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## Newsflash

13 December 2019

## Update on current issues and recent developments on stamp duty

### Tax audits and statute of limitation

While the issue of the applicable statute of limitation period regarding stamp duty is still pending before the Council of State, the Tax Administration continues to conduct tax audits on individuals and legal entities and to impose stamp duties, as well as special social contribution for Agricultural Security Organization, fines and interests for late payments, for tax years up to 31 December 2013. In particular:

For tax years from 1 January 2014 onwards, the general rule of the 5-year statute of limitation period applies to stamp duties as well.

For tax years up to 31 December 2013, the Tax Administration follows the older Council of State's jurisprudence. According to this and because of the absence of specific provision for the statute of limitation for stamp duty, the general rule of the 20-year statute of limitation of article 249 of the Civil Code, applies.

**Decision No 1655/2018 of the Thessaloniki's Administrative Court of Appeal**, as well as subsequent decisions of Athens' Administrative Court of Appeal, adopted the above mentioned older jurisprudence of the Council of State but also further concluded that the reasonable duration for the stamp duty's statute of limitation is **five years** as a general rule, and ten years as an exemption (in case of new additional information).

In October 2019 a hearing took place before the Council of State during which, the Greek State's petition of cassation against the above decision of the Thessaloniki's Administrative Court of Appeal as well as against a related decision of Athens' Administrative Court of Appeal regarding the statute of limitation on stamp duty were heard. The relevant decision is expected to be issued in order to finally resolve the pending issue.

### Common tax audit cases

Common cases for which stamp duties are imposed include loan and other credit agreements, bank overdrafts and accounts, liquidity facilities, as well as shareholder

withdrawals or deposits not related to any other commercial transaction subject to (or exempt from) VAT.

### Foreign loan agreements

The stamp duty and the special social contribution for the Agricultural Security Organization are imposed on the written loan agreement.

According to Greek legislation, stamp duties are not imposed on loan agreements that have not been concluded in Greece and have no obligations to be executed in Greece.

It is commonly accepted that such obligations are considered to be the obligations agreed by the parties by virtue of the signed loan agreement. As a result, the accounting entry in the lender's or the borrower's accounting books held in Greece should not be considered to be an obligation executed in Greece.

Pursuant to Council of State's decisions (indicatively, decisions no. 124/2014, 3178-3179/2013, 190/2009), the agreement between the parties according to which the loan shall be transferred to Greece (on the same day) from the borrower's foreign bank account, is practically an obligation to be executed in Greece. Thereafter, tax audits do in practice impose stamp duty on loan agreements that were signed abroad but the loan amount was transferred to Greece and was not used abroad, regardless of whether the agreement included a relevant contractual term or not.

However, according to relatively recent decisions, the Administrative Courts of Appeal have canceled the surcharges, which were imposed for the non-payment of stamp duty on such loan agreements, because the taxpayers had followed the guidelines of the Tax Authority (Circular POL. 1027/1990), according to which the deposit of the loan in a foreign bank account is considered to be an execution of the loan abroad.

### Legal actions against stamp duty' assessments

While the final resolution of the above legal issues is still

pending, the assessments for stamp duties and special social contribution for the Agricultural Security Organization may be challenged by an administrative appeal filed before the Directorate for Dispute Resolution and thereafter, a court appeal before the competent Administrative Court.

We highlight that, according to the recent jurisprudence, all grounds of the case related to the actual facts shall be included in the administrative appeal because new grounds are in principle not admissible while filing an appeal before the Court, unless they have arisen after the administrative appeal or they are purely legal.

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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.

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