examined based on its own merits, and that the above mentioned general principles might not necessarily capture all possible eventualities. Our tax expert advisors are in a position to advise you on the tax implications arising from a Greek tax perspective in relation to your specific case.

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