

THE TAX DISPUTES
AND LITIGATION
REVIEW

TENTH EDITION

Editor
David Pickstone

THE LAWREVIEWS

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PREFACE

It is increasingly common for tax practitioners to be involved in disputes that span multiple jurisdictions. We operate in a global economy. Supply chains cross continents, and the increasing role of technology accelerates the pace at which economic activity becomes divorced from the structures intended to tax it. The pace of economic and technological change potentially increases the gap between the reality of commerce and that of taxation.

Although supranational agencies, such as the European Commission and the Organisation for Economic Co-operation and Development, work hard to keep pace with change, there is an inevitable lag between intention and action. Of late we have seen individual countries start to take unilateral actions, with digital taxation being a prime example. In coming years, a combination of economic developments and unilateral actions by individual countries is likely further to emphasise the importance of double tax treaties and the OECD multilateral instrument.

As the chapters of this book were being written, there were already important changes taking place in the political landscape in the United States and Europe, and in the global economy, that will affect international cooperation on tax and trade. For example, the past year has seen a ground-breaking deal agreed by 136 countries, accounting for more than 90 per cent of global GDP, to impose a minimum tax rate of 15 per cent on multinational enterprises.

In the light of the economic effects of the global pandemic, tax authorities are under unprecedented pressure to increase tax yield, and this will only increase the pressure on tax authorities to collect what is seen as a fair share of tax from international businesses operating on their shores. For our profession, this means a likely increase in the frequency of tax disputes, an ever-increasing international element to them and the ensuing need to work more closely with international colleagues as complex, multi-jurisdictional issues arise. It comes as no surprise that the authors of many chapters continue to identify international tax issues and offshore structures as areas of key focus for their own domestic tax authorities.

Regardless of whether tax authorities increase in cooperation or increase in competition, one thing is certain: they will not stand still. Tax, and particularly the international approach to tax, is a permanent fixture on the political agenda. The resulting frequent (and sometimes abrupt) changes in key elements of tax law inevitably lead to high value and complex disputes which often take many years to resolve.

The purpose of this book is to provide insight into the issues that give rise to tax disputes in different jurisdictions, the procedures for resolving those disputes and the powers and approach of local tax authorities. It is hoped that it will provide valuable insight into the process, timescale and cost of resolving complex difficulties when they arise across more than one jurisdiction.

We are lucky to have contributions from many leading and impressive tax practitioners across a wide range of jurisdictions. Each provides an up-to-date insight into dealing with contentious tax issues in their jurisdiction. I have enjoyed and learned from reading their contributions and I hope you will do, too.

I would like to thank my colleagues Victor Cramer, Lee Ellis and Cristiana Bulbuc for their valuable assistance in compiling this edition.

David Pickstone

Stewarts

London

February 2022

CYPRUS

*Kyriacos Scordis, Penelope Papapetrou, Costas Michail and Phoebe Papageorgi*¹

I INTRODUCTION

The tax laws of Cyprus contain provisions to refer disputes to resolutions in a manner that is designed to be equitable, fair and relatively predictable. The Cyprus Tax Agency is entrusted with the administration of the tax system, including ensuring compliance and providing guidance on the interpretation of tax laws through the circulation of interpretative circulars and regulations.

Tax disputes are common between a taxpayer or their counsel and the tax authorities. Nevertheless, the majority of disputes are frequently resolved without seeking recourse from other bodies as the tax authorities encourage resolving tax disputes amicably through collaboration and negotiations.

The starting point for any dispute is the taxpayer lodging an objection against an income tax assessment within the prescribed statutory time limits. If the taxpayer does not reach an agreement with the tax authorities following an objection, then legal proceedings may be instituted by bringing the case before the Administrative Court or the Tax Tribunal (described in more detail below).

No formal alternative dispute resolution mechanism exists. Nevertheless, the amicable resolution environment shared by professionals and the tax authorities assists in resolving many disputes without the need to refer them to a third party. Additionally, conventional tax rulings are conducive to reducing the number of disputes and litigation by creating certainty regarding tax treatment. The tax ruling process entails the preparation and submission of a tax ruling application letter specifying background circumstances and technical aspects. The Commissioner of Taxation will issue a formal opinion on the letter. This tax ruling will be binding and enforceable and district tax offices will apply such rulings during future tax audits.

