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FLASH REPORT

Country:	Greece
Title:	Separate submission of each spouse's tax return
Date:	18 February 2019
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Update of news report:	Greece - Separate submission of tax return by spouses (PDF 132 kB)
Context	
Issue at stake:	Repeal of the fiscal law provision obliging the spouses to submit a joint income tax return
Ground of discrimination:	Sex
Source:	Legislation
Field of application:	Other
Applicable law:	Article 59(5) Act 4583/2018 (OJ A 212/18.12.2018)

Content

Case development: By judgment No. 330/2018 the Council of the State (CS) 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), whereas if either of the spouses informs explicitly the tax authorities of the lack of his/her consent, the spouses may submit separate income tax returns.

Following this judgment, Article 59(5) of Act 4583/2018 amended the relevant provision of Article 67(4) of the Income Tax Code¹ (Act 4172/2013 OJ A 167/23.07.2013) which required that the spouses submit a joint income tax return.

According to the new provision of Article 59(5) of Act 4583/2018, the spouses may submit separate income tax returns if either of them chooses to do so by submitting an irrevocable declaration to the tax authorities for each fiscal year until 28th of February (cut-off date) of the year when the income tax return must be submitted.

¹ Article 67(4) of the Income Tax Code (Act 4172/2013 OJ A 167/23.07.2013) provided that spouses, during their marriage, were obliged to submit a joint income tax return; however, the income tax, the corresponding fees and the contributions were calculated separately for each spouse on the basis of his/her income. According to the same Article, the parties to a life partnership agreement might also submit a joint income tax return (in this case it is optional); if they did, they had the same treatment as married spouses. The husband (or the party to the life partnership agreement who is declared as the principal taxpayer) was 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 partnership agreement) as well. Separate income tax return was allowed only (a) in case the marital cohabitation had stopped (or the life partnership had been dissolved); 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 for lack of mental capacity.

Key points of analysis: This is an exemplary case of immediate and effective application of CS case law by the Greek legislator.