TAX AVOIDANCE FROM A GREEK PERSPECTIVE

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Introduction

Tax avoidance and evasion are effusive in all countries, and tax structures are undoubtedly splayed by this reality[2]. Even though the distinction between tax avoidance and tax evasion is pretty much clear, the noticeable rise of tax evasion cases in Greece lately, brings again to the forefront the need for a better understanding of those terms. The crystallization of those terms can provide a way to the achievement of more or less the same result, which is the optimisation of the applicable tax treatment, without though breaking the law and endanger the public finances, both in a national and in an international level.

Generally, there is a well-established attitude in Greece in an individual level, as well as in a corporate one, of not paying the total amount of tax due. That mostly takes place in the form of misrepresenting the real revenues and expenses. Sadly enough, black economy and tax fraud in Greece have reached the previous years between 25%-37%[3] of the GDP, which is by far the greatest percentage of all countries in the European Union. Although there are no excuses for the great percentage of tax evasion in Greece, that phenomenon may have its routes on the onerous Greek tax system along with the high cost of living, which are inversely proportional to the average salary.

No matter how many and effective measures are already taken or are about to be taken by the government and other governmental agencies, it can be effectively supported that the problem will not be efficiently minimized, unless firstly and

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2 Alt, J. (1983), "The evolution of tax structures", Public Choice 41(1):181-222

3 "Korruption und Steuerhinterziehung: Griechenland versinkt im Sumpf". Die Presse. 5 August 2009. Retrieved 5 May 2010

foremost the cast of mind, in relation to that problem, is subsequently altered. The major issue that needs to be well understood is that legal tactics can mutatis mutandis provide a similar lucrative result, abstract the financial burden towards third parties. That is besides the main aim of that thesis. There are illustrative examples of international cases that underline exactly that point; how legal tactics lead to a noticeable decrease of the amount of taxes due. Thus, the final goal of that thesis is to show a way of how those tactics can be applied in the Greek tax reality, with a view to decrease the payable amount of tax. Even though an application such as that may seem at first sight simpleminded or even been taken for granted, the current financial and social status of Greece shows entirely the opposite.

Chapter 1 contains major tax definitions, chapter 2 provides a presentation of recent international tax avoidance cases, chapter 3 outlines the attitude of Greece towards taxation with cases and illustrative examples and examines what would happen if tactics of international tax avoidance were applied in the Greek tax system. Chapter 5 presents several anti-avoidance measures that have been implemented, as of 1.1.2014, by virtue of the NITC. Finally, chapter 5 provides some conclusions.

Legal vs. illegal tactics

Having the assumption that the minimization of taxation is the ultimate goal there are both legal and illegal ways for reaching it, as obviously with every other goal. Thus, tax avoidance and tax evasion are nothing more than practices, which are designed to reduce the amount of tax due. The difference is that tax avoidance involves legal means, while tax evasion is illegal and is a form of tax fraud[4].

The classic distinction between avoidance and evasion is according to Oliver Wendell Holmes, who wrote: "When the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as evasion, what is meant is that it is on the wrong side of the line"[5].

Thus, the essential difference of evasion is illegality.[6] Tax avoidance is legally taking advantage of the tax system in order to reduce present or future tax

4 Stiglitz, JE. (1985), "The general theory of tax avoidance", National Tax Journal 38(3):325-337

5 Bullen v. Wisconsin (1916), 240. US. 625 at p. 630

6 Kay (1980, p. 136) offers a different pair of definitions for evasion and avoidance: "Evasion is concerned with concealing or misrepresenting the nature of a transaction; when

liabilities by means, which are not proposed by the parliament. It often involves artificial transactions that are designed to crate tax advantages.

In tax avoidance, people take advantage of the tax law as it stands, so as to find ways to decrease their total tax liability. With tax avoidance, taxpayers look for tax credits, write-offs, and other means for reducing their tax liability.

When tax avoiding, people declare all of their income and submit other financial documents as required by law, and the means used to reduce their tax liability are clearly reported on their tax returns.

Thus, tax avoidance can take several forms. The simplest in principle is to "shop around". Tax regimes around the world have different pricing policies and are in competition with each other, just like shops, with the view of attracting businesses. In several countries, commonly known as "tax havens"[7], the taxation rates are very low or even none. However, moving to a tax haven involves a kind of logistic "endeavour", which requires a lot of planning, research, and overcome of various problems. Besides, there are plenty of measures taken in an international level so as to tackle tax havens, harmful tax completion and aggressive tax planning[8]. Thus, even though "shopping around" is the simplest form of tax avoidance is not for the abovementioned reasons the most preferable.

In tax practice, several other forms of avoidance are found. One example is to change the legal form of a given behaviour, such as reorganizing a business from an A corporation to a B corporation, characterizing ordinary income as capital gain, or renaming a consumer loan as a home equity loan. Another example is tax arbitrage[9]; for financially equivalent transactions, but taxed at different tax rates, positions are held simultaneously long and short, producing tax savings. Finally, retiming a transaction to alter the tax year it falls under is one more method of avoidance.

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avoidance takes place; The facts of the transaction are admitted but they have been arranged in such a way that the resulting; Tax treatment differs from that intended by the relevant legislation".

7 According to IFA tax haven is "any country which by features in its tax law (or the absence thereof) attracts the attention of tax planners".

8 The goal of tax planning is to arrange your financial affairs so as to minimize your taxes. There are three basic ways to reduce your taxes, and each basic method might have several variations. You can reduce your income, increase your deductions, and take advantage of tax credits.

9 The term tax arbitrage appears when a transaction structured by a taxpayer so as to benefit from an inconsistent characterisation of the transaction under the tax laws of two or more countries.

At that point the definition of tax arbitrage may be of importance. Tax arbitrage is the act of profiting from variations in how income or capital gains are taxed in different tax jurisdictions. Tax havens are often used to take advantage of tax arbitrage opportunities. For example, a natural or legal person may open an account in a certain country[10] or create a certain legal structure so that the income that flows from these investments is taxed at a more favourable tax rate.

From a US perspective, the simple fact that the IRS taxes different types of income streams at different tax rates create tax arbitrage opportunities on a daily basis. Investors, for example, might choose to put extra cash into stocks rather than bonds, because the tax rate on capital gains is lower than the tax rate on earned interest. Therefore and in a broader sense, any tax planning method can be viewed as tax arbitrage. As potentially any tax planning method can be considered tax arbitrage, subsequently comes that not all the forms of tax arbitrage are legal. That point, however, is out of the scope of that research.

The antipodes of all the above concepts is tax evasion. People avoid taxes not just by scrupulously following the tax code, but by hiding or moving income, making false claims on tax returns, and using other illegal means to pay less on the taxes due. Simply choosing not to file an income tax return or not to include information about taxable income on the filed return is the most common and simple act of not paying taxes. In all instances, as tax evasion is considered tax fraud, usually carries stiff penalties. It has also been reported the case of people, who avoid taxes all together; people who work as independent contractors or receive money “under the table” for their work, for example, may simply not declare this income and as a result avoid paying taxes on it.

The line between tax avoidance and tax evasion can sometimes be very fine. There are some things people can do with their money that are perfectly legal under the law, but could be interpreted as attempts to evade taxes. Moving funds suspiciously and with no clear and specific reason or documentation can attract the attention of tax authorities.

In practice, of course, there are many grey areas where the dividing line is not clear, and sometimes the tax authorities may inappropriately characterize particular cases as evasion attempts. Thus, there are elaborate schemes, which are considered legal if they do not contravene any law. For example, investors could set up elaborate legal structures in offshore jurisdictions[11] to minimise their tax liabilities. If the tax authorities were unhappy with such arrangements they could take action

10 As for instance and at some point in the “Lagarge list” case, examined below.

11 The fact that Greece is broadly used for off-shore entities, is examined below.

to close the loophole. But in broad terms any measures that respected the letter of the law were regarded as legitimate.

A good and simple test for whether a particular method is tax avoidance or tax evasion is to determine if it is possible to be open about it or if it is essential to be kept secret. Having an offshore bank account is legal, and if the money has been acquired by honest means there shouldn't be any need to hide in secrecy. The principle is known as "transparency" and works if the authorities are honest.
Even though tax avoidance and tax evasion can be characterized as the two sides of the same coin, there are particular countries that in general prefer one rather than the other. Regarding Greece the examples of tax evasion[12] clearly prevail over the avoidance ones.

International tactics vs. Greek tactics

Although, the legal tactics for minimizing taxation are in abundance, Greece has shown a long preference towards illegal ones. The attitude dates back to the 400-year-long Ottoman rule over Greece, when people evaded taxes as a form of resistance. As generalizations are of none legal accuracy and importance, the reference to "Greece" at this point is exclusively a reference to the particular share of natural and legal persons who evade and not to all citizens as a whole. Besides, it's my firm believe that the size of tax evasion in Greece has been overestimated by international media, without meaning by that, that the problem isn't already highly expanded. But those issues are not to be examined by that paper.