II COMMENCING DISPUTES

i Direct tax

Submission of tax returns and examination power

A taxpayer should prepare and submit its annual tax return by the statutory deadline in conformity to the relevant tax law provisions. The deadline for submitting a tax returns differs for corporate and physical persons.

¹ Kyriacos Scordis is a managing partner, Penelope Papapetrou is a partner, Costas Michail is director of Direct Tax Services and Phoebe Papageorgi is an associate at Scordis, Papapetrou & Co LLC.

For corporate taxpayers, the legislative deadline is set on 31 March two years after the relevant tax period (e.g., a 2021 tax return should be submitted by 31 March 2023). The tax return is submitted electronically using the TAXISNET system.

In relation to capital gains tax, the taxpayer or their counsel should prepare and submit the capital gains tax forms, containing relevant details of the envisaged transfer, to the tax office. These details include, inter alia, disposal price, cost of purchase, indexation inflation and other expenses.

The Assessment and Collection Law² empowers the tax authorities to audit a taxpayer's specific year of assessment. The law includes a statute of limitation that imposes a time constraint on the tax authorities' auditing powers. In this regard, the tax authorities should examine a specific tax year within the previous six years.³ The time bar is 12 years in the event of a wilful attempt to defeat or evade tax laws.⁴

Assessment – investigation

The tax authorities are entitled to assess⁵ submitted tax returns. After concluding an assessment, a corporate or personal income tax assessment may be issued evidencing the authorities' agreement with the submitted tax return. Conversely, the assessment may depart from the submitted tax return by incorporating adjustments.

The tax authorities may request information⁶ and documentation.⁷ Such information and documentation will enable them to examine the particular submitted tax return that is the object of their tax investigation. The starting point of a request are audited financial statements (if the subject is a company), the submitted tax return relied upon, followed by descriptions and breakdowns of cost elements, clarifications on income streams and transactions with connected parties.

A taxpayer who disagrees with an assessment may formally challenge it by submitting an objection.

Tax disputes and time limits

A taxpayer may oppose an assessment pursuant to Section 20 of the Assessment and Collection Law. In this regard, the taxpayer or their counsel will file an objection setting out specific reasons and evidence supporting the objection. The objection must be filed by the end of the month following the month the assessment is issued (e.g., if the objection to an assessment is issued in December, the objection must be filed by the end of February).

The tax authorities have 12 months⁸ to request additional clarifications or set a meeting with the taxpayer or their counsel. This period applies from the date the objection letter is received. The Assessment and Collection Law imposes a three-year time limit⁹ on the tax authorities for reaching a final decision on a taxpayer's objection, from the date the authorities receive the objection. If the three-year period expires and the authorities have not

2 Assessment and Collection Law 4/78, as amended.

3 *ibid.*, Section 23.

4 *ibid.*

5 *ibid.*, Section 13(1).

6 *ibid.*, Section 27.

7 *ibid.*

8 *ibid.*, Section 20(3).

9 *ibid.*, Section 20(5).

arrived at a decision, the authorities should rescind the original assessment and issue a new one in accordance with the taxpayer's submitted tax return. It is noted that the three-year period may be extended to reflect time delays that caused by the taxpayer or their counsel.

Advance tax rulings may be submitted to a district tax office underscoring the taxpayer's case. Advance tax rulings are binding and are enforceable. In this regard, the tax authorities will adhere to them after ascertaining the validity of facts and circumstances the ruling rests upon.

A tax dispute may lead to an agreement between the tax authorities and the taxpayer or their counsel. The agreement reached will be cemented via the issuance of a revised assessment superseding the original. This new assessment should reflect the agreement reached between the tax authorities and the taxpayer.

If the tax dispute is not resolved, the tax authorities formally mark their disagreement with the taxpayer by issuing a predetermination letter and their final assessment. This will signify their final decision on the dispute.

The Assessment and Collection Law lays down rectification provisions¹⁰ enabling the taxpayer to challenge the final assessment. In this respect, upon receiving the final assessment, the taxpayer may either institute legal proceedings exercising his or her legal rights, pursuant to Article 146 of the Constitution of the Republic of Cyprus to the Administrative Court,¹¹ or file a hierarchical recourse before the Tax Tribunal.

