

“COMING IN FROM THE COLD” THE LATEST TAX AMNESTY IN
GREECE AND LESSONS FOR THE FUTURE.

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ABSTRACT

What renders a tax amnesty program successful? Tax amnesty programs have long been used by governments as policy tools to produce both short and medium-term benefits. Despite the criticism that such tools have received for being inefficient and unfair, tax amnesties remain a very popular choice amongst policymakers nonetheless. However, as recent experience has shown, tax amnesty programs are often unappealing amongst taxpayers and fail to achieve the short-term and medium-term goals set by governments. This Article critically discusses the latest international tax amnesty in Greece that took place in 2010 and provides an overview of its advantages and disadvantages. By reviewing the said tax amnesty and comparing it with the tax amnesty of Argentina and Italy, this Article makes significant conclusions about what renders a tax amnesty scheme successful and prompts taxpayers' participation.

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I. INTRODUCTION

During Greece's modern history, since its independence from the Ottoman Empire, in the 1820s and 1830s through 2006, Greece has experienced five sovereign defaults, being more years in default than not.¹ In 2012, Greece "made headlines" once again as it announced the largest sovereign bond haircut in history,² while it was still struggling with its sovereign debt. In such times of financial hardship, Greece has often resorted to tax measures, including various tax amnesties, to extend its tax base and increase its revenue which mainly stems from the collection of taxes.³ Indeed, since 1978, Greece has offered 11 tax amnesty programs⁴ and many more amnesty-like procedures,⁵ rendering such programs a significant part of its tax policy. In this article, I explore the latest tax amnesty program offered by Greece in 2010, by reviewing the design and characteristics of same as well as its positive and negative elements. Based

¹ Don Lee, "Greece Is Not Alone When It Comes to Sovereign Defaults" THE LOS ANGELES TIMES, available at <http://www.latimes.com/world/europe/la-fg-debts-defaults-other-countries-20150707-story.html>.

² MARTIN GUZMAN, JOSE ANTONIO OCAMPO AND JOSEPH E. STIGLITZ, TOO LITTLE, TOO LATE: THE QUEST TO RESOLVE SOVEREIGN DEBT CRISES 85 (1st ed. 2010).

³ To see the distribution of the government's income at "Main Components Of Government Revenue, 2016 (% Of Total Revenue) YB17.Png - Statistics Explained" available at [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Main_components_of_government_revenue,_2016_\(%25_of_total_revenue\)_YB17.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Main_components_of_government_revenue,_2016_(%25_of_total_revenue)_YB17.png).

⁴ Tonia Peditaki, "Tax Amnesties & Tax Compliance: The Case of Greece" (International Conference on Taxpayer Rights, Washington DC, 2015).

⁵ See JACQUES MALHERBE, TAX AMNESTIES 83-96 (1st ed. 2011).

on this, the article identifies the elements that make such programs successful.

II. THE 2010 TAX AMNESTY

In 2010, Greece launched a largescale tax amnesty framework consisting of various tax amnesty measures aiming to encourage the voluntary disclosure of previously undeclared income and to collect a part of the massive amount of evaded taxes. Such taxes are calculated at approximately €70 billion annually, corresponding to 6% of Greece's Gross Domestic Product (GDP).⁶ To this end, Greece enacted Law 3842/2010 which offered tax incentives for the repatriation of funds held abroad, as well as Law 3888/2010 that offered tax payers amnesty for the settlement of their 'unaudited tax filings and arrears' of up to ten years back⁷

A. *Art.18 of Law 3842/2010*

On 23 April 2010, the Greek Government adopted Law 3842/2010, which together with Law 3888/2010, aimed to create a new tax framework, which would create general rules to cultivate a change in tax mentality and enhance voluntary compliance.⁸ Article 18 of Law No.3842/2010 ("Article 18") provided that natural or legal persons subject to income tax in Greece could, within 6 months from the enactment of the said law, declare and repatriate funds kept abroad by paying a flat tax. Funds declared and repatriated in Greece would be subject to a flat tax equal to 5% of the funds' value, provided these would be held in a time deposit in Greece for no less than a year, while the tax would increase to 8% of the funds' value if the funds were declared to Greek tax authorities, but were not repatriated. Payment of the aforementioned tax would exhaust taxpayers' obligations regarding the said funds, while tax authorities would not investigate how such funds were acquired. Article 18 also provided that in case the repatriated funds were invested in i) Greek government securities held by the taxpayers for at least two years, or ii) mutual funds, or iii) in real estate in Greece acquired or built within two years from the funds repatriation, 50% of the tax paid would be refunded to the taxpayers.

