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NEWS REPORT

Country:	Greece
Title:	Separate submission of tax return by spouses
Date:	15 June 2018
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<u>Context</u>	
Issue at stake:	The fiscal legislation provides that the spouses are obliged to submit a joint income tax return
Ground of discrimination:	Family status
Source:	Greek Council of the State (CS) judgment 330/2018
Field:	Other
Applicable law:	Article 67(4) of the Income Tax Code, Article 8 in conjunction with Article 14 of the European Convention of Human Rights (ECHR), Articles 2(1), 4(1), 5(1) and 25 (1) Greek Constitution

Content

Case development: Article 67(4) of the Income Tax Code (Act 4172/2013 OJ A 167/23.07.2013) provides that spouses, during their marriage, are obliged to submit a joint income tax return; however, the income tax, the corresponding fees and the contributions are calculated separately for each spouse on the basis of his/her income. According to the same Article, the parties to a life partnership agreement may also submit a joint income tax return (in this case it is optional); if they do, they have the same treatment as married spouses. The husband (or the party to the life partnership agreement who is declared as the principal taxpayer) is obliged to submit the income tax return not only for his income but for the income of his wife (or of the other party to the cohabitation agreement) as well. Separate income tax return is allowed only (a) in case the marital cohabitation has stopped (or the life partnership has been ended); the relevant burden of proof is born by the taxpayer, (b) in case one of the spouses (or one of the parties to a life partnership agreement) has been declared bankrupt or has been put under guardianship by judicial decision due to lack of mental capacity.

However, by its recent judgment No 330/2018, the CS, interpreting the above provision in the light of Articles 2(1) (protection of the human value), 4(1) (principle of equality), 5(1) (free development of the personality) and 25(1) (protection of human rights) of the Greek Constitution and of Article 8 in conjunction with Article 13 of the ECHR, ruled that the husband may submit a joint income tax return even for his wife's income, only if both spouses agree thereto (the agreement is deemed to exist even tacitly by the mere submission of a joint income tax return); if either of the spouses informs explicitly the tax authorities of the lack of his/her consent, the spouses are entitled to submit separately income tax declarations.

The CS rejected the Greek State's allegations that the above practice is justified by technical difficulties. It ruled that the technological means of the Administration must be developed and adjusted to the necessities of the correct and effective implementation of the fiscal legislation. The fiscal legislation should not be interpreted and applied so as to be subject to limitations due to existing technical settings and the capabilities of the electronical systems of the fiscal authorities. Reference is made by the Court to the judgement of 10.10.2017 of the German Constitutional Court (1BvR 2019/16, par.52).

The CS thus annulled the tacit refusal of the competent tax authorities to grant the (male) claimant the possibility to submit electronically an income tax declaration separately from his wife for the fiscal year 2016 and so forth. The Court found that the claimant (and accordingly his wife) had the right to submit a separate income tax return. However, given that the claimant and his spouse had been forced to submit a joint tax return for the year 2016, the CS restricted the temporal effect of the above judgment to the date upon which it was published.

Key points of analysis: *(five lines maximum)*

The tax legislation provides that spouses, during their marriage, are obliged to submit a joint income tax return. The CS, interpreting the applicable tax provisions in the light of the Greek Constitution and Article 8 in conjunction with Article 14 ECHR, ruled that each spouse has the right to submit a separate income tax return; a joint income tax return is possible only with the (explicit or tacit) consent of the other spouse.