The Assessment and Collection Law limits the time span for pursuing either of the above course of actions. A taxpayer or their counsel have 75 days from the date of notification of the final assessment to file an application to the Administrative Court, and 45 days from the date of notification of the final assessment to file an application to the Tax Tribunal.

ii Indirect tax challenges (VAT)

With regard to indirect taxation (e.g., VAT), any person disagreeing with the decision of the VAT Commissioner, may file:

- a An objection to the Tax Commissioner – According to the provisions of the Value Added Tax Law¹² (VAT Law), any person (legal or natural) subject to the tax may object, in writing, to the Tax Commissioner within 60 days from the date of notification of a VAT assessment. Such an objection must be supported by relevant evidence. The objection may relate to any of the following matters:
 - the registration or cancellation of registration of any person under the provisions of the VAT Law;
 - any claim for refund of VAT according to the provisions of the VAT Law;
 - the enrolment, cancellation of enrolment, or continuance of any person in the Special Farmers' Scheme; or
 - a claim for a refund of VAT pursuant to the provisions of the VAT Law.
- b A request for the Tax Commissioner to reconsider its decision – According to Section 29 of the Constitution, any person (legal or natural) subject to the tax may file a request to the VAT Commissioner asking for the reconsideration of a decision or an act of that body. This does not include reconsideration of the VAT assessment per se.

10 *ibid.*, Sections 20A, 21.

11 With a further limited right of appeal to the Supreme Court.

12 Section 52A, Value Added Tax Law 95 (I) /2000.

- c A hierarchical recourse to the Tax Tribunal – According to the provisions of the VAT Law, any person (legal or natural) subject to the tax to the tax may file a hierarchical recourse before the Tax Tribunal in relation to the amount of VAT charged on the supply of any goods or services, on the acquisition of goods from another EU Member State or on the importation of goods from outside EU Member States, or the amount of any input tax which any person may deduct.
- d A recourse to the Administrative Court – Any person (legal or natural) subject to the tax may file a recourse to the Administrative Court against an executory administrative act of the VAT Commissioner within 75 days from the date of the notification of the relevant act.¹³

III THE COURTS AND TRIBUNALS

i Tax Tribunal

The Tax Tribunal is a panel of five¹⁴ people (usually professionals from the industry) appointed for four-year terms. One of the panel is nominated as president. The Tribunal communicates taxpayers' appeals against final assessments to the Commissioner of Taxation and requests that the Commissioner provides its summary report, along with supporting documentation. The Tribunal defines the time span within which the Commissioner should provide the above, which should not exceed three months.¹⁵

The Tribunal will give instructions as to the hearing date and invite both sides to appear before it to advocate their cases. After hearing the two sides and examining the materials provided, the Tribunal hands down its decision. The Tribunal should issue its ruling within one year from receiving the taxpayer's application.¹⁶ If either party are not satisfied with the Tribunal's ruling, they may institute legal proceedings in the Administrative Court.¹⁷

It is worth noting that the burden of proof on showing a final assessment was incorrect or excessive falls on the applicant (i.e., the taxpayer).

ii Administrative Court

The decisions of the tax authorities are subject to judicial review by the Administrative Court, pursuant to Article 146 of the Constitution and the Administrative Court Law.¹⁸ The Administrative Court does not review the correctness of the decisions of the tax authorities but examines the legality of their reasoning, and has the power to amend decisions of the tax authorities if they incorrectly assess facts or wrongly interpret the law.

The decisions of the Administrative Court are subject to appeal to the Supreme Court, pursuant to Article 146 of the Constitution. Appeals may be made solely on questions of law.

The taxpayer may seek recourse directly to the Administrative Court if he or she disputes a final assessment or if he or she is not satisfied with the Tax Tribunal's ruling. The taxpayer may pursue this action within 75 days from receiving the final assessment or from the issuance of the Tax Tribunal's determination.

13 Article 146 of the Constitution of the Republic of Cyprus.

14 www.taxtribunal.gov.cy/taxtribunal/taxtribunal.nsf/page13_gr/page13_gr?OpenDocument.

15 Assessment and Collection Law 4/78m Section 20A, Paragraph 3.

16 *ibid.*, Section 20A, Paragraph 6.

17 *ibid.*, Section 21(1).

18 The Establishment and Operation of the Administrative Court Law (135(I)/2015).

Equally, the Commissioner of Taxation may challenge a Tax Tribunal's determination before the Administrative Court.

