

Tax - Breaking News

November 2017



As part of our effort to provide you with up-to-date information on all current tax matters, we summarize the rationale of Decision No.2934/2017 published by the Council of the State, regarding the statute of limitation of the Tax Administration's right to impose tax based on "additional" information.

Key points of the Decision

- Decision No.2934/2017 of the Council of the State ruled that information deriving from existing bank deposits in national banks brought to the attention of the Tax Authority after the five-year statute of limitation period, must not be considered as "additional" (new) information and, thus, must not extend the statute of limitation period to ten years. Therefore, in such cases the Tax Administration has no right to carry out a tax audit and impose taxes and fines.
- According to the Court's reasoning, the statute of limitation for the Tax Administration to carry out tax audits is the five-year period. Only by way of derogation would it be possible for the five-year statute of limitation period to be extended and, moreover, only if such extension is a necessary and reasonable measure in order to identify and combat tax evasion.
- More specifically, for accounting years up to and including 2006, the extension of the statute of limitation period to ten years is possible, only if additional information (within the meaning given by the law and the Council of State's interpretation) arises, and only where a tax audit had been carried out within the standard five-year statute of limitation period, and within which the relevant (initial) tax audit sheet had been notified to the taxpayer.
- Moreover, for accounting years from 2007 and onwards, the extension of the statute of limitation to ten years is possible, where additional information (within the meaning given by the law and the Council of State's interpretation) arises, even if the initial tax audit sheet was been notified after the initial five-year statute of limitation.
- In general, additional information does not include (a) that which has come to the knowledge of the Tax Administration within the five-year statute of limitation period and was ignored or disregarded and (b) that which the Tax Administration ought to have taken into account within the five-year statute of limitation period, by taking appropriate audit and research measures.
- Finally, the Council of the State specifies that the lifting of banking confidentiality for the effective investigation and suppression of tax evasion as provided by the law, in addition to the investigation of both balances and transactions made in all bank accounts in Greek banks, has been the basic instrument and manner to perform a tax audit, and the Tax Administration ought to have systematically used for many years.

KPMG Comments

- The Court explicitly states that the suppression of tax evasion is an imperative goal for the public interest, confirming the right and duty of the Tax Administration to exhaust all broad possibilities provided for by the legislative framework in combination with the modern tools that technology also provides.
- The Council of State considers that the balances in bank accounts in Greece constitute an element of information available to the Tax Administration any time on and after the filing of a tax return. As a result, at the end of the five-year statute of limitation period, information in Greek bank accounts cannot be accepted by default as additional (new) information nor serve as a reason for extending the statute of limitation period to ten years and provide the basis for carrying out a tax audit.

- The Decision clarifies that the inadequacy and deficiencies concerning the structure, recruitment and operation of the tax audit process cannot justify the lack of due diligence which the Tax Administration ought to demonstrate during tax audits, when comparing taxpayers' tax returns with their bank deposits.
- Finally, with regards to the burden of proof, it is noted that the Tax Administration ought – in principle – to prove the actual facts which constitute the violation. However, according to case law, it is sufficient for the evidence to be indirect, in the sense that even indications of a tax violation may presumptively result in the assessment of taxes.

[Contact us](#)

Georgia Stamatelou
Partner, Head of Tax

T: +30 210 60 62 227

E: gstamatelou@kpmg.gr

More information at

kpmg.com/gr



Follow us

This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.

© 2017 KPMG Advisors AE, a Greek Societe Anonyme and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.