Back to tax evasion in Greece the OECD estimated in August 2009 the size of the Greek black market to be around €65bn (equal to 25% of GDP), resulting each year in €20bn of unpaid taxes. Especially, in the last quarter of 2005, tax evasion reached an estimated 49% of the population, while in January 2006 it fell to 41.6%. A study by researchers from the University of Chicago concluded that tax evasion in 2009 by self-employed professionals in Greece was €28 billion or 31% of the budget deficit that year.

As shown from the numbers above the main tactic of Greece for minimizing taxation is tax evasion. In contrast, and from an international point of view several countries use other -legal- tactics, leading more or less to the same result. The most common ones are "treaty shopping" and "transfer pricing".

Treaty shopping, found solely in the commentary of Article 1 of the OECD MTC, and originated in the US, is the practice of some investors of 'borrowing' a tax

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12 Namely: The Mall Athens case, The Bank of Crete case, The Hellenic Statistical Authority case, The Vatopedi monastery case, the Siemens Greek bribery scandal etc.

treaty by forming an entity (usually a corporation) in a country having a favourable tax treaty with the country of source – that is, the country where the investment is to be made and the income in question is to be earned". That international allocation is a well-established technique, it is totally legal, as it is based on treaties conducted by states, and manages to reduce the amount of payable taxes. In any case, however, a substantial business reason for forming such a new entity shall be illustrated, in order to avoid scrutiny under GAAR, which is already implemented by several countries, among which is also Greece.

Also, the OECD MTC article on Associated Enterprises provides for the legal basis of transfer pricing. Transfer pricing is a method of profit allocation, which is used to attribute a corporation's net profit or loss before tax to certain tax jurisdictions. Transfer prices are the charges made between controlled (or related) legal entities. Legal entities considered under the control of a single corporation include branches and companies that are wholly or majorly owned ultimately by the parent corporation. Many international firms are using that technique with the view of minimizing taxes and consequently increasing profits.

From the above, it is clearly shown that the mainly used tactics by Greece is of much difference in comparison to the international ones. Treaty shopping is an unknown term to the Greek market, whereas transfer pricing is at an early stage, continuously evolving though. Transfer pricing environment is relatively new to Greece and now is about to getting tested by the supervising authorities.

If Greek economy in general, and individuals as well as companies, familiarize themselves with those techniques and certainly if the government offers tax incentives towards that direction, it's my view that the phenomenon of tax evasion will subside noticeably. That's because almost the same result will be achieved without the risk of breaking the law and without the financial and social consequences that an action, such as tax evasion, carries.

The following chapters will present and examine critically and comparatively International and Greek cases, which respectively used the abovementioned techniques.

International perspective: Descriptive analysis of avoidance

According to Stiglitz (1985) there are three basic principles of tax avoidance within an income tax; postponement of taxes, tax arbitrage across individuals facing different tax brackets -or the same individuals facing different marginal tax rates at different times-, and tax arbitrage across income streams facing different tax treatment. Several tax devices though, use a combination of the above three

principles. Stiglitz argues that, with perfect capital markets, these three principles can be exploited to eliminate all taxes while leaving the individual's consumption and bequests unchanged relative to the zero tax case, and facing no more risk than in the original situation. However, capital markets are not perfect; therefore, tax liability is not eliminated by tax avoidance[13], and so as to reduce tax liabilities, distorting actions are utilized. An example of those actions could be an investment in sectors, where it is easier to convert ordinary income into capital gains.

As it comes to retiming (deferral), there is abundant support for the notion that the timing of certain transactions can be greatly responsive to alterations in tax rates. Sophisticated econometric techniques using panel data have been developed for separately identifying the timing responses to tax rate changes over time from the permanent behavioural response to a changed tax rate. These new techniques have been applied to both capital gains realizations and charitable contributions. In both cases the results suggest that the retiming effect prevails over the permanent effect.

Tax arbitrage activity, as mentioned above, takes advantage of inconsistencies in the tax law featuring economically offsetting positions that have asymmetric tax treatments. Examples range from sophisticated derivative financial instruments to the more mundane cases of doing tax-deductible borrowing to finance tax-deferred IRA contributions or tax exempt bond purchases.

Finally, the classic example related to income reclassification[14] is turning ordinary capital or labour income into capital gains. From a U.S. perspective for instance, Maki and Scholz have documented that, following the Tax Reform Act of 1986, there was a large shift from no-longer-deductible consumer interest into still-deductible mortgage or home equity loans.

There is also evidence that, following the introduction of the R&D credit in the United Kingdom, much business activity was "discovered" to have a significant research component. That also took place in the Unites States, where Gordon and MacKie-Mason have investigated how, when the Tax Reform Act of 1986 lowered the top individual rate below that of the corporate rate, there was a large shift from C corporations into S corporations, which are taxed like partnerships and therefore are not subject to the corporation income tax. Further, Gordon and Slemrod discuss the income shift between the corporate and individual tax base through the method of compensation and document evidence.

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13 There are also policy responses to avoidance, such as limits on loss offsets and interest deductions.

14 Found "income shifting" elsewhere

Presenting in overview the basic tax avoidance techniques is essential so as to have a better understanding of how the "tax avoidance scheme" worked in the international cases that follow.

International tax avoidance cases

Several multinational businesses avoid paying some of the taxes due, just by shifting profits away from the location where the activities creating those profits take place, also known as base erosion and profit shifting (BEPS).

Starbucks, Amazon, Google, eBay, Microsoft are highly popular brand names especially in young ages. The names of those companies have received since 2012 additional popularity. The reason behind such popularity is obviously tax avoidance.

Everything started at the end of 2012 when the agency «Reuters» revealed that the well-known multinational coffee chain Starbucks had paid in taxes only 8.6 million pounds in Britain for sales of three billion pounds, since it opened in 1998. The Starbucks case brought in the forefront the legal means for the minimization of taxation. In the era of globalization, in spite of the austerity for the majority of ordinary people in Europe, Britain and America and even though the European Commission itself points out the loss of about one trillion Euros each year in the EU from tax evasion, legal means for avoiding taxation are now broadly used by large multinational companies. That fact creates by itself a noticeable paradox. Besides it is striking enough that in Britain, where the noise of the 'multinational' avoidance formula started from, the Finance Minister George Osborne announced, as part of the new financial measures, the deduction of corporation tax rate from 22% to 21%.

Before though analysing the techniques used or even criticizing the ethics behind those tactics, is of crucial importance to have a look at the factual background of these cases.

Starbucks Corporation is an American global coffee company and coffeehouse chain based in Seattle, Washington. Starbucks is the largest coffeehouse company in the world. In October 2012, Starbucks faced criticism after a Reuters investigation found that the company reportedly paid just £8.6m in corporation tax in the UK over 14 years, despite generating over £3bn in sales. This included no tax having been paid on £1.3bn of sales in the three years prior to 2012. In Ireland, Starbucks' subsidiary Ritea only paid €35,000 in tax between 2005 and 2011 and the subsidiary recorded losses in every year other than 2011. Noteworthy, the Dutch-based Starbucks Coffee Emea owns Ritea.

Amazon.com, Inc. is an American multinational electronic commerce company with headquarters in Seattle. Amazon.com started as an online bookstore, but soon diversified, selling DVDs, CDs, video and MP3 downloads/streaming, software, video games, electronics, apparel, furniture, toys, and jewellery. The company also produces consumer electronics and is a major provider of cloud computing services. As it comes to Amazon UK, the sales were of £3.35bn in 2011 with the reported "tax expense" of just £1.8m though.

Google Inc. is an American multinational corporation specializing in Internet-related services and products. These include search, cloud computing, software and advertising technologies. Google's UK unit paid just £6m to the HM Treasury in 2011 on UK turnover of £395m.

eBay Inc. is an American multinational internet consumer to consumer corporation, headquartered in California. Today is a multi-billion dollar business with operations localized in over thirty countries. The company manages eBay.com, an online auction and shopping website in which people and businesses buy and sell a broad variety of goods and services worldwide. Ebay seems to have created a burden to the economy of German and UK of about 1 billion dollars, by not paying the taxes due.

Microsoft Corporation is an American multinational software corporation headquartered in Washington that develops, manufactures, licenses, and supports a wide variety of products and services related to computing. Measured by revenues Microsoft is considered to be the largest software maker. It is also one of the world's most valuable companies. Specifically, Microsoft's subsidiary in Ireland, reported revenues of 1.7 billion pounds from Britain, a country in which the company does not pay at all taxes.

Methods' analysis

A closer look at the techniques used is essential, in order to determine how all those multinational companies managed to avoid their taxes due.