The scope of the judicial review may also expand to examine whether the Commissioner's decisions, issued against accurate factual backdrop, were erroneous in the circumstances. If the Commissioner's decisions were reasonable, the Court will not substitute its own decision.

According to the Supreme Court (on the powers of the Administrative Court to rescind the Commissioner's decision under Article 146 of the Constitution):

The Supreme Court¹⁹ has no jurisdiction to go into the merits of the taxation and substitute, where necessary, its own decision. The power of the Supreme Court is limited, as indicated, to the scrutiny of the legality of the action, and to ascertain whether the administration has exceeded the outer limits of its powers. Provided they confine their action within the ambit of their power, an organ of public administration remains the arbiter of the decision necessary to give effect to the law; and so long as they make a correct assessment of the factual background and act in accordance with the notions of sound administration, their decision will not be faulted. In the end, the courts must sustain their decision if it was reasonably open to them . . . The approach of the court to the validity of a taxing decision is no different from its approach in respect of any other administrative decision liable to review under Article 146.²⁰

A judgment of the Administrative Court may be appealed to the Supreme Court within 42 days from its issuance. The Supreme Court, as an appellate court, will convene in a plenary session to adjudicate the case.

IV PENALTIES AND REMEDIES

Generally, underpayment of taxation prompts monetary penalties. Equally, not paying the tax liability confirming to the applicable deadlines may also result in monetary penalties.

Underpayment may be a product of the adjusted tax liability, wrong provisional tax estimates or innocent error. The adjusted tax liability will be the product of a dispute between the taxpayer and the tax authorities.

The monetary penalties vary in type and amount. If a company or a natural person miscalculates its provisional taxation, then it will sustain an additional taxation of 10 per cent on the difference between the provisional tax and the actual tax. The provisional tax is based on estimates and is payable in two instalments in the year of assessment: by the end of July and by the end of December. If the taxpayer miscalculates its tax liability by more than 25 per cent, then additional taxation shall apply.

In addition, a monetary penalty of 5 per cent shall apply if the taxpayer does not pay its taxation within the proper statutory time limits, or as defined by the assessment issued by the Commissioner. An additional 5 per cent will apply if the tax liability remains outstanding after the lapse of two months as from the statutory deadline or as from the date prescribed in the assessment.

19 References to the 'Supreme Court' should be read as referring to the Administrative Court as the first instance court dealing with such actions pursuant to Law 135(I)/2015.

20 *Costas M Pikis v. The Republic* (1965) 3 CLR. 131, at 149.

Additional monetary penalties also apply when the taxpayer, inter alia, fails to adhere to a notice issued by the Commissioner or missed a statutory deadline for submitting a tax return. The monetary penalties range from €100 to €200.

The Commissioner may charge an administrative penalty for breach of rules and regulations, not exceeding the amount of €20,000,²¹ depending on the seriousness of the breach.

In addition to the administrative penalties, it is a criminal offence to wilfully²² contravene tax laws by delaying or omitting to settle taxes due. If the breach is perpetrated by a corporate entity, then the executive director, or members of the board or other corporate officers, may be imprisoned for up to two years. The standard of proof for such criminal offence is beyond reasonable doubt.

V TAX CLAIMS

i Recovering overpaid tax

Occasionally, a taxpayer may overpay tax. Such overpayments may occur due to inaccurate estimates of the provisional taxation or inadvertent application of the tax laws.

The Assessment and Collection Law²³ gives taxpayers the right to claim tax refunds. Such claims must be brought before the tax authorities within six years from the end of the year of assessment to which the overpayment relates to.

A taxpayer initiates the process for recovering a tax refund by submitting a formal request with the tax authorities setting out specific details, the amount of the tax refund claimed, reasoning underpinning the overpayment and the tax year. The tax authorities will examine the request. In this regard, a tax audit will likely take place in order to ascertain the claim of the taxpayer. The tax authorities are obliged to issue decisions on requests, which are subject to challenges as described above (see Section II).

ii Challenging administrative decisions

The tax authorities are empowered to administer the tax laws, including issuing interpretation circulars to ensure uniform application of the laws, or advance tax rulings to clarify grey areas of the tax law.

