

Combating tax evasion in times of crisis in Greece

Katerina Pantazatou

1. Introduction

Greece is the European country that has been most in the spotlight after the breakout of the financial crisis in 2008. It was the first Member State that had to be ‘bailed out’ and allegedly the first and only one being so close to exiting the Eurozone.

The reasons for the dire financial situation of Greece are many. Among those figure a number of tax-related causes, notably tax evasion and the inefficient collection of taxes. The 3 Memoranda of Understanding the Greek government(s) has(ve) signed so far include very detailed reforms Greece has to implement with regard to taxing and spending. Amidst such pressures for increasing the country’s public finance, the issues of tax secrecy, tax transparency and the collection of taxes have become imperative, although this has not been reflected so scrupulously in the Greek legal framework.

2. The mosaic of tax evasion in Greece

After years of deliberations as to how the financial situation in Greece can be fixed, it has probably become widely acknowledged by now that Greece *does* suffer from large amounts of tax evasion. Indicatively, shadow economy for the period 1999 – 2007 was found to be an estimated 27.5 percent of GDP (larger than any other EU Member State at that time).¹ The VAT gap was found by a study of the European Commission to be 33.4% for 2012 and 34% for 2013, placing Greece 4th in the EU – 26 list of VAT gap countries after Romania, Lithuania and Slovakia;² while the tax debt as a share of annual net tax revenue in Greece was 72.2 percent in 2011, compared to an OECD average of 12.3 percent. A recent study of the Centre of Planning and Economic Research (KEΠΕ) showed that the Greek state is losing on average since 2009, 7.5 billion Euros per year as a result of VAT evasion and avoidance.

In order to understand what the laws on tax secrecy and tax transparency aim to put a halt to, one has first to discern the nature of tax evasion in Greece, in particular whether it relates to sophisticated tax schemes (corporate profit shifting

¹ Friedrich Schneider, ‘The Shadow Economy and Work in the Shadow: What Do We (Not) Know?’ IZA DP No. 6423 (March 2012).

² European Commission (TAXUD) ‘Study to quantify and analyse the VAT Gap in the EU Member States, (2015 Report).

or transfer pricing), VAT fraud and evasion, or corporate or personal income tax evasion.

According to the IMF Country Report of June 2013 (No 13/156) the very high taxes (income and VAT), the low probability of detection, the low effective penalties in conjunction with some amnesty schemes, a poor provision of public goods and services and a ‘social norm’ of tax evasion are the main reasons behind the high percentages of tax evasion in Greece.

With regard to income tax evasion, a recent academic study found that, possibly contrary to popular belief, the highest percentages of tax evasion in Greece come from the highly educated and powerful professions and explained that ‘[r]anked by tax-evaded euros, the largest offending industries are medicine, engineering, education, accounting and financial services and law.’³ It, further, estimated that 43%-45% of self-employed income went unreported and thus untaxed.

The question, thus, arises what does the Greek state do to rectify this situation? Since 2008 Greek tax laws have undergone a series of amendments and additions which relate primarily to the increase of tax rates and the imposition of new taxes and secondarily to the improvement of tax enforcement and the combat of tax evasion. This latter point I turn to explore in the following section.

3. The Greek tax framework with regard to tax evasion, tax secrecy and tax transparency

3.1. Tax and Bank Secrecy

Since 2013 Greece has a new Income Tax Code (Law 4172/2013) and a new Code of Tax Procedure (Law 4174/2013) (with effect from January 1, 2014). The former provides for the general, simplified in comparison to the past, legal framework with regard to both corporate and personal income taxation, while the latter introduces the procedural provisions relating to the determination, assessment and collection of all taxes (including VAT and real estate property taxes).

The previous legal framework (Law Decree 2238/1994) devoted a very detailed provision to tax secrecy (Art. 85) which provided inter alia that “...any data of the taxpayers’ file that is related to taxation is secret and any notice to anyone else but the taxpayer is forbidden”. The tax secrecy provided therein is waived in certain enumerated cases (Art. 85 (5)).

³ Nikolaos Artavanis, Adair Morse and Margarita Tsoutsoura, ‘Measuring Income Tax Evasion using Bank Credit: Evidence from Greece’

Under the new legal framework (Article 17 of the Code of Tax Procedure) there is a general requirement for employees of tax administration to keep as confidential all data and taxpayers' information that have come to their knowledge. The confidentiality and secrecy requirements are waived when this information is requested by specific authorities which aim to verify the tax obligations of the taxpayers. These authorities include prosecuting and judicial authorities, when they adjudicate tax or criminal cases relating to tax evasion; foreign tax authorities (pursuant to Directive 2011/16/EU); financial authorities; social security institutions and the tax administration in general. Data or other information regarding any taxpayer can be disclosed to any interested party, upon the latter's application and provided the taxpayer at issue consents in writing. The General Secretary of Public Revenue (GSPR) may further establish the conditions under which any third party can be granted access to the taxpayer's data if this is deemed necessary for the efficient functioning of the tax administration. Under Article 15 of the Code of Tax Procedure all national authorities and third parties are obliged to provide to the General Secretary, when asked, any relevant information concerning the financial transactions of taxpayers. This obligation is waived in cases pending before criminal courts unless the District Attorney gives his consent for the disclosure. By contrast, third parties bound by professional secrecy are (still) required to provide information that would assist the General Secretary to determine the tax obligations of the taxpayers (the request for the disclosure of any other information should be accompanied by a written permission by the D.A.).