Starbucks managed to avoid taxation by charging high licencing fees to the UK branch, allowing it to declare a £33m loss in 2011. The British subsidiary pays royalty fees to the USA subsidiary and buys coffee beans from the Netherlands subsidiary, where the corporation rate tax is lower than in the UK. Dutch law, besides, allows companies to send royalties collected from other countries to tax havens without exit taxes, unlike in the rest of the EU. The CFO though did not accept that they chose the Netherlands as their European headquarters, so as to avoid tax, but rather because they have a coffee roasting plant there. Until 2009

the royalty rate was 6% of UK sales, but after being challenged by UK's tax authorities, it was reduced to 4.7%. The coffee served in the UK, is purchased from the Swiss subsidiary, which charges a 20% mark up on the wholesale price and pays 12% corporation tax on profits. Regarding how Starbucks frequently reports a loss in the UK, the CFO told the committee that Starbucks are not pleased with their financial performance in the UK. Their French and German subsidiaries also make large losses because they have heavy debts to the Dutch subsidiary, which charges them higher interest rates than the group pays to borrow. According to a Reuters' calculation, without paying interest on the loans and royalty fees, the French and German subsidiaries would have paid €3.4m in tax. The Dutch subsidiary supported that royalties are paid in order to make a €507k profit in 2011 from profits of €73m, while the company that roasts coffee made a profit of €2m in 2011 and paid taxes of €870k. To sum up, Starbucks has made extensive use of the mark up transfer pricing method.

Strange enough, even if **Google** is one of the biggest internet-related companies, it pays the lowest taxes to the countries of origin of its revenues, by using various tax avoidance methods. The company partly accomplishes this by licensing technology through subsidiaries in Ireland, Bermuda, the Bahamas and the Netherlands, which are known as tax havens. This has reportedly sparked a French investigation into Google's transfer pricing practices. As a result, the techniques used by Google resemble the ones used by Starbucks.

As it comes to **Amazon.co.uk**, the sales were of more than £3.3bn in the UK last year but the paid corporation tax was none for all of the profits from that income. The UK operation avoids tax as the ownership of the main Amazon.co.uk business was moved to a Luxembourg company in 2006. Therefore, all payments for books, DVDs and other goods go directly to Luxembourg. The UK business is simply a delivery organisation. The latest 2010 accounts for Amazon EU showed that the Luxembourg office employed just 134 people, but generated turnover of €7.5bn (£6.5bn). In the same year, the UK operation employed 2265 people and reported a turnover of just £147m. However, the UK sales for that year were between £2.3bn and £3.2bn. Amazon in the US has earned an average 3.5% profit margin over the past three years. UK sales during the past three years were between £7.6bn and £10.3bn. If the same profit margin was applied and taxable profits of £266m-£360m would have been generated the UK corporation, the amount of the tax due would be of about £100m. However, in the nine years between 2003 and 2011, the UK-registered company reported a net tax bill of just £3m – of which £1.9m was incurred in 2011. This is not the tax actually paid to HMRC; that information is not available because the UK branch is not required to produce a cash flow statement.

Tax tricks to reduce its tax liabilities are also used by another well-known multinational "internet-related" company. **Microsoft** transfers electronic payments, relating to the operating program Windows 8 and other programs, in Luxembourg and Ireland, where the tax rates are lower than in Britain. In specific, **Microsoft's** subsidiary in Ireland, reported revenues of 1.7 billion pounds from Britain, a country in which the company does not pay taxes. Microsoft claims that there is nothing wrong with that and that it "pays all taxes, as required by law, all over the world." According to company announcement "Microsoft subsidiary is subject completely in the jurisdictions where it operates".

EBay, the online auction company has impaired in taxes $ 1 billion to Britain and Germany. EBay has also established a company of nine people in Luxembourg, through which it provides services across Europe, charging clients at a much lower VAT rate, helping in this way to be in a better position than its competitors. The company claimed to channel money from the sales made through a subsidiary based in Bern, Switzerland, benefiting in this way from the very low tax regime in the country.

From the abovementioned analysed techniques it clearly comes out a common conclusion; transfer pricing methods-such as the mark-up method used by Starbucks - are of a wide usage from the majority of multinational companies, aiming exclusively to the minimization of the taxes due. However, and it will be showed below, the transfer pricing scheme, even if covered by the Greek tax system, it is of relatively low use in practises.

Criticism towards tax avoidance cases

Tax avoidance, as aforementioned was not only legal but the Government of several countries, such as the UK, created the tax shelter as an incentive to invest.
That situation has changed fundamentally in the last few years. Even those who have respected the law have been heaped with moral scorn. The targets for such attacks range from international companies such as Amazon and Google to wealthy individuals. Although it is acknowledged that they have obeyed the law they are often treated negatively for moral reasons. Noteworthy, Chancellor George Osborne used his 2012 Budget speech to describe "aggressive tax avoidance" as "morally repugnant".

This moral offensive has had several practical consequences. The government in the UK for example has redrawn the legal distinction between evasion and avoidance. Even those who have not set out to break the law can be accused of aggressive avoidance or abuse; but what is aggressive is hard to define.

The dishonour towards tax avoidance has coincided with a renewed attack on offshore financial centres. According to critics such tax havens are seen as "junctions" for avoidance and evasion. The thought that follows is that the business of such centres needs to be curbed. Besides, tax havens in general have also been targeted in an international level and it has been argued that they will not exist in some years.

Political criticism

Perhaps the most valuable political criticism was that of David Cameron during the G8 summit of world leaders in June 2012. His main point was not only on tax evasion, which is by definition illegal, but also on "aggressive tax avoidance"[15]. In this context the term "aggressive" is extremely difficult to define. What one-person considers as aggressive or abusive another might think it is judicious tax planning. Whatever the intentions of the Prime Minister, the result was to stigmatise legal behaviour as improper.

Another impact is that it clears politicians of their responsibility to make appropriate tax rules. The burden is shifted to taxpayers to decide how much tax to pay; they risk being found guilty of misbehaviour unless they can prove themselves innocent.

Although the final communiqué did not name offshore centres officially, it indirectly referred to them. As it comes to tax, it was discussed the shared need for authorities in different countries to exchange information. It was made clear that no one should be able to move assets from one location to another to avoid tax, even where such action was legal.

However, Cameron was keen to defend offshore centres that are linked with Britain. In an open letter sent to crown dependencies and overseas territories, he said he was confident that they would meet the "gold standard" in transparency. Perhaps, the Prime Minister was trying to find a balance between his moral offensive on taxation and his desire for the UK to benefit from its relationships with offshore centres.

Apart from the UK's prime minister, other national leaders have also made high-profile criticisms of such practices and places, even though they sometimes focus on different points. Greece's aspect towards offshore entities is examined below.

15 Found elsewhere as "aggressive tax planning"

Moralistic criticism

The moralistic criticism of tax avoidance should not be dismissed just because political ones are traditionally considered supreme.

Naturally, breaking the law remains an offence for everyone. It has become possible, though, even for those who obey the letter of the law to get into trouble for potentially breaking its spirit.

This shift is clearly spelt out in the General Anti-Abuse Rule (GAAR) published in April 2012. According to the HMRC's own guidance note, the GAAR:

> "Rejects the approach taken by the Courts in a number of old cases to the effect that taxpayers are free to use their ingenuity to reduce their tax bills by any lawful means, however, contrived those means might be and however far the tax consequences might diverge from the real economic position."
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> For the Government the GAAR is mainly designed to stop individuals or companies using complex structures that are against the *spirit* of the law. As David Gauke, the Exchequer secretary to the Treasury, said in the House of Commons in April: "It targets only avoidance schemes that are clearly abusive. The term 'abusive schemes', refers to schemes that can be seen from the outset to be highly contrived and artificial arrangements designed to enable people to get around the tax law and avoid paying tax."

This shift, however, introduces a great deal of uncertainty into an individual's tax affairs. The boundaries between proper and improper behaviour are no longer clear. Even those who have not broken any rules run the risk of being morally tainted for not paying their fair share of tax – the question of what is "fair" is debateable.

Although GAAR does not in specific targets offshore structures, as there are other measures that are focused on them. The proposed "Son of FATCA" rules – based on America's Foreign Account Tax Compliance Act –requires crown dependencies and overseas territories to disclose even more information to the British tax authorities.

Many of those associated with offshore financial centres are reluctant to talk to the media. Perhaps this is understandable given the public flaying such centres have received from many quarters. But those who are willing to talk are generally vociferous in their defence of the centres with which they are involved.

It has been argued that the reality is that the offshore financial centres are the squeakiest clean places for reporting and compliance anywhere in the world. It has also been stated that large countries have the upper hand when it comes to relations with offshore tax centres. That is because the amount of anti-avoidance legislation is massive and the opportunity to legitimately avoid tax is being narrowed.

