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Greece: Law & Practice

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Zepos & Yannopoulos

GREECE

Law and Practice

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1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Businesses in Greece most commonly adopt the forms of:

- a *société anonyme* (*Ανώνυμη Εταιρεία*, or AE);
- a limited liability company (*Εταιρεία Περιορισμένης Ευθύνης*, or ΕΠΕ); or
- a private company (*Ιδιωτική Κεφαλαιουχική Εταιρεία*, or IKE).

All of these forms of companies are referred to as "capital companies" (*κεφαλαιουχικές εταιρείες*). One of the features that distinguishes them from partnerships is that the liability of their shareholders or members is limited. Corporations and partnerships alike are taxed as separate legal entities.

Large companies usually take the form of an AE, which – unlike the ΕΠΕ and IKE – is subject to a minimum capital requirement (EUR25,000 as of 1 January 2019). The popularity of the IKE form for SMEs has risen in recent years, as it offers a more flexible structure compared to an ΕΠΕ. SMEs engaged in service provision and family businesses often take the form of a general partnership (*Ομόρρυθμη Εταιρεία*, or OE) or limited partnership (*Ετερόρρυθμη Εταιρεία*, or EE).

1.2 Transparent Entities

In general, business entities are not transparent. Exceptions include Greek Venture Capital Mutual Funds (ΑΚΕΣ) and Greek Alternative Investment Funds (OEE).

The tax of Greek undertakings for collective investment in transferable securities (ΟΣΕΚΑ) is calculated as a percentage of their net assets, and exhausts the tax liability of the undertaking and its shareholders.

The tax of Greek real estate investment companies (ΑΕΕΑΠ) is calculated as a percentage of the average fair market value of their investments. This tax also exhausts the tax liability of the undertaking and its shareholders.

1.3 Determining Residence of Incorporated Businesses

Subject to the operation of double taxation treaties, incorporated businesses are deemed to be resident in Greece if:

- they are formed in accordance with Greek law;
- their registered seat is in Greece; or
- the place of their effective management is in Greece.

The place of effective management is determined on the basis of facts and circumstances, with particular consideration being given to the places where:

- day-to-day business is undertaken;
- strategic decisions are adopted;
- annual shareholders', board of directors' and other executive meetings are held;
- books and records are kept; and
- the directors' place of residence.

The place of residence of the majority shareholders may potentially be considered. The rules on residence do not apply to certain companies operating under special shipping regimes.

1.4 Tax Rates

From financial year (FY) 2021 onwards, the ordinary income tax rate has been reduced to 22% (from the previous 24%) and is applicable to:

- businesses incorporated in the form of an AE, ΕΠΕ or IKE;
- partnerships in the form of an OE or EE; and
- all other legal persons and entities defined in the Income Tax Code, including local permanent establishments (PEs) of non-resident entities.

This does not apply for credit institutions that have opted to apply a scheme to enhance capital adequacy by converting deferred tax assets into deferred tax credits against the Greek state, which are taxed at a rate of 29% for the relevant years.

Business income of individuals who are directly engaged in a business forms part of their taxable basis, including any salary and pension income, and is taxed at a progressive scale ranging from 9% to 44%. Individuals who transfer their tax residence in Greece for such purpose may benefit from reduced tax rates or exemptions for seven years.

Reduced tax rates are available to companies formed as AEs or ΕΠΕs on certain non-taxed profit reserves formed under growth incentive laws if converted into share capital. Prerequisites for this include, in certain cases, restrictions to ensure the continuity of the relevant company and the preservation of capital.

Each year businesses are obliged to prepay a certain percentage of their income tax due in the form of an income tax prepayment. The applicable percentages are 80% for legal persons and entities, 100% for banks and 55% for business income earned by individuals.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

The taxable profits of incorporated businesses are based on accounting profits, subject to the special rules and classifications provided for in the income tax legislation. In general, taxable profits equate to the aggregate of revenues after subtracting business deductible expenses, depreciation allowed for tax purposes, and certain provisions for bad debts.

Additionally, in order to be deductible, all business expenses must have:

- been actually incurred;
- been incurred for business; and
- been properly recorded in the books and supported by adequate documentation.