In an effort to combat tax evasion, bank secrecy vis-à-vis the tax authorities has been effectively entirely curtailed in Greece. Various tax authorities, or investigation and enforcement units associated to them like the General Secretariat for Public Revenue or the "Financial and Economic Crime Unit" (S.D.O.E.) can have access to information on bank transactions of private persons.

In line with the motto 'bank transparency for tax purposes' the Greek government introduced more than three years ago a database (Taxis) where tax and financial authorities, tax inspectors and the S.D.O.E. could access data regarding remittances abroad, the interest income on savings for all taxpayers and the data of all bank accounts with transactions (debit or credit) of more than 100,000 Euros.

Law 4170/2013 as completed and amended by Law 4211/2013 introduced, inter alia, a Registry for bank and payment accounts which allowed 'certified users' (such as the tax authorities and S.D.O.E.) to gain access to the balances of the bank accounts of the taxpayers, as well as the bank transactions they made within the last 10 years, by simply inserting in the database the taxpayer's tax identification number.

With a view to accelerating the process of handling tax evasion cases, by recent Ministerial Decision (ΦΕΚ Β' 1957/11.9.2015), the 'Registry for bank and payment accounts' was extended further to allow authorities from the Ministry of Finance and inspectors from the GSPR to access within 24 hours *all* taxpayers' transactions within the last 10 years.

In order to combat tax evasion, the Greek government is, currently, contemplating the establishment of an 'electronic movable and immovable property registry' ('ηλεκτρονικό περιουσιολόγιο') which, drawing from the taxpayers' tax returns, will consist of detailed data regarding the taxpayers' immovable and movable property, including, inter alia, savings accounts, shareholdings, bonds, mutual funds, paintings and expensive jewelry.⁴ The idea behind this measure is that the tax authorities have now the opportunity to determine, in principle, all the assets of the taxpayers and control whether they are *justifiable* according to their tax returns. If inconsistencies are found, for instance a very low income worker holds valuable assets (or has income therefrom) he has never declared to the tax authorities, the Greek government will consider imposing a heavy fine or even seizing the relevant assets.

3.2. VAT gap

Among the suggestions of the KEPE study regarding VAT evasion in Greece was the improvement of the VAT collection which could be effectuated via the promotion of the use of credit and debit cards for all transactions. In order to incentivize taxpayers to use 'plastic money', which, in turn, would boost consumption and put a halt to VAT evasion, the study recommended 'cash back' and other bonuses.

In order to facilitate the monitoring of (bank) transactions for tax purposes, Article 23 of the Income Tax Code provides that all invoices worth over 500 € (VAT inclusive) issued after 1/1/2014 will have to be paid either by check or by cash deposit to the bank account of the company, otherwise the taxpayer will risk of incurring indirect fines.

In addition to incentivizing consumers to use bank cards for their transactions, the study recommends the establishment of a system that will automatically deduct the VAT and attribute it to the State. This last measure materialized for specific transactions (notably the ones that are effectuated via bank cards, e-banking etc.) with the adoption of Law 4334/2015 which provided that the transaction-related VAT amount will be withheld by the bank and paid directly to the State within 5 days from the day of the transaction.

⁴ The Draft Bill will most probably be discussed in the Hellenic Parliament within December 2015, so that, if it gets the requisite majorities, it can be enforced already starting in 2016.

3.3. Tax Transparency

In order to restore confidence to the taxpayers and to incentivize them to pay their taxes, the Greek government introduced for the first time in 2012 the General Secretariat for Public Revenue which is responsible for ‘tax and customs’ issues. In their online platform the GSPR publishes regularly its targets and results allowing citizens to monitor the efficiency of the Tax Administration for the first time.⁵ Information regarding the old debt collections, auctions, the number of the full scope and temporary audits are now available to everybody for the first time.