By blurring the line between evasion and avoidance it unwittingly introduces a new element of uncertainty into the decision of what's what. Even those who follow the law risk being branded morally abhorrent.

This problem is emerging on an even larger scale with taxation more generally. The boundaries between legal obligations and moral disapproval perhaps will have unintended consequences that some of the critics may regret. Although relatively few observers have noticed that there should be little doubt that the Government has scavenged away a fundamental principle on which taxation was long based.

Although politicians have led the way in campaigns against offshore centres, other organisations, including media outlets and campaigning groups, have taken a similar place.

One of the most significant campaign revolved around the "offshore leaks" revelations in April 2012. The International Consortium of Journalists, an international network of reporters, announced that it had collated 2.5 million files in offshore centres that exposed hidden dealings of politicians, conmen and the mega-rich the world over. The Consortium collaborated with several other media organisations, including the Guardian and the BBC in the UK, Le Monde in France, Süddeutsche Zeitung and Norddeutscher Rundfunk in Germany, the Washington Post in America and the Canadian Broadcasting Corporation.

During the G8 summit of world leaders in June the IF campaign against world hunger linked directly the problem of insufficient food with tax avoidance. The campaign claimed that avoidance could mean that the poor in developing countries can go hungry as a result. One of its demands was that Britain should "use its presidency of the G8 to launch a Convention on Tax Transparency". That campaign is also backed by Action aid, Christian Aid, the Methodist Church, the National Union of Students and Save the Children.

Tax evasion and offshore financial centres are featured in international discussions for many years.

Tax policy was identified as a problematic area at least since the G7 Lyon summit of world leaders in 1996. As per the summit communiqué: "Globalization is creating new challenges in the field of tax policy. Tax schemes aimed at attracting

financial and other geographically mobile activities can create harmful tax competition between states, carrying risks of distorting trade and investment and could lead to the erosion of national tax bases."

The best-known piece of legislation on international taxation is perhaps the US's 2010 Foreign Account Tax Compliance Act. This law requires foreign financial institutions to provide information on financial accounts held by American taxpayers to the US tax authorities. It also provides the model for the proposed "Son of FATCA" legislation that Britain and other countries look to introduce.

In continental Europe the discussion of tax havens often has a different perspective.

In French the eradication of tax havens has been called. By threatening to raise the top rate of income tax to 75 per cent the French President has also raised the anger of some of France's wealthy elite.

Apparently it cannot be forgotten the fact that Hollande's credibility was damaged when Jerome Cahuzac, his then budget minister, admitted to concealing €600,000 (£510,000) in an undeclared foreign account.

Germany too has taken a strong line against tax evasion. For example, the German Chancellor, made a joint statement on the need for "global leadership" to tackle it. Suspicion of tax havens also played a role in shaping German attitudes to the Cyprus bailout in March 2012. Due to the accusations that many offshore depositors in Cyprus were Russian oligarchs, helped to legitimise a hard line towards the rescue package.

From the above, it clearly comes out that tax evasion and even legitimate tax planning at some point, are problems that tantalize several countries around the world, with subsequent caused burdens to public finances. As a result, there is nowadays a variety of measures taken against not only tax evasion, which is by definition illegal, but also against tax avoidance, which in almost all of its forms is legitimate.

Measures against tax avoidance

With the view of preventing avoidance by large multinational corporations, during the G20 meeting of finance ministers in February 2013, Chancellor of the Exchequer George Osborne welcomed the initial report by the OECD on addressing BEPS as a first step for dealing with profit shifting by multinational corporations. At the G8 summit in June 2013, G8 leaders called on the OECD to

draw up a template for global corporations to report to tax authorities on the location they make their profits and where they pay their taxes around the world. This will give tax authorities around the world a new tool against tax avoidance by multinationals.

For tackling tax evasion and aggressive tax avoidance there is also the EU Savings Directive of 2005, the US Fact legislation and the G5 pilot programme on exchanging tax information [16] (involving Britain, France, Germany, Italy and Spain).

As part of Budget 2011 the government published 'Tackling tax avoidance' which sets out the states anti-avoidance strategy. The 3 principles are the prevention of tax avoidance at the outset, its early detection where it persists and it's counteracting through legislative change and challenge through litigation.

At Budget 2012, new guidance was announced on the GAAR, following recommendations from a report into tax avoidance, led by Graham Aaronson in 2011. The guidance will come into force with the Finance Act 2013, which is due to be published in summer 2013.

In December 2012 autumn statement, the Chancellor of the Exchequer said: 'There are still too many people who illegally evade their taxes, or use aggressive tax avoidance in order not to pay their fair share' and set out the government's commitment to taking action against these people.

In December 2012 the "Closing on tax evasion: HMRC's approach" was published, which sets out the approach to tax evasion in more detail, concentrating particularly on how the third party data can be used.

In the 2013 Budget, HMRC published the report "Reveling the tax playing field", which underlined the successes HMRC has had in tackling avoidance, evasion, criminal attack and debt since 2010. HMRC also published its offshore evasion strategy "No safe havens", which sets out HMRC's approach to tackling offshore evasion. In 2011 to 2012 HMRC brought in a record £16.7 billion of additional revenues from compliance activities. HMRC also protected £2.5 billion of revenue by preventing organised criminal attacks, and defendants were convicted in 85% of criminal cases taken to court.

By the aforementioned measures, taken both domestically by the UK and internationally, the tax avoidance phenomenon is expected to be decreased, still leaving though noticeable space for legitimate tax planning. However, some

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16 involving Britain, France, Germany, Italy and Spain

countries will come across major issues, as still the term "tax avoidance" is by no means established, as the illegal means shadow the legal ones.

Greek perspective; Greece's aspect towards taxation

One of the most serious problems that Greece traditionally faces, within the planning and carrying of its fiscal policy, is that of the insincerity and inconsistency of the Greek citizens, in terms of their relationship with the tax administration and the fulfilment of their tax obligations.

According to reports of the Tax Offices and Financial Crimes Squad (SDOE) the apparent and certain delinquency reaches 30% in most sectors of the economy. That obviously leads to the thought that the percentage of the actual tax delinquency is even higher. During 2003 were performed by SDOE 62.100 "targeted inspections"[17] and were found 505.907 infringements, in which 24.278 businesses were involved[18]. The average rate of delinquency[19] was in 2003 39%, in 2002 34,7%, in 2001 29,7% and in 2000 23,4%. This growing trend indicates the increase of tendency by taxpayers towards tax evasion. Further, the 2003 inspection found that 24.170 fake or virtual tax data were issued, the net value of which (excluding VAT) came to 604.290.525€. The size of the inconsistency of Greek taxpayers towards the tax administration is captured vividly by the calculations of the Finance Ministry, according to which the amount of overdue public debts in 2003 were amounting to approximately 5.5 billion euros and in 2004 to 6 billion euros.

One explanation to the difference in the rate of tax unfairness between Greece and the other developed countries is the number of employees in the liberal professions, as supported by the economic analysts of Alpha bank have stated. In numbers, if self-employment in European Union countries is 14% of the labour force on average, their percentage in Greece is 35%. The tax control, however, in this group of employees are very demanding as they are limited companies such as individual traders and a series of transactions with individuals from whom it is difficult to require to present documents for services rendered. The most common

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17 In SDOE statistics an inspection is characterized as targeted when it is carried on specific, targeted enterprises, which have been selected in the context of the annual programming of that action. The selection in made randomly, from all sectors of economic activity.

18 Meaning one out of three companies were breaking the law with the average rate of delinquency coming to 39%.

19 The term delinquency is used in the SDOE statistics in a broader sense, containing all the tax delinquencies, regardless of whether these delinquencies are standardized under current law only as a tax offenses.

violations by self-employed have been registered in the fields of tourism, agriculture, construction and trade.

According to data one in three employees is working without a contract, without paying taxes and social security contributions as well as that many employers, today more than ever, are taking advantage of the lack of control, compelling the employees to accept the unacceptable conditions of work to retain their job.

According to the report on the state of the Greek tax system, commissioned by the IMF in 2012, the real income of the people from specific professional groups (doctors, lawyers, tutors and engineers) is actually about 2.5 times higher than the income they declare to the tax authorities each year.

As per the experts, the high level of non-payment of taxes in Greece is explained by the fact that the benefits of tax evasion are higher the possible penalty that could be imposed in establishing the violation. This does not, however, means that the imposition of tax penalties especially in the course of tax audits, performed, as of 1.1.2014, are not onerous; it rather means that the benefits of tax evasion acquired over the time, were after all, in most cases, outweighed the imposed tax penalties.

The tax rates in Greece are of the highest compared to the rates in the OECD member countries. The difference between the net and gross pay in Greece is 43% whereas it is 26% in the other countries of the OECD on average. The VAT on a range of goods and services is significantly higher than in other countries too, and the ineffective government control makes it almost impossible to detect the irregularities.