A taxpayer may only instigate legal proceedings challenging an interpretation or a tax ruling after the tax authorities issue a final assessment. This means that the taxpayer may prepare and submit the tax return for a year of assessment that departs from the tax authorities' guidelines or tax rulings. When the tax return is examined and a final assessment without the taxpayer's agreement is issued, the taxpayer may instigate legal proceedings or seek recourse to the Tax Tribunal (see Section II).

iii Claimants and related parties

In general, with regard to direct and indirect taxes, claims for recovering tax may only be made by a taxpayer or by their counsel on their behalf. Third parties are not eligible for refunds.

21 Assessment and Collection Law 4/78, Section 50B(1).

22 *ibid.*, Section 51(3).

23 *ibid.*, Section 35.

In relation to VAT, the VAT Law, as well as the regulations and guidelines issued by the Tax Department from time to time, contain additional circumstances regarding VAT refunds. Such circumstances include the following.

Recovery of input VAT

Cyprus applies the general principle that a taxable person has a right to deduct input VAT.

A taxable person has the right to deduct input VAT through the VAT period in which the right to deduct has arisen. However, input VAT is only deductible when the necessary documentation is available, including:

- a* an original VAT invoice for supply of goods or services;
- b* a copy of an import declaration and the original customs teller's ribbon; and
- c* any other documents approved by the Commissioner of Taxation.

The tax authorities may suspend the examination of any request for a VAT refund where the taxable person has not submitted all the declarations required under direct tax legislation. Any examination will recommence once such obligations have been met.

Input VAT is also available for recovery for the period before registration: three years for goods (unless the goods were consumed before the date of registration) and six months for services.

Excess input VAT

Excess input VAT shows up as a credit balance on quarterly statements that are automatically sent by the tax authorities to the taxable person. In order to obtain a refund, a taxable person must submit a separate refund request for each quarter using Form VAT 4B. A taxable person has a six-year period from the end of the VAT quarter in which excess input VAT arose to lodge a claim for a refund. The form is submitted electronically via TAXISNET.

VAT refunds are regulated by Section 20 of the VAT Law. A refund is provided in cases where the taxable person is not likely to cover excess input VAT with output VAT, or excess input VAT relates to zero-rated supplies or supplies made outside of Cyprus (with the right to deduct) or fixed assets.

VAT refunds for non-Cypriot taxpayers

Taxpayers outside of Cyprus, (whether EU or non-EU) that pay Cyprus VAT may claim a refund under certain circumstances that differ depending on whether the payment of VAT was by an EU or non-EU tax-resident taxpayer.²⁴ In general, following principles apply.

VAT refund for an EU business

The annual minimum limit (for claims that are made for a calendar year or the remainder of a calendar year) is €50 and the interim minimum limit (for claims that are made for less than a calendar year but at least three months) is €400.

The minimum period for making a claim is three consecutive calendar months in one calendar year, unless it is the remainder of the year. The maximum period for making a claim

²⁴ The Tax Department has issued a relevant Information Leaflet on the topic of VAT refunds to EU and non-EU businesses (www.ciat.org/the-principal-purpose-test-ppt-the-beps-inclusive-framework-and-mli/?lang=en).

is one calendar year. The deadline for making a claim is 30 September of the year following the year for which the claim is made. It is possible to submit a claim within five calendar years from the end of the calendar year in which the VAT was incurred, but if the claim is filed after the deadline of the 30 September, then no appeal can be filed.

The tax authorities must issue a decision on the refund claim within four months of receipt of the claim. The period the tax authorities must make a decision may be extended to six or eight months if they request additional information. If a refund is granted, it will be processed within 10 business days and paid to a bank account provided to the tax authorities. If the applicant disagrees with the decision of the Commissioner of Taxation, he or she can appeal as per the procedure explained in Section II.ii, with the exception that the process of objecting to the Commissioner's decision is not available for such cases.

VAT refund to non-EU businesses

It is possible for businesses outside of the European Union to reclaim input VAT on the purchase of goods and services in Cyprus, or VAT that was imposed on imports to Cyprus, provided that the business:

- a* does not have a residence in any EU Member State;
- b* is not registered, liable or eligible to be registered for VAT in Cyprus;
- c* has no place of business or other residence in Cyprus; and
- d* does not make any supplies in Cyprus, other than those subject to reverse charges by the recipient, including the international transportation of goods services.

