



Operational Programme
**Human Resources Development,
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“The Greek GAAR within the context of the Greek public law”

Postdoctoral International Tax Forum (PITF)

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Aim and scope of research

- ▶ **To analyse the Greek GAAR within the frame of the Greek public law (constitutional, administrative and tax law)**
- ▶ **To highlight the mission of the GAAR from a Greek legal order perspective and give solutions to specific problems related to the application and interpretation of the (Greek) GAAR.**
- ▶ **The research will focus, among others, on:**
 - ✓ **the interaction of the Greek GAAR with the Greek SAARs**
 - ✓ **The interaction of the GAAR with the provisions of DTTs**
 - ✓ **The interaction of the GAAR with the general principles of administrative law and human rights**
 - ✓ **The impact of the GAAR on the Greek case law of administrative courts**

Phase I

All respective Greek and foreign bibliography (including scientific journals) and case law will be collected, reviewed and thoroughly examined.

Phase II

The post-doc study is drafted, based upon the conclusions that will have arisen following the review and analysis of all the collected material.

Main Hypothesis

The enactment of ATAD and ATAD II as well as the incorporation of a GAAR in the EU legal order mark a significant step towards the integration of national tax legislations of the Member States and the harmonization of corporate taxation within the EU.

The introduction of a GAAR in a national tax system materially affects the whole rationale of it. The insertion of the Greek GAAR marks the differentiation of the philosophy of the whole Greek tax system and its transition from the form-over-substance approach to the substance-over-form approach.

In a legal system such as the Greek one, in the absence of a relevant provision that would confer such jurisdiction and competence on the courts so that they may be able to ignore an arrangement or series of arrangements if they consider them to be artificial, the development of relevant case law would lead to a legal gap, although it could result in the creation of a customary rule of law.

Main arguments/conclusions to date

- ▶ **Legal uncertainty generated by granting wide discretion to tax authorities and courts: need for proper safeguards (panel of experts, tax ruling procedure, detailed guidance, reliance upon CJEU case law, administrative guidelines)**
- ▶ **General principles of administrative law, principle of legality, human rights and jurisprudential prohibition of disallowance of business expenses due to expediency reasons should be taken into account. The latter seems to be subject to change**
- ▶ **The co-existence and parallel adoption of a GAAR and SAARs/TAARs for "high risk" tax areas could potentially lead to an effective grid of fuller protection against the phenomenon of tax abuse and circumvention of tax law, despite the inherent disadvantages of the multiplicity and overlapping that may arise.**

- ▶ **In case a DTT contains a Principal Purpose Test (“PPT”) provision, such a provision supersedes the GAAR and applies exclusively. In any other case, the GAAR applies and the DTT’s benefits are not granted.**
- ▶ **Greek GAAR prevail over DTTs in case no PPT exists. The Greek guideline as per the relationship of the internal tax law with the international contractual law is rather innovative. It is not as self-evident as it may seem to be, since, in the Greek legal order, there is a hierarchical relation, according to which international conventions, following their legal ratification, prevail over national law. Contradiction as per the interaction of GAAR with SAARs/TAARs?**

- ▶ **A uniform approach could be selected, according to which even in case of the existence of a particular SAAR, a GAAR could also be implemented as an ultimum refugium, in case an unintentional legislative gap arises and to the extent that such a GAAR covers all loopholes of the law.**
- ▶ **The ATAD sets a minimum level of protection for the internal market, and, thus, the Member States can adopt even stricter anti-avoidance rules, upon their discretion.**
- ▶ **Member states could adopt a stricter and wider interpretational approach. According to this approach, GAARs could still apply in case of unintentional gaps of SAARs or even in case a particular SAAR is sought to be circumvented.**