Identifying and analysing the causes of the problem of tax sincerity and inconsistency goes beyond the scope of this work. A scientifically informed consideration of the causes of this problem requires extensive sociological and financial investigation, that difficulty can be attempted here. The aforementioned, however, outline in many points some of the reasons behind tax evasion. Seeking the reasons solitary is endogenous factors related to the civic education and character of Greek taxpayers is one-sided and cannot be accurate. The vast majority of literature points out that great contribution to the emergence and spread of dishonest and inconsistency has apparently itself the Greek government. Anarchy and ever-changing tax laws, the low level of public goods and services, the incomplete organization of tax consultancy, the often hostile and coercive behaviour towards taxpayers and the offered rewards to systematic fraudsters with repeated pardoning measures encourage the mala fide taxpayers and causes discomfort and resentment to the good faith ones. Therefore a fuelling climate of distrust is created, both as regards to the efficient and honest management of the

public finances, as well as, towards the proper application of the constitutionally guaranteed principle of fair taxation.

Direct consequence of these is the establishments in the minds of the average Greek taxpayers of an injustice and inefficient state. This fact leads to the success of the notion that the taxpayer can restore justice and that the dishonesty towards tax administration gets “legitimized” as a means of “self-reliance”.

From tax avoidance to money laundering

Most unpleasant but yet a tough reality, is the fact that Greece has been identified with shadow economy. Not only the high rates of black economy, but also the numerous economic scandals that have lately come to light have created a huge burden to the public finances, which subsequently has given the causation for austerity measures to be taken. However, and as mentioned in the abstract, there are no cases related to tax avoidance in Greece and that was exactly the motivation for that thesis. The term tax avoidance, on the one hand, is absolutely absent from the Greek practice exclusively because the term evasion has somewhat prevailed.

Evasion is considered more profitable, more accessible and as also a way to restore tax fairness and equality. Tax evasion, on the other hand, contains more financial that legal interest. The reason behind can be found in the enormous percentage of tax evasion cases. Tax evasion in Greece is a sad everyday reality, as the evaders cover the whole range of economy; from the low-earning individual to the most prosperous enterprises. The most often-used tax evasion methods, namely, are the misrepresenting or hiding of real revenues and the declaration of more expenses than the actual ones. However, there is one case that has been addressed very vigorously by the international press and is related mostly to tax evasion. That case is known as “Lagarde list”.

Lagarde List or List Faltsiani is a specific list of Greek depositors in HSBC bank in Switzerland. The list was intercepted but received afterwards by the secret services of France. It was forwarded then to the French Ministry of Finance and sent, in the part relating to Greek depositors, to the Greek Minister of Finance. The name is due to the then French finance minister, Christine Lagarde, which handed the list to the Greek State in October 2010. The list was delivered accompanied by a cover letter in CD format and out of the “diplomatic bag”, which means without a registration number. Thereby, when the list was handed to the then Minister of Economics the Foreign Ministry was passed by. The former afterwards informed the Prime Minister’s office.

The CD seems to contain about 2000 Excel files with bank accounts, names of beneficiaries and in some cases money deposits. The total amount of deposits in the list is estimated at around 1.5 billion euros. As the list came to the possession of many people within the Greek government, there have been raised legitimate questions and doubts about the validity of the list. If it has been altered, for instance, if there are copies and how many are they and who holds them.

Under those circumstances, the weekly magazine "HOTDOC" published a list alleged as "list Lagarde". This list contained 2059 names of Greek depositors, without mentioning the amount of each deposit, nor account numbers. The list included names of politicians and relatives of those, as well as ship-owners and businessmen, the turnover of which can justify deposits abroad given that the bulk of their business is done abroad. However, the biggest part of the list included Greek names, the deposits of which cannot be completely justified by their turnover, without though meaning that they are completely illegal. In the latter category are found journalists, doctors, teachers, actors, etc.

On 19 December 2012, the "Committee on Institutions and Transparency of the Parliament" decided to refer the investigation of "Lagarde List "in the "Control Commission Persons Occupying ". Up to day several investigations have been made, suspects have been examined and indictment is still taking place. What undoubtedly would catch someone's attention is the fact that of the key players and the major suspect for concealing and falsifying the list is the former finance minister of Greece.

The significance of the case lies within the fact that the list includes names of both legitimate and non-legitimate depositors, which means it contains both elements of tax avoidance and of tax evasion respectively. Tax avoidance to the extent that the deposits come from individuals operating abroad and preferring the Swiss bank due to the offered favorable tax treatment and the high secrecy, which begirds the Swiss banks. Tax evasion to the extent that the activities of other depositors do not justify having high deposits, which were canalized to a foreign bank so as not to be taxed by the Greek state.

As tax avoidance cases are scarce and tax evasion cases plenteous, the most worth analyzing are those related to money laundering, as the techniques are of more complexity and of subsequent more interest.

But what is money laundering first of all?

Money laundering is the technique, by which criminals "dress up" the illegal origins of their money and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence. In

order to prevent and detect money laundering there are means of high effectiveness so as to identifying criminals and terrorists and the characteristic activity from which money is derived.

A financial institution, found to have assisted in money laundering would be dodged by legitimate enterprises. Further, an international financial centre that is used for money laundering can become an ideal economical haven. Developing countries that attract "dirty money" as a short-term engine of development can find it difficult, as a result, to attract that kind of solid long-term foreign direct investment that is based on stable conditions and good governance, and that can help them maintain development and promote long-term growth. Money laundering can erode a nation's economy by changing the demand for cash, making interest and exchange rates higher, and by causing high inflation in countries where criminals are doing business.

Most disturbing of all, money laundering fuels corruption and organized crime. It corrupts public officials that need to be able to launder bribes, kickbacks, and public funds and at some points even development loans from international financial institutions. Organized criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling. Terrorist groups use money-laundering channels to get cash to buy arms. Apparently, the social consequences of allowing these groups to launder money can be disastrous.

From a Greek perspective "The Bank of Greece" is the authority, which is in charge for supervising compliance with the legislative framework on the prevention and suppression of money laundering and terrorist financing by the institutions supervised by it.

The current institutional framework has at many points resulted from the transposition of the relevant Community legislation, which is in harmony with the Forty Recommendations on the prevention of money laundering and the Nine Special Recommendations on combating the financing of terrorism issued by the Financial Action Task Force, an intergovernmental body responsible for setting AML/CFT standards and guidelines.

The Bank of Greece, in the context of its supervisory responsibilities, checks supervised institutions' compliance with their AML/CFT-related obligations and assesses the properness and effectiveness of their AML/CFT procedures.

The Bank of Greece has also sent to supervised institutions a confidential document providing a wide range typology of transactions that may suggest money laundering or terrorist financing, building on international experience and research and adjusted to reflect domestic conditions.

However, it should be noted that the Bank of Greece has no competence to conduct preliminary investigations or to examine in substance suspicious transaction reports submitted by supervised institutions. These powers are reserved to the AML/CFT Committee, the law enforcement or judicial authorities, as appropriate.

Back to the international perspective, in recent years, the international community has become more aware of the dangers that money laundering carries in all these areas and many Governments and jurisdictions have committed themselves to taking action. The United Nations and other international organizations have been committed to helping out in any way they can. Criminals are now taking advantage of the globalization of the world economy by transferring funds quickly across international borders. Rapid developments in financial information, technology and communication allow money to move anywhere in the world easily and rapidly. This makes the task of combating money laundering even more urgent than ever. The deeper "dirty money" gets into the international banking system, the more difficult it is to identify where it came from. Because of the smuggled nature of money laundering, it is difficult to estimate the total amount of money that goes through the laundry cycle.

According to UNODC estimations, the amount of money laundered globally is 2 - 5% of global GDP per year, or $800 billion - $2 trillion in current US dollars. Even though the margin between those data is huge, even the lower estimate underlines the seriousness of the problem governments have committed to address.

A number of developments in the international financial system during recent decades have made the three F's-finding, freezing and forfeiting of criminally derived income and assets-more and more difficult. Some of which are the "dollarization" (the use of the United States dollar in transactions) of black markets, the general trend towards financial deregulation, the progress of the Euro market and the proliferation of financial secrecy havens.

Fuelled by advances in technology and communications, the financial infrastructure has turned into a perpetually operating global system in which "megabyte money" (money in the form of symbols on computer screens) can move anywhere in the world with speed and ease.

As it comes to Greece the Finance Ministry has sent a circular to all tax offices, audit centres and the SDOE financial crimes corps specifying heavy penalties and audits, as provided under the legislation on money laundering. This refers to businesses that repeatedly do not issue receipts and have overdue debts to the state of more than 120,000 euros, the issuing of fake invoices, and for taxpayers who have not submitted income tax statements resulting in evasion of taxes of over 15,000 euros.

