

Statute of Limitations for tax assessments - New guidelines addressed to tax authorities

Background: Supreme Court Decision No. 1738/2017

In June 2017 the Supreme Administrative Court issued decision No. 1738/2017, whereby the consistent practice of the legislator to extend the time-period of the applicable Statutes of Limitations (SoLs), right before their expiration, was ruled unconstitutional. In light of this decision, the reaction of the tax administration was anticipated with great interest as to which fiscal years it would consider time-barred. The ambiguity is created by the fact that different SoLs apply depending on the type of tax, fiscal year in question and circumstances (e.g. non-filing of tax returns, tax evasion). Furthermore, many audits, which are currently pending, are covering a number of fiscal years, some of which should normally be considered time-barred on the basis of the above decision.

The reaction of the Independent Authority for Public Revenues: POL 1154/2017

The Independent Authority for Public Revenues has responded to the Supreme Court decision by issuing guidelines to the tax authorities (Circular POL 1154/2017), as to which audits they should pursue and finalise within year 2017. Although the guidelines concern tax audits of year 2017, still they reflect the way the tax administration interprets the decision of the Supreme Court as to SoLs.

Income tax audits

According to the guidelines, income tax audits may be performed for the following fiscal years under the respective SoLs:

- (i) For years **2011 onwards**, the standard **five-year** prescription period applies, starting from the end of next year from the year of reference.

- (ii) In case of **tax evasion** as defined in the Code of Tax Procedures, the SoLs set out a **twenty-year** prescription period. Circular POL 1154/2017 provides that this rule applies to fiscal years **2008 onwards**.

Application of the twenty-year SoL for fiscal years 2008-2011 appears to be questionable, in the light of the Supreme Court decision.

The rule was introduced for the first time in 2013, extending retroactively the SoLs for years 2008 onwards. According to the reasoning of the Supreme Court decision, the retroactive extension of the SoLs to twenty years should only be applicable for years 2012 onwards.

Tax evasion should be established in the course of a tax audit.

It is not clearly indicated, whether such audit should have been initiated within the standard five-year prescription period. This is a question of particular significance with respect to fiscal years 2008-2010, for which the five-year prescription period has expired.

- (iii) In the event that **new/supplementary evidence** comes to the tax authorities' attention, i.e. evidence that was not available at the time that the initial tax audit was performed or the tax return was filed, the SoLs set out a **ten-year** prescription period. According to Circular POL 1154/2017, this rule applies for fiscal years **2006 onwards**.
- (iv) In the event of **failure to file an income tax return**, the prescription period is **fifteen years**. According to Circular POL 1154/2017, this rule applies to fiscal years **2001 onwards**.

Other taxes

Different SoLs apply to other types of taxes (e.g. VAT, real estate taxes). Especially for **stamp tax**, the SoLs set out a **twenty-year** prescription period for fiscal years up to 2013. Circular POL 1154/2017 notes in this respect that, if it is no longer possible to assess income tax for any given fiscal year, still other taxes may be assessed for which the prescription period has not yet expired.

Impact on cases pending before the Dispute Resolution Directorate

Finally, Circular POL 1154/2017 explicitly mentions that the above rules apply also to tax assessments for which administrative appeals have been filed before the Dispute Resolution Directorate. Accordingly, it should be expected that normally the DRD will issue favorable decisions for the taxpayers in relation to cases concerning fiscal years that should be treated as time-barred.

For further information, please contact:

Alex Karopoulos

T (+30) 210 69 67 000

E a.karopoulos@zeya.com

Dimitris Gialouris

T (+30) 210 69 67 000

E d.gialouris@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640

www.zeya.com

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