⁶ For an extensive analysis of Greece's shadow economy between 1999 to 2005 see Friedrich Schneider, *Shadow Economies Around The World: What Do We Really Know?* 21 EUR. J. OF POLITICAL ECON (2005).

⁷ Law 3888/2010 (Art.14) provided tax payers the opportunity to pay 20% of the outstanding tax debt up front and spread the remaining 80% over a period of no more than two years, payable in monthly installments.

⁸ Dimitrios Stamatopoulos, "Tax Provision in Today's Reality, Analysis, Directions, Goals" available at <https://www.forin.gr/articles/article/5724/oi-forologikes-diatakseis-sth-shmerinh-pragmatikothta-analush-kateuthunsh-stoxoi-arthro-tou-dhm-stamatopoulou>.

B. The requirements to benefit from Article 18

In order for taxpayers to benefit from Article 18 provisions, the funds needed to have already been deposited in banks abroad before the enactment of the law. It is important to note that according to the law, such funds did not need to be undeclared in the taxpayers' tax returns, but taxpayers could benefit from the said provision even if they had declared such funds, but had not paid tax for same. Additionally, the taxpayers needed to file an application in the form stipulated by circular 1058/2010. The computed tax was withheld upon repatriation of the funds by the banks in Greece. In case of funds that were declared but not repatriated, the tax due was attributed to the debtor himself upon filing of the said application to the competent tax authority.

C. The benefits to taxpayers

By its definition, a tax amnesty is a limited time opportunity offered by the government to taxpayers to pay a flat tax in exchange for "forgiveness" of a tax liability for the previous period.⁹ Therefore tax amnesty measures are addressed to "non-compliant" tax payers that have not declared whole or part of their assets for a given tax year. Thus, for a tax amnesty measure to be successful, it needs to provide incentives to tax payers to comply with tax laws although they previously had chosen not to.¹⁰ This is also true for Article 18 which followed a "carrot-stick" approach, offering benefits to taxpayers, while threatening increased controls and penalties.

1. Reduced tax rate

Apart from repatriation incentives, Law No. 3842/2010 also amended applicable tax rates. According to the said law, income generated from legal persons was taxed differently than income generated from individuals. Indeed, income generated from legal persons would be taxed at a flat rate of 24% irrespective of the source of income and regardless if it was generated in Greece or abroad, while individuals would be taxed at a progressive tax rate starting from 18% for annual income above €12,000 and it could reach 45% for annual income over €100,000. Hence, the reduced tax rate of 2.5% to 8% offered by Article 18 was significantly lower than the standard tax rates for either legal or natural persons, offering an important benefit to those invoking Article 18.

⁹ ERIC LE BORGNE AND KATHERINE BAER, *TAX AMNESTIES: THEORY, TRENDS, AND SOME ALTERNATIVES* 5 (1st ed. 2008).

¹⁰ Pinaki Bose and Michael Jetter, *Liberalization and Tax Amnesty In A Developing Economy*, 29 *ECONOMIC MODELLING*, 761 (2012).

2. No liability for non-declaration

In accordance with the provisions of the Income Tax Code applicable in 2010 (Law No. 2238/1994), Greek residents were required to declare and pay tax in Greece for their worldwide income. Hence, funds generated abroad were also taxable in Greece and should have been included in the taxpayers' tax declarations. In case such funds were indeed declared in the annual income tax return of a taxpayer and due tax on such amounts had been paid, these funds could be repatriated any time without any additional charge. On the other hand, in case a taxpayer omitted to declare the funds, income tax code provided for both administrative and criminal charges. Provided certain conditions were met the following penalties would apply:¹¹

- a) The loss of the right to pay tax in installments.
- b) The loss of the right to participate in public sector tenders generally for a period of six (6) months to one (1) year.
- c) The loss of the right to obtain a tax clearance certificate for a period of six (6) months to one (1) year.