The above categories of businesses and tax payers will be audited for money laundering and if found guilty, the confidentiality of their bank accounts, tax history and stock market transactions will be lifted and the transgressing parties will face imprisonment of up to 10 years. The circular lists the specific violations of legislation that will lead to inspections by the Committee for Combating the Legalisation of Revenues from Criminal Activities, which include failure to issue or the issue of inaccurate tax documentation non-payment of overdue debts to the state that exceed 120,000 euros, non-submission of or submission of inaccurate income tax statement for undeclared incomes of which the corresponding tax exceeds 15,000 euros, non-payment or inaccurate payment of VAT and other withheld taxes that exceed 3,000 euros annually, the issue or acceptance of fake invoices regardless of value, and illicit trade and contraband.

As Greece protagonists in the shadow economy, it is not surprising that recently have been reported several money laundering cases.

For instance, the Greek ship owner Victor Restis was arrested on charges of money laundering and embezzlement. He has a stake in Greece's top-selling newspaper and other media as well as his shipping fleet, is being investigated over bad loans of up to 500 million euros at FBBank, which is a troubled lender that was wound down this year, as stated by the court officials. He has been accused of using his influence over the bank to secure a 5.8-million-euro loan for companies with direct or indirect links to him. His family owned the majority stake of FBBank, which had about 1.6 billion euros' worth of assets before it was wound down, with its healthy assets absorbed by Greece's top lender, National Bank.

Rated number 56 in the Lloyd's List top 100 influential people in shipping, Restis has been active in sectors including the dry bulk, tanker and offshore markets, managing an estimated 80 to 85 vessels.

Another prominent Greek businessman, also involved with money laundering is Lavrentis Lavrentiadis, who was jailed in December pending trial for involvement in a banking scandal. He was the main shareholder of Proton Bank. So as to legitimatize money for other illegal activities, he issued bad debts for his companies, which were never paid back. The bank itself has been put under "guardianship" by the Bank of Greece after the findings of the Authority for Combating Laundering suspicious if not illegal transactions of board members who resigned. The bank accounts of the major shareholder were also "frozen".
Those cases are very indicative for illustrating the attitude of a stake of Greeks towards finance in general and for comparing it with the international one. While, in many countries profits are transferred in banks abroad, just because they offer a higher interest rate, the aforementioned businessmen used their "own bank" so as to defalcate great amounts.

Greece's descent into a deep economic crisis has triggered public anger against a political and business elite widely viewed as privileged and corrupt, prompting prosecutors to step up investigations into corruption cases. The aforementioned cases somehow promoted that feeling of public anger.

Greece's wealthy ship owners, who control about 15% of the global fleet, have enjoyed favourable tax terms for decades, paying taxes on their ships' tonnage instead of profits. Noteworthy, that he shipping industry accounts for about 5 %of GDP. As a result, they have come under fire since the crisis started from some media groups and the leftist opposition that accuses them of sidestepping their share of austerity and tax burden on the public.

Measures taken

As the problem of tax evasion was expanding rapidly each year with subsequent consequences to the public finances, the adoption of measures became essential. Thus, the needed measures were taken both in international and in domestic level. From an international perspective, the Commission sent Reasoned Opinions- inter alia- to Greece asking to notify the progress of the of the Directive on administrative cooperation into national law.

It is worth mentioning at this point that the Directive on Administrative Cooperation aims to the increase of transparency, improvement of exchange of information and also to strengthen cross-border cooperation, which are in other words the fundamental tools to fight tax evasion. Member States had a legal obligation to start applying this Directive from 1 January 2013. Apart from Greece the Reasoned Opinions were also sent to Belgium, Finland, Italy and Poland, as those countries have not informed the Commission of the transposition of the Directive into their national legislation. At this point, however, it is essential to have a look at the provisions of that particular Directive.

The Directive on Administrative Cooperation contains many provisions that will make a fundamental difference to the efficiency and effectiveness of national administrations in tracking tax evaders. It prevents Member States from refusing a request for information on the basis that a financial institution holds the data. It sets clear deadlines for the transmission of spontaneous information (where tax evasion is suspected) and information on request. It provides, also, for common forms, computerised formats and standard procedures to improve the quality and speed of data transmitted between national authorities.

Moreover, it is under the Administrative Cooperation Directive that automatic exchange of information between Tax Authorities will be considerably extended in

the future. In the already agreed Directive, available information will be automatically exchange on income from employment, immovable property, directors' fees, pensions and life insurance from 1 January 2015.

On 12 June, the Commission proposed to amend the Directive to further broaden the scope of automatic information exchange to other categories of income and capital. Income concealment and tax unfairness have been some of the most discussed problems of the Greek economy even before the economic crisis. Tax unfairness in Greece cost the state 27% of GDP whereas the average value established in the member states of the OECD is much lower and does not exceed 20.2%. However, according to the experts, the problems of tax unfairness are the consequence of specific characteristics of the legal structure of Greece and the economic model that it has been applying.

From an EU and IMF perspective, measures were also taken to cut Greece's budget deficit and make its economy more competitive are key conditions of its €240-billion ($314-billion U.S.) bailout. But tax evasion is endemic in Greece, making it more difficult for the government to shore up its finances and denting support for the pro-bailout ruling coalition. Middle-class wage earners and pensioners, the hardest-hit group in Greece's six-year recession, account for 70 per cent of total personal income declared.

Thus, the IMF has called on the Greek government to strengthen the independence of the tax administration to make it easier to reform the system. It also said Greece must lay off public workers to be able to hire new qualified staff, and not just rely on voluntary departures.

Under Greece's current bailout plan agreed in November 2012, Athens has to cut 150,000 public sector jobs overall from 2010 to 2015, about a fifth of the total, through hiring curbs, retirement and dismissals.

As a condition for receiving further bailout funds, Greek lawmakers have recently approved a plan that makes it easier to fire government employees for disciplinary reasons, and also extends an unpopular property tax and opens up professions such as accountants and bakers.

Fortunately, the several measures that have been taken both domestically and internationally have come up with encouraging results. The IMF said Greece has made "exceptional" progress on reducing its fiscal deficit since 2010, with its primary budget surplus, or the surplus before taking into account debt-financing costs, set to improve by 10 per cent by the end of the year. However, the country's public debt still remains "much too high," according to the IMF.

Thus, the critical long-term goal for Greece is to bring its debt as a proportion of GDP down to a manageable size. The ratio currently stands at more than 160 per cent. The IMF has said it must be cut to 120 per cent by 2020 to be "sustainable." Apart, however, from those measures it is my personal view that if the techniques of international tax avoidance start becoming more popular to the Greek practice and more attractive for companies and individuals in Greece, the public debt, will be further decreased as the tax avoidance methods can provide a necessary alternative to the well establishes tax evasion methods.

Below, transfer pricing and offshore entities from a Greek perspective are examined.

Transfer pricing

Since the Constitution of 1975 was adopted, Greece recognises the supremacy of international law over all ordinary Greek laws. The principal legal text that regulates the relationship of Greek law towards both international and EU law is Art.28 of the Greek Constitution. Art.28 (2) provides that "in order to serve important national interest and to promote cooperation with other states, state powers' provides in the Constitution can be recognised, through International Convention or Agreement, to organs of International Organizations. The law, which ratifies this Condition or Agreement, must be approved by a vote of three fifths of all incumbent Members of Parliament".

As it comes to taxation, Greece has signed 58 Double Taxation Agreements. However, and in spite of its international element, the domestic reality of Greece prevails. Regardless of article 14 of the OECD MTC for the associated enterprises and Transfer Pricing Guidelines, issued by the OECD, transfer pricing environment in Greece is relatively new and now is about to been tested by the supervising authorities. Additionally, even if the number of DTAs offers opportunities for treaty-shopping and legitimate tax planning, those terms remain unknown in the Greek practise.

It is worth mentioning at this point, that the fact that the transfer-pricing environment is new for Greece does not mean that there is no legal cover for associated enterprises. Arts 39 to 39c of N.2238/94 of the Income Tax Code used to provide the abovementioned legal cover up to 31.12.2013. According to it, resident enterprises linked with another undertaking within the meaning of paragraph 2 of Article 39 of N.2238/94 will have to keep for the year 2013 (fiscal year 2012) documentation prices intercompany transactions. The "Documentation of prices for intercompany transactions" provided for in Article 39a was not up until recently issued. The mimeographed ministerial circular 1179/18.7.2013 lays

down the rules for concerning the submission of the summary table information and training documentation prices intercompany transactions for the year ended December 31, 2012.