Cyprus will only allow claims of input VAT if there are tax refund reciprocity arrangements in place, (i.e., a country gives similar concessions to traders in Cyprus). Currently, tax refund reciprocity arrangements are in place with Israel, Norway and Switzerland.

Claims for refunds must be submitted no later than six months after the end of the 'prescribed year' in which the input VAT was incurred. The prescribed year means the 12-month period beginning 1 July and ending 30 June of the following calendar year. Such claims must be made by 31 December. A claim for VAT cannot be made outside of the prescribed year dates.

VI COSTS

In general, costs incurred by the taxpayer vis-à-vis the tax authorities are not recoverable (other than costs awarded by the Administrative Court or Supreme Court for proceedings before them).

In contrast, court costs are recoverable but may not reflect actual costs as the recovery generally ranges between €1,500 to €3,000 while actual costs usually amount to more than €3,000.

VII ALTERNATIVE DISPUTE RESOLUTION

As already articulated, the Assessment and Collection Law does not embody formal alternative dispute resolution procedures. However, it is commonplace for discussions and negotiations to take place between the taxpayer or their counsel and the tax authorities.

Such discussions or negotiations may be construed to be a substitute to formal alternative dispute resolutions procedures as they essentially pursue to resolve the dispute without instigating legal proceedings.

Advanced tax rulings are also forms of advance dispute resolutions. They are commonly obtained for ensuring certainty of tax treatment on grey or new areas in the tax laws.

VIII ANTI-AVOIDANCE

As from 1 January 2019 and 2020, the Cyprus Income Tax Law²⁵ incorporates the latest anti-tax avoidance concepts by the implementation of the Anti-Tax Avoidance Directive²⁶ (ATAD).

The ATAD largely builds upon the European Union's base erosion and profit shifting (BEPS) initiatives and aims to combat profit shifting and entrenching the tax bases of EU Member States. The Income Tax Law has, *inter alia*, incorporated the following anti-tax avoidance provisions to confirm with the ATAD:

- a* Control Foreign Companies (CFC)²⁷ provisions. CFC provisions aim to enlarge the tax base of the parent company by including in its tax base the undistributed profits parked in a low-taxed subsidiary (directly or indirectly) company.
- b* Interest Barrier Rule (IBR)²⁸ provisions. IBR aims to put a ceiling at the deductibility of interest expense by recruiting a fixed ratio of 30 per cent applicable on the total deductible interest expense. A monetary safe harbour of €3 million applies, calculated on a consolidated basis.
- c* Exit Taxation²⁹ provisions that constrain the transfer of assets, businesses or residency out of a host state.
- d* General Anti Abuse Rule.³⁰ This rule operates as a backstop provision capturing non-genuine transactions or arrangements that were affected with the sole or main purpose of obtaining a tax advantage. Awarding a tax advantage in these circumstances would defeat the purpose and spirit of the Income Tax Law. *Prima facie*, the anti-abuse rule contains two cumulative components: the subjective component exploring the intention of the taxpayer and the objective component that assess the economic reality of the arrangement or transaction.

The above new amendments in the Income Tax Law have yet to be brought before the Tax Tribunal, the Administrative Court or Supreme Court.

It is anticipated that Cyprus will introduce transfer pricing rules in line with the OECD's BEPS Actions 8–10 and Transfer Pricing Guidelines.

25 Corporate Income Tax Law 118(I)/2002.

26 Anti-Tax Avoidance Directive, 2016/1164 and the Assessment and Collection Law 4/78.

27 Section 36A(1), Cyprus Income Tax Law.

28 Section 16, Cyprus Income Tax Law.

29 Section 33B, Cyprus Income Tax Law.

30 Section 33A(1), Cyprus Income Tax Law.

IX DOUBLE TAXATION TREATIES

In addition to the intra-EU rules on avoidance of double taxation (such as the Parent – Subsidiary Directive³¹ on the exemption of taxation of intra-EU dividend flows from subsidiary to parent companies), Cyprus maintains an extensive double tax treaty network, being a signatory of around 65 double tax treaties. Most of the double tax treaties draw upon the OECD Model Tax Convention. In this regard, the OECD commentary may be employed for interpreting treaty provisions.