Additionally, Article 86 of the Income Tax Code provided for additional tax imposed as penalty for late or non-submission of tax return, while Article 87 provided for fines of up to 10% of the tax. Lastly, Law No. 2523/1997 provided for criminal charges in case of non-declaration of taxable income that entailed fines and incarceration up to 2 years, depending of the tax amount.¹²

Article 18 specifically stated that Greek tax authorities would not investigate the date and origin of the funds declared. However, it also provided that following the expiration of the 6-month deadline, Greek authorities would activate all European and international agreements to verify deposits of Greek residents kept abroad.

Hence, by taking advantage of Article 18, taxpayers that had failed to declare funds abroad could avoid both the administrative and the criminal charges described above.

D. The drawbacks of Article 18 to taxpayers

However, Article 18 had also several drawbacks that acted as hindrances to the large-scale implementation of the scheme. The drawbacks are discussed below.

1. Criminal Liability for Money laundering

The major drawback of Article 18 was that it failed to provide amnesty

¹¹ Art. 90 of Law 2238/1994.

¹² KONSTANTINOS FINOKALITIS, TAX LAW 77 (2011).

from criminal liability, as Law No. 3691/2008¹³ on money laundering continued to apply. According to the said Law,¹⁴ financial institutions were obliged to submit suspicious transaction reports to the Hellenic Anti-Money Laundering and Anti-Terrorism Financing Authority for any unusual or suspicious transactions, whenever money laundering or terrorist financing was suspected. Hence, tax payers transferring funds to Greek financial institutions could face criminal charges after all. If the Hellenic Anti-Money Laundering and Anti-Terrorism Financing Authority also considered the transaction suspicious, it was obligated to submit its findings to the public prosecutor. Clearly, this was a significant deterrent for participants for repatriating their funds because in this way they could be helping Greek authorities prosecute them.

2. Confidentiality

An important element of consideration for persons that have previously chosen not to declare or pay tax is whether their personal information will remain confidential.¹⁵ Article 18 section 3 specifically stated that banks should extend banks examiners' 'confidentiality privilege to information received by persons that inquired or made use of Article 18. However, the scope of the said confidentiality is limited as it does not apply in several occasions, including, *inter alia*, money laundering,¹⁶ various tax and social insurance reasons¹⁷ and criminal offences.¹⁸ Further, the privilege only related to Financial Institutions and to the Income Tax Authorities that have often publicized similar data.¹⁹ By way of comparison, Italy in its famously successful tax amnesty scheme of 2009 ensured confidentiality by requesting taxpayers to file a "reserved declaration" which was delivered solely to the financial intermediary and not to the tax administration. Instead, financial intermediaries would file an annual return to the tax administration where they reported the total amount of assets repatriated under the amnesty scheme.²⁰

¹³ The said law transposed into Greek law the third directive against money laundering (2005/60/EC) and the execution measures (directive 2006/70/EC)

¹⁴ 2005/60/EC & directive 2006/70/EC.

¹⁵ Arun S. Malik and Robert M. Schwab, *The Economics Of Tax Amnesties* 46 J. OF PUBLIC ECONOMICS 32 (1991).

¹⁶ Art. 7 of Law No. 3691/2008,

¹⁷ Art. 32(2) of Law No. 3986/2011

¹⁸ Art. 3 of Law 1059/71

¹⁹ Indicatively, the tax data online platform (www.gsis.gr) contains lists of natural and legal overdue debtors to the State, including their personal details.

²⁰ Marco Rossi, "Italy's Offshore Tax Amnesty and International Tax Enforcement" (3rd Annual STEP Pacific Rim Conference May 6-7, 2010, Santa Monica, CA, 2010).