More specifically, the circular states initially companies must prepare documentation and thus to submit to GSIS the summary table of information, essentially reproducing the provisions of Article 39 of the ITC, as amended by Article 11 of N.4110/2013. Recall that exempted from affiliated companies with a height of intercompany transactions up to 100.000 € in gross income to € 5 million or 200.000 € to higher revenues.

The documentation includes information about the functional identity of the business as the group to which it belongs, the functions they perform and the risks involved, and a list of intercompany transactions for documentation that are made within the relevant accounting period and short description of the methods of investigation used. The documentation must be kept in the company and made available to the competent supervisory authority under control within a reasonable time, which may not exceed thirty days.

In spite of the aforementioned legal cover, up to date no cases or incidents of transfer pricing related to Greece have been reported. The current law, as it stands contains several loopholes and its efficiency cannot be guaranteed unless it is put into practice.

Based on the aforementioned it is greatly surprising the fact that despite the international element that Greece has evolved in theory, in practice the Greek tax system does not takes it at all into consideration. The question that still remains is how transfer pricing could be established in the Greek practice. Perhaps, the starting “kick off”, could be given by international firms, which also operate in Greece, and are more familiar with those techniques. Besides, the Greek legal system, in spite of its complexities, offers a variety of benefits for foreign companies. Those are examined below in reference with offshore entities.

As of 1.1.2014, when the legal tax framework for Greek has been completely reformed, new transfer pricing regulations apply. A company is obliged to prepare a Greek TP documentation to the extent that it entered into intercompany transactions or transfer of business functions with an aggregate value of more than € 100,000 in a fiscal year and on condition that its reported turnover is less than € 5 million during the financial year under review. The aforesaid threshold is set at € 200,000 when it reports turnover more than € 5 million. Companies which, based on the previous test, are liable to prepare TP documentation are required to document any transfer of business function and intercompany transaction per

category and per counterparty. Definition of category has not been officially clarified, thus a conservative approach is advised to be adopted in this respect.

For the assessment of their compliance with the aforementioned obligation, the liable companies should document the prices of any transfer of business function and intercompany transaction they enter into, with a documentation set, which comprises of the Master File and the Greek File.

For the purposes of assessing the compliance of the liable companies with the Greek TP provisions, the TP documentation should be prepared within four months from financial year end. Within the same deadline, they are obliged to electronically submit a summary information table (SIT) to the tax authorities. It should be noted that, although the TP documentation is not filed with the tax authorities, the SIT includes information that derive from the TP documentation.

Acceptance of documentation methods follows OECD guidelines. However, the traditional methods are preferable compared to transactional profit methods.

Finally, according to article 2 of NITC, it is defined that for Greek tax transfer pricing purposes, associated parties are considered in case of:

i. participation of one person to the other, holding directly and indirectly shares or equity participation of at least 33%, based on value or number or profit or voting rights, or

ii. any other person holding directly or indirectly shares, voting rights or equity participation of at least 33% based on the value or the number or profit or voting rights in one of the associated person, or

iii. any other person with which there is a direct or indirect material management dependence or control or this entity exercises decisive influence on or may decisively influence company's decision making or in case that both entities have a direct or indirect relationship of material management dependence or control or a third party may decisively influence both of them.

Offshore entities

Several concepts related to international tax avoidance are not ranked among the priorities of the Greek legislator. The existence of high requirements constituted always a deterrent to activate the Greek legal and tax administration. Those requirements is the cost, the essential logistic and managerial infrastructure and the diverse political, economic and legal complications, which are inextricably linked to the detection and the resolution of tax avoidance forms, which exploit

possibilities offered by foreign jurisdictions and unfolding outside the national territory.

The sole international tax avoidance term, which dominates the Greek tax reality, is that of offshore entities. It has been argued that the status of an offshore company is a device for avoiding the payment of taxes or reducing them. It is an undisguised recipe on how someone can avoid taxation. Strange enough, that recipe is not manufactured by some private consultants, but is created by other state entities. It is striking to note that some states are surviving by offering "tax avoidance services" at the expense of other countries and is even more impressive that the economically developed states are tolerating that attitude without taking any bold measures to support economic interests. The EU is trying to curb that phenomenon, by gradually adjusting the jurisdictions that are engaged to provide tax benefits. However the diversity of tax systems of Member States themselves formed a non-competitive environment after the imposition of tax differ from country to country.

Until 2002, the reaction of the Greek legislative methods in international tax avoidance have been entirely fragmentary and essentially expressed the rules of Article 38 of the FITC. This regulation, was seeking to narrow the scope of used by associated enterprises tax avoidance methods[20] and is ordering inter alia that overpricing or under-pricing are not taken into account for the calculation of the taxable revenues. The associated enterprises, however, are given the opportunity to rebut that the transfer of prices was not done in order to avoid direct or indirect taxes. This setting is not only related to the relationship between foreign and domestic associated enterprises, but also to the relations between domestic business units and is linked to both administrative and criminal penalties. The first remained in force after the adoption of the N.2523/1997. The latter disappeared with the entry into force of the N.2523/1997[21].

The Regulations contained in Article 39 of the FITC had limited scope. Further, the number of Greek taxpayers, who are directly and indirectly involved in transnational behaviours circumvention of state financial interests, brought the problem of international aggressive tax avoidance into focus. In specific, the use of offshore entities, which is the most efficient method of international tax avoidance, became popular and increasingly used both by companies and by individuals.

20 Those methods contain inter alia: overpricing, underpricing, profit or expence allocation etc.

21 Please note that, pursuant to the NITC and L.4174/2013 (New Code Of Tax Procedures), relatively a few provisions of L.2523/1997 remain into force, something that will be analyzed below.

A report of the Directorate of Special Economic Research Financial Crime, which is based on the results inquiries by the Central Office of Financial Crime, highlights that the Greek tax authorities have reported the registration of almost 2100 foreign companies, which had as a single asset a property of great value, without though exerting any other activity and without any obligations of bookkeeping. The report, citing findings from a thorough examination of samples of the above foreign companies, suggests that probably many of them belonged to Greek taxpayers, who are offered by that way significant tax benefits. The report also notes that most Greek businessmen put in between of their transactions, both with third countries and with EU member-states, off-shore companies of their ownership, so that a substantial portion of their trading profits remains within these companies and be taxed in that jurisdiction, which usually has favourable tax rates. Summarizing the results of the research, it is appreciated that the use of offshore companies for the above purposes is expanding to Greece rapidly and the advantages offered by this expand are so powerful that a potential offshore establishment can be attractive even for private individuals. Besides, there are many reported incidents of Greek-owned offshore entities, even by Greek politicians.

It was also estimated by that report that the revenue loss from the avoided tax would be especially in the near future impressively high and finally, the Greek legislature was invited to intervene immediately. Following this report the reaction of the legislature was immediate. In the context of tax reforms undertaken by N.3091/2002, various measures towards obvious targets were taken so as to make the use of offshore companies fiscally unprofitable. The law stipulates the imposition on these companies of annul tax of 3% for the company-owned properties. Also, the possibility of local companies to deduct from gross income either depreciation of fixed assets bought from off-shore companied either to expenditure for purchasing goods or receiving services from such companies was excluded.

These settings however include imperfections. The provisions of Article 15 N.3091/2002 are problematic in the sense that the emerged intention of the legislator to tax the property only of those offshore companies, which are actually used as opaque curtains for the unfair loss of tax, is implemented through a complicated arrangement that limits the possibilities for exception. The rules, however, set out in paragraph 1, shift the onus of proof of the fulfilment of any potential exceptions. Even greater complaints were raised by the regulations of Article 5, paragraphs 7 and 9 N.3091/2002. The problem here is that the legislature so as to optimize the efficiency of the regulations and prevent possible circumvention uses both broad and vague definitions and waives the prediction of exceptions even in the form of shifting the burden of proof. Tax credits are even denied to offshore companies, which have no intention of evasion. This

inflexibility has given rise to much criticism and some writers even mention the unconstitutionality of certain provisions. Therefore the coverage of international tax avoidance methods evasion in Greek tax law is at many points problematic.

If those loopholes are covered and a mutatis mutandis beneficial regime for offshore entitled is introduced, international capital and investments will be attracted and that will help the public finances. Apparently, all those alterations if done must follow the international demand for transparency and exchange of information.

However, the establishment and proper function of an offshore entity, should as from 1.1.2014, be seen in parallel with the Greek GAAR and Greek CFC provisions, introduced for the first time in the Greek tax system.

New Greek anti-avoidance measures; Greek GAAR

Article 38 of the new Tax Procedures Code (L.4174/2013), effective as of 1.1.2014, introduced in the Greek tax framework for the first time a general anti-avoidance tax rule, according to which the Tax Administration may disregard any artificial arrangement or series of arrangements that aim to the evasion of taxation and lead to a tax advantage.