Even though Cyprus is not a member of the OECD or the Inclusive Framework,³² Cyprus ratified the Multilateral Convention,³³ hence Cyprus's existing treaties are changing in order to incorporate the minimum actions pursuant to the OECD BEPS initiative. The Multilateral Convention lays down articles implementing, among others, the minimum standard. The changes to Cyprus's treaties include:

- a* amendments to preambles of existing treaties, enlarging their covered purposes;
- b* improvements to dispute resolution mechanisms; and
- c* the introductions of:
 - a general treaty anti-abuse rule;
 - BEPS Article 7 – Principal Purpose Test;
 - BEPS Article 6 – Prevention of tax treaty abuse; and
 - Article 16 of the OECD Model Convention.

In general, the distributive provisions of double tax treaties are enforceable in Cyprus. In this regard, the tax authorities adhere to them by allowing the stipulated deduction or credit pursuant to the applicable double tax treaty. Commonly, the tax authorities implement the principle that agreements must be kept when interpreting and applying treaty provisions. In this respect, they avoid stretching relevant treaty provisions to their breaking points.

Equally Cyprus transposed EU Directives, such as Parent Subsidiary, Merger, Interest and Royalty, into its national law. In regards to the European Court of Justice's case law on fundamental freedoms, the tax authorities tend to conform to them, unless they conflict with the Cypriot legal framework. If so, an emerging tax dispute may only be resolved by appealing to the Administrative Court or Tax Tribunal.

X AREAS OF FOCUS

Cypriot tax legislation is directly affected by, and evolves with, the international tax landscape. The new anti-avoidance rules (see Section VIII) are expected to be a new focal point and increase the demand for advance tax rulings.

The impending transfer pricing laws and regulations are also anticipated to be an area of increased attention and basis for tax scrutiny.

31 European Council Directive 2011/96/EU.

32 Turkey exercised its veto power preventing Cyprus becoming a member of the OECD or the Inclusive Framework.

33 Cyprus ratified the Multilateral Convention on 22 January 2020.

Cypriot courts are increasingly scrutinising both procedural and substantive tax matters. At the same time, in the following recent cases, Cypriot courts adopted the view that the relevant tax authority has a wide discretion to use the methodology best suited under the circumstances in order to determine the amount of tax owed by the taxpayer.

In *Adamos Adamou Watersports Ltd v. VAT Registrar*,³⁴ the applicant contested the legality of the VAT Registrar's decision to proceed to a tax assessment following a discovery that the applicant had not been issuing receipts and that the sales were not properly recorded, depicting a much lower income in comparison to a prior year. The court rejected the applicant's allegations and highlighted that when a tax declaration is inaccurate or incomplete, the VAT Registrar has the discretion in good faith and using the methodology best suited under the circumstances to determine the VAT owed.

In *Kyriakou Brothers Farm Ltd v. Republic of Cyprus*,³⁵ the applicant did not keep a record of invoices received and the reported entries (expenses) could not be verified. In the absence of evidence provided by the applicant, the Income Tax Registrar did not consider the purchase of straw as part of the applicant's tax declaration and did not allow the grant of capital discounts.³⁶ The court confirmed the decision of the Tax Registrar and rejected the allegations of the applicant, highlighting that the Income Tax Registrar has the discretionary power to draw its own conclusions, exercising its judgement in the best possible way.

XI OUTLOOK AND CONCLUSIONS

Cyprus has a relatively developed but not overly complicated tax system. In addition, as a result of the advance tax ruling concept and the willingness of the tax authorities to engage with the taxpayer, whether with respect to the said advance tax ruling or, in case a dispute arises, to reach an amicable solution, a large number of tax disputes can be, and are, resolved without the need for the taxpayer to take costlier steps, such as appeals to the Tax Tribunal, the Administrative Court and the Supreme Court.

At the same time, the global proliferation of anti-abuse provisions (which have yet to be interpreted by Cypriot courts) may well result in an increase of tax disputes not being resolved amicably and thus having to be referred to the Tax Tribunal, the Administrative Court or the Supreme Court.

34 *Adamos Adamou Watersports Ltd v. VAT Registrar* (www.cylaw.org/cgi-bin/open.pl?file=administrative/2020/202001-724-16.html).

35 *Kyriakou Brothers Farm Ltd v. Republic of Cyprus through (1) Minister of Finance and (2) Income Tax Registrar* (www.cylaw.org/cgi-bin/open.pl?file=administrative/2020/202002-84-13.html).

36 Assessment and Collection of Taxes Law 1978 (N. 4/1978).

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