3. Incompatibility with EU Law

Finally, Article 18 was found to be incompatible with EU law. Indeed, according to the European Commission the fact that Article 18 provided preferential tax treatment to funds repatriated than funds kept in bank accounts in other EU members was a restriction on the free movement of capital and services, a breach of Articles 63 and 56 respectively of the Treaty of the Functioning of the European Union (“TFEU”).²¹ Thus, in March 2011 Greek Government published Law 3943/2011, whereby Article 21 para. 19 amended Article 18 so that as from March 31, 2011 taxpayers who voluntarily declared their funds would be subject to 8% tax regardless if the funds were repatriated.²²

E. The effects of Article 18

Article 18 was not met with the enthusiasm anticipated by the government. Indeed, although the duration of Article 18 was extended until end of September 2011, the measure succeeded to repatriate only €425 million and to collect no more than €5 million in tax revenues, despite the government’s initial estimations that the measure would gather 20 billion Euros. Additionally, the tax amnesty failed to increase the tax base and instead an increase in tax evasion was recorded in 2011 in comparison to 2010.²³ One cannot easily pinpoint the reasons for such failure, but looking at the reasons for tax evasion in Greece can help shed some light to this direction. An extensive analysis of the routes of tax evasion in Greece falls outside the scope of this paper, so it will hereby suffice to say that the International Monetary Fund (IMF) has recognized there are several reasons for tax evasion in Greece including the complicated tax system that provides for several and high taxes, the low likelihood of detection of tax evasion, the ineffective penalties which along with amnesty schemes create a feeling of “injustice” to law-abiding taxpayers, and the low quality public goods and services.²⁴ Hence, as the underlying tax system has not substantially changed with Law No. 3842/2010 coupled with the aforementioned drawbacks and the fact that Greece had offered several tax amnesties in the

²¹ European Commission, 16 February 2011, no. IP/11/161

²² See also Katerina Perrou, “Commission Requests Greece To Modify Its Discriminatory Tax Amnesty” (2011) <<http://www.kperrou-ontax.com/home---news-and-comments/commission-requests-greece-to-modify-its-discriminatory-tax-amnesty>> accessed 3 May 2017.

²³ General Secretariat of Informative Series, ‘Statistical Issue On Tax Data (2007-2011)’ (2011), p.12

²⁴ International Monetary Fund, “Greece: Ex Post Evaluation Of Exceptional Access Under The 2010 Stand-By Arrangement” 13 International Monetary Fund Staff Country Rpt (2013).

past,²⁵ little success is granted to the tax amnesty in question.

III. LESSONS FOR THE FUTURE

Since 2015 Greece has been contemplating the reintroduction of a tax amnesty scheme and has, to this end, drafted several bills, that were not forwarded for discussion before the Parliament's plenary session because Troika did not approve them. Currently, Greece is examining the introduction of a new amnesty for undeclared income generated before 2012. But what would make such a scheme successful now when it failed before? Put differently, what would make tax evaders take part in tax amnesty when they had previously elected not to pay any taxes? Generally, taxpayers' decision-making is perceived to be complicated, as incentives that trigger decisions vary from person to person and are based on both extrinsic and intrinsic factors.²⁶ Empirical study suggests one of the most important extrinsic factors is the ability to avoid penalties and other liability for previous non-compliance.²⁷ This is true if one looks at the very successful case of the 2017 Argentinean tax amnesty program that succeeded in gathering approximately \$117 billion, the highest amount gathered by a tax amnesty scheme to date.²⁸ Analysts of the said tax amnesty program have noted that one of the most crucial reason to its success were OECD-led initiatives that have made it harder for taxpayers to keep undeclared funds abroad.²⁹

This, in my view, is the decisive factor for Greek taxpayers as well. Indeed, the current developments in the international tax plane have caused significant changes also in the Greek tax system, which is now very different than it was in 2010. Article 18 states upon expiration of the 6-month period, Greek tax authorities would seek to investigate information about funds abroad activating international and European treaties. Currently, Greece receives this information automatically due to the Common Reporting Standard for the automatic exchange of financial account information, developed by the Global Forum of the Organisation for Economic Co-

²⁵ Indicatively, Greece had offered a tax amnesty also in 2014 with a reduced flat tax rate at 3% of the fund's value kept abroad.