It is being defined that an arrangement is considered artificial if lacks of commercial substance. For determining if an arrangement is artificial various characteristics are examined.

For the purposes of this provision, the goal of an arrangement is to avoid taxation in the event that, regardless of the subjective intention of the taxpayer, it is contrary to the object, spirit and purpose of the tax provisions that would apply in other cases.

In order to determine the tax advantage, the amount of tax due taking into consideration such arrangements is compared to the tax payable by the taxpayer under the same conditions in the absence of such arrangement.

No guidelines have been issued so far by the Tax Administration as to the content and manner in which this provision may be applicable. Although, GAAR is quite general and it would appear to cover any series of structures aiming at tax efficiency.

Lack of interpretation of the Greek GAAR is not, however, the sole drawback thereof detected up to date; GAAR's implementation in a sufficient rather than in

an abusive manner, may be the most significant GAAR-related problem for the years to follow and the most serious challenge to be faced in this context.

Besides, the experience of other jurisdictions demonstrates that it may be difficult to achieve absolute certainty, or even a general level of clarity, when considering a GAAR. As the Supreme Court of Canada in Copthorne Holdings Ltd. v Canada noted:

> *"The GAAR does create some uncertainty for taxpayers".*

Greek CFC provisions

According to the new provisions of the NITC, the taxable income of a person (individual or legal entity) in Greece includes the non-distributed income of legal entities/ other entities tax residents in another state, provided that the following conditions are cumulatively met:

a. the taxpayer, on his/her own or jointly with related persons, holds, directly or indirectly, shares, parts, participations, voting rights or participations in the capital at a percentage exceeding 50% or is entitled to receive a percentage exceeding 50% of the profits of the foreign legal entity,

b. the foreign legal entity is subject to taxation in a non-cooperative state or state with a preferential tax regime, namely to a special regime allowing for a substantially lower level of taxation than the general regime,

c. a percentage exceeding 30% of the net income before taxes realized by the foreign legal entity falls in one or more of the following categories:

    i. interest or any other income generated from financial assets,

    ii. royalties or any other income generated from intellectual property,

    iii. income derived from dividends and the transfer of shares,

    iv. income derived from movable assets,

    v. income derived from real estate property,

    vi. income derived from insurance, bank and other financial activities. In order for the CFC rules to apply, more than 50% of the income from one of the above categories

should derive from transactions with affiliated entities/ persons.

d. it is not an entity, the principal category of shares of which are traded in an organized market.

The above provisions are not applicable to EU resident legal entities or to contracting parties of the EEA agreement, unless the establishment or economic activity of such an entity constitutes an artificial arrangement put in place for tax-evasion purposes.

Therefore, in cases of EU/EEA established CFC, one should clearly evidence that the foreign entity has an actual business activity (i.e. the company has a proven substance in the country of its registration, namely a seat or a PE, permanent employees, tax residency in the foreign country of its registration etc.).
This income is taxed at the tax rate applicable to profits derived from business activities of individuals and of legal entities as the case may be.

Conclusions

As the tax administration in Greece has several drawbacks, its optimisations and the simplification of the tax code are some of the immediate and essential needed to be taken measures, as besides have asked the representatives of the IMF, the European Central Bank and the European Commission. The income tax, property tax and the tax code have already been reformed, and it is expected that the new rules, effective as of 1.1.2014, will tackle several of tax well-established problems in Greece. Even though steps have been taken to make the revenue administration autonomous, there are still problems in the functioning of the system. Besides, in spite that the NITC and of the new Code of Tax Procedures are in force almost a year now, a relatively low number of Administrative Guidelines have been issued up to date.

The IMF had stated that Greece has made an "exceptional" progress on reducing its fiscal deficit since 2010, with its primary budget surplus, or the surplus before taking into account debt-financing costs, set to improve by 10 per cent by the end of the year. Still Athens' long-term goal is to bring its debt as a proportion of GDP down to a manageable size. The ratio currently stands at more than 160 per cent. The IMF has said it must be cut to 120 per cent by 2020 to be "sustainable."

The IMF, however, has insisted on strict debt targets as a condition of helping Greece gets its economy in shape, but the Fund has also been criticized for failing to predict Greece's deep recession. The Fund has stated that: "The lessons of the recent past are that only with full and timely policy implementation and

commitment to the program can the fundamentals for a recovery be put fully in place and the fear of adverse outcomes permanently put to rest".

According to the report of the supervisory "Troika", the lenders and the government have largely agreed that the Greek recovery program is being implemented as planned. It provides for primary balance in the budget this year and for gradual return to economic growth in 2014. "The outlook remains uncertain," states the report of the Troika. The supervisors note that the recapitalization of the banking sector is almost complete. The authorities have committed to further steps to safeguard the financial stability, including through the sale of two bridge banks as stated in the report. According to the Greek analysts, the lenders predict that, by the end of the year, the government will sell the two state banks, namely Postbank and Proton Bank, to complete its strategy to build a four-pillar banking system as scheduled. According to the IMF "these reforms are a further important step towards facilitating adjustment and enabling growth. The mission also discussed with the authorities the progress in strengthening the social safety net, including through targeted employment and training programmes supported by the European Union and a programme to provide access to primary health care for the uninsured."

As per the IMF, Greece has made progress in reducing government debt and improving its competitiveness, but needs to follow through on structural reforms to ensure its economy recovers.

Based on the above measures and improvements, if someone compares the international tax avoidance cases with the Greek tax evasion and money laundering ones would come up at a final point with essential proposals for reducing the public debt, which is mostly caused by shadow economy. Obviously, the most important difference that Greek cases have in comparison to international ones is that the formers use exclusively illegal methods, whilst the latter are taking advantage of the laws as they stand, so as to come up with benefits and credits. Further, the allocation of profits and expenses is not preferred not that known to the Greek practice, as instead what is used is the misrepresentation of real revenues and expenses. The former are minimized as the latter are maximized. Further, the regulations of the Greek law for offshore entities has several loopholes, as discussed above, whilst Greek CFC rules have not yet been tested in practice, in the course of tax audits. Additionally and in spite of the legal cover of transfer pricing, there have been reported no extensive incidents of transfer pricing planning in Greece. Even the Greek audits in their vast majority are not yet enough familiarized with transfer pricing methods.

The techniques, though, of international taxation can be taken as illustrative examples of how Greek taxpayers can still optimize their tax position, without

breaking the law and burden the public finances. Perhaps, the government should offer incentives to that direction in the view of attracting domestic and foreign capital and scoping also to the minimization of base erosion.

Tax evasion has always been the main enemy of public finances, whereas tax avoidance techniques somewhat helped countries to attract foreign capital and investments. However, after big multinational groups have avoided great amounts in taxes, the question that comes up is whether tax avoidance should be still given incentives by each government or if it should be completely penalized, becoming by this way synonymous with tax evasion.

The answer cannot be straightforward especially when it comes to Greece. In the latter, where tax evasion has become some kind of a "bad – hard to quit – habit", just the switch from tax evasion to tax avoidance would seem ideal and impressively effective in reducing the public debt. Even if the limits of legitimate tax avoidance are and will become even narrower in the future, one can argue that still enough space will be left both for individuals and for companies for legitimate tax planning. What is certainly absent from Greece so as to leave behind evasion and approach avoidance is the internal legislation. As mentioned above "treaty-shopping" and "transfer pricing planning" are almost unknown terms in the Greek legal order. Thus, firstly and foremost internal legislation is needed and afterwards a shift in the way of thinking and acting. Undoubtedly the government and the lawmakers have the exclusive competence of offering privileges or incentives to each entity for using legal techniques rather than illegal.

Clearly above is shown that the evaders in Greece are not only big corporations but also next-door people. As for instance transfer pricing is not a technique applicable by natural persons, a question that arises in reference to natural persons is whether they should prefer paying taxes rather than evading. The solution falls again mostly within the competence of the government. The tax rates should be decreased but the tax auditing should be more frequent, sincere and in depth, the penalties for evaders should become tougher, incentives should be offered for reporting the actual revenues, perhaps in the form of benefits, and finally the Greek banks should find ways to attract domestic and foreign capital (perhaps by competitive interest rates).

When a problematic situation exists the solution by no means can be one-sided. As a result, and after the government proceeds to these alterations, it should show-after the collection of taxes- that the money paid is returning variously to the state itself-in the form of public goods and services- and that is not used to serve other purposes. Besides, the spirit of law demands the relationship between the state and the taxpayer to be bilateral.

Tax evasion does not offer money; it "lends" money in high interest rates and in due time it will ask it back regardless of the consequences. Tax avoidance even though it has already been targeted, contains several-unknown to the Greek reality-techniques that can give a legitimate alternative to the unfortunately well-established attitude towards tax evasion in Greece. Most likely the desired improvement to the public finances may also come from that alternative and not exclusively from the tougher austerity measures.