The Greek government already in 2011 contemplated that another way to combat tax evasion would be via ‘naming and shaming’ the taxpayers (both natural and legal persons) whose debt towards the State has become due and exceeds 150,000 Euros. Consequently, under the tax data online platform (www.gsis.gr) one can find lists of both natural and legal overdue debtors to the State, including their full name, the exact amount they owe, as well as their seat (for legal persons). The publication of these taxpayers’ lists online has been the subject of debate regarding its compatibility with the Greek Constitution which explicitly protects the collection, processing and use of personal data,⁶ and the special law 2472/1997. The Hellenic Data Protection Authority (HDPa) which is entrusted with monitoring the protection of all personal data (including tax and bank secrecy and secrecy of communications), has issued contradictory opinions with regard to the compatibility of the taxpayers’ lists with the data protections laws. In its earlier opinion 1/2011, it opined that the publication of these lists on the internet did not constitute a “harmless” measure for the “honest/sincere” taxpayers but instead it found that the processing of all the information found in these lists might be used to satisfy the “curiosity” of people with no legal interest, or even worse might be used for purposes that could affect directly the peoples’ freedom to participate in the social and economic life of the country. By contrast, in its later opinion 4/2011, the HDPa held that the publication on the internet, by the Ministry of Finance, of the overdue debtors to the State as stipulated in Article 9 of Law 3943/2011 (for the combat of tax evasion) and the Ministerial Decision ΠΟΑ 1185/01-09-2011 (on the publication of overdue debts to the State) was proportional to the intended purpose. The Authority held that in such times, when the course of the country’s public finance is particularly bad, the processing of personal data of the taxpayers at issue, constituted a constitutionally tolerable restriction which did not infringe the principles of appropriateness and necessity.

3.4. Tax enforcement - Sanctions

⁵ <http://www.publicrevenue.gr/kpi/>

⁶ Greek Constitution Article 9A.

The Code of Tax Procedure distinguishes between procedural infringements (Art. 54) and infringements relating to tax evasion (Art.55), while it further lists a series of other, more specific infringements (Art. 56 – 60). The former include, inter alia, the non- or late submission of tax returns, the non-compliance of the taxpayer with regard to his books and records' obligations, his lack of cooperation during a tax audit, his non-registration to the tax registry, and more.

Tax evasion related infringements comprise the issuance of false and fictitious tax returns with the purpose of the concealment of taxable income, the non-attribution or inaccurate payment of VAT, the receipt of tax rebates upon deception of the tax authorities, and more. For the purposes of the Code, tax evasion is effectively termed as the concealment of tax exceeding € 10,000 per fiscal year for individuals or taxpayers responsible for keeping single entry accounts and the concealment of tax exceeding € 60,000 per fiscal year for taxpayers responsible for keeping double-entry books.

The relevant administrative procedure and the fines imposed therefrom are independent of the criminal sanctions applicable to tax offenses. The administrative fines imposed in cases of tax evasion depend on the specific infringement at issue and are calculated as percentages of the value of the infringement.

In the second half of November 2015 the Greek Parliament approved the draft bill of the 'measures for the implementation of the agreement (cc. with the lenders) regarding fiscal targets and structural reforms'. The new law will bring about for the umpteenth time significant amendments both to the Codes of Income Taxation and of Tax Procedure, including the abolishment of a ceiling in tax fines and the imprisonment of up to two years for nonpayment of taxes exceeding 100,000 in cases of income taxation or 50,000 in cases of VAT. Unlike before, criminal proceedings shall not be suspended even if the taxpayer has lodged an administrative (remedial) appeal.

4. Conclusions

From 2012 onwards the Greek government(s) seems to be moving towards the right direction. Although priority is still given to the increase of public revenue through the increase of tax rates or the imposition of new taxes, slow progress is being made regarding the improvement of tax collection, the increase of tax transparency and the combat of tax evasion. It is, indeed, surprising why the improvement of tax enforcement has not featured high enough in the financial assistance conditions, in particular since the big problem of tax evasion in Greece is well-known to all lenders and is not premised on complicated tax structures of profit shifting or transfer pricing. I strongly believe that besides the Greek taxpayer, who by reason of long standing traditions and beliefs has to be explicitly

incentivized to pay his taxes, the Greek state also has to be motivated to combat tax evasion. Such a motivation could be based on the financial assistance being contingent upon the improvement of tax collection (while keeping the tax rates intact).

The progress made, however, so far should not be overlooked. In this endeavor the Greek state had to overcome many obstacles; in particular an obsolete, non-digitalized archiving system and the Greek taxpayers' mentality that deceiving and tax-evading a 'bad-performing' State is not only non-reprehensible but rather to be applauded.

This progress certainly comes at the expense of the principles of secrecy, confidentiality and data protection and to the detriment of the 'sincere' or 'honest' taxpayer who, despite his consistent compliance with the tax law framework, effectively enjoys no bank or tax secrecy and has to pay extremely high taxes to compensate for the inefficient collection by the State.

Furthermore, the progress has come at the expense of legal certainty and predictability. Since the crisis began, a large number of laws and ministerial decisions relating to tax enforcement and administration have been adopted, each one amending or completing or even contradicting the previous one. The continuous change of the tax legal framework, be it a result of the lenders' pressures or the Greek governments' initiatives, may damage not only the taxpayers' trust in the tax authorities but the tax enforcement itself.