²⁶ James Alm, Erich Kirchler and Stephan Muehlbacher, *Combining Psychology And Economics In The Analysis Of Compliance: From Enforcement To Cooperation*, 42 *ECONOMIC ANALYSIS & POLICY*, 133-155 (2012).

²⁷ Jonathan Farrar and Cass Hausserman, *An Exploratory Investigation Of Extrinsic And Intrinsic Motivations In Tax Amnesty Decision making*, *J. OF TAX ADMIN.*, 2, 14 (2016).

²⁸ Caroline Stauffer, Nicolas Misculin and Maximiliano Rizzi, "Argentina Says \$116.8 Billion Declared In Record Tax Amnesty" *REUTERS*, available at <http://www.reuters.com/article/us-argentina-tax-amnesty-idUSKBN176300>.

²⁹ Mateo Jarrin, "Argentina's Tax Amnesty: A Success Story" *TAXLINKED*, available at <https://taxlinked.net/blog/april-2017/argentina-tax-amnesty>.

Operation and Development (OECD). Currently 50 jurisdictions have enacted the Common Reporting Standard, including Cyprus, Lichtenstein, Luxembourg, Malta and the UK, which are traditionally favorite foreign banking jurisdictions for Greeks, while in 2018 the number of jurisdictions automatically exchanging information will rise up to 100, including Switzerland.³⁰ Furthermore, Greece is also automatically receiving information on advance (cross-border) tax rulings and advance pricing arrangements by virtue of the amended Mutual Assistance Directive that has implemented Action 5 of the Action Plan on Base Erosion and Profit Shifting (BEPS), adopted by the OECD in 2013. Additionally, the EU Anti-Tax-Avoidance Directive³¹ allows Greece to ignore any arrangement(s) which, in light of all relevant facts and circumstances are not genuine but have been put into place for the main purpose of obtaining a tax advantage. These developments have enhanced Greece's ability to trace cases of undeclared funds kept abroad by either natural or legal persons.

Additionally, Greece has also implemented a new Tax Code Law No. 4172/2013 as well as a new Tax Procedure Code Law No. 4174/2014. The latter, as amended, has modified penalties in case of tax evasion. In particular, Articles 72 and 73 of the said law define tax evasion as, *inter alia*, the intentional concealment of income for the purpose of avoiding paying tax. The Articles note that penalties in case of tax evasion include imprisonment of no less than two years in case the corresponding tax on concealed income exceeds €100.000 and imprisonment of no less than 5 years when the corresponding tax exceeds €150.000. Furthermore, in case Greek authorities detect tax evasion they may impose tax fines without a ceiling, while they can also take precautionary measures to avoid future tax evasion of previous offenders that have evaded over €150.000 by, *inter alia*, freezing 50% of bank deposits. In light of the increased penalties and increased ability of detection, a tax amnesty would be more likely to appeal to a larger number of taxpayers.

IV. CONCLUSION

Amid the financial distress faced by Greece, the latter has often resorted to offering tax amnesties to generate additional tax revenue. The tax amnesty of 2010 was the 11th amnesty scheme that has been offered by Greece in the last 40 years. The said amnesty offered legal and natural persons subject to

³⁰ Organisation for Economic Co-operation and Development, «CRS by Jurisdiction, available at <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489>.

³¹ Council Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (EU Anti Tax Avoidance Directive) [2016], OJ L193/1 art. 16

income tax in Greece, who maintained funds abroad that were not declared or taxed in Greece, the option to declare and repatriate such funds at a reduced rate and without penalties for late or non-submission. However, despite the benefits offered by the tax amnesty in question, it was not successful as it failed to generate the expected tax income as well increase Greece's tax base. The reasons for such failure are manifold and involve both the scheme itself as well as the Greek tax system's realities in general. That stated, recent developments in the international and European plane targeting tax evasion and tax avoidance, along with recent changes in the penalties for tax evasion introduced by Greece, are more likely to render a new carefully planned tax amnesty scheme more successful.