As of 2023 a minimum level of imputed taxable profits, calculated in accordance with a combination of parameters set in the law, is applicable annually in respect of businesses conducted by individuals.

Non-deductible Expenses

Categories of business expenses that are not deductible are explicitly defined, and include:

- provisions (except specifically allowed bad debt provisions);
- penalties and fines;
- payments for goods or services exceeding EUR500 if not effected through banking transactions;

- unpaid social security contributions;
- payments to persons resident in the jurisdictions deemed non-co-operative or preferential unless the taxpayer proves that there is no tax avoidance or evasion; and
- certain other types of expenses.

Payments to residents in EU and EEA jurisdictions that are deemed to be preferential are deductible in principle. Specific limitations apply to the deduction of interest.

Taxable Profits

As a general rule, the profits of incorporated businesses are taxed on an accruals basis. Any profits that are distributed or capitalised without having previously been taxed are subject to tax upon such distribution or capitalisation.

2.2 Special Incentives for Technology Investments

R&D Expenses and Patents

Subject to a governmental procedure, a super-deduction of an additional 100% of certain R&D expenses – including any depreciation of machinery and equipment used for R&D purposes – is available at the time such expenses are realised.

Profits derived by a business from the sale of assets produced by deploying self-created patents internationally recognised in its name – and from services provided with the use of its own patents – are exempt from corporate income tax for a period of three years from the year when the relevant revenues were first accrued. The relevant profits are taxed when they are distributed or capitalised.

Certain instruments and equipment used for R&D that are decided by the government can be amortised at a 40% rate annually.

Special Regime of Law 89/1967

The cost-plus regime of Law 89/1967, which provides a special framework for the establishment in Greece of shared-services centres rendering certain services specified in the law to associated companies, includes within its scope marketing and consulting services, software development, IT support, data management and storage and computer-based call centres. The regime provides for the full deductibility of business expenses that combine to form the taxable gross revenues for income tax purposes after addition of a profit mark-up, which cannot be less than 5% and which is acknowledged in advance by the tax authorities. Eligibility under the regime presupposes annual expenditures of at least EUR100,000 and employment of at least four persons (one of whom can be part-time).

2.3 Other Special Incentives

The current EU-compliant framework for the establishment of private investment aid schemes for the country's regional and economic development focuses on 13 specific areas of business activities, including green transition and the digital and technological transformation of businesses. The law includes state grants in the form of tax exemptions for eligible investments.

EU-compliant tax incentives for the production of audio–visual content, the provision of ancillary services, and the development of source code for computer game software provide for a 30% deduction of eligible expenses (incurred in Greece) from taxable income.

Incentives for the creation of new jobs are also available and consist of a 50% super-deduction for the relevant social security contributions payable by employers, subject to a maximum limit specified in the law. Specific tax incentives, such as exemption from real estate transfer tax, are

available to entities that acquire property and commence activities in special industrial zones and entrepreneur parks.

Green Incentives

Incentives for sustainable development include super-deductions for expenses or increased depreciation related to environmental protection – ie, in relation to zero or low emission vehicles or public transportation season tickets. Explicit deductibility for corporate income tax purposes of expenses related to corporate social responsibility (CSR) activities has also been introduced as an incentive for sustainable development.

Moreover, a super-deduction of an additional 100% of expenses relating to green economy, energy and digitalisation is available in respect of expenses incurred or fixed assets acquired in FY 2023–24 and FY 2024–25 by SMEs (except for those active in primary agricultural production, fishing and aquaculture).

Strategic Investments

During 2019, new legislation was introduced with the aim of streamlining the existing framework for attracting strategic investments in all sectors of the Greek economy through the grant of incentives. The rules define strategic investments as those that are capable of producing material quantitative and qualitative results when it comes to expanding employment, reconstructing production, and improving the country's natural and cultural environment. The legal framework was enhanced in 2021 to include additional categories of investments, such as flagship investments promoting green economy, innovation, technology, and the low-carbon economy and environmental footprint (if implemented until 31 December 2025). These investments are to be financed by the EU Recovery and Resilience Plan for Greece.

Strategic investments would mostly embrace innovation, competitiveness, comprehensive planning, the preservation of natural resources in the context of the circular economy, and high added value – notably in the business sectors of international trade and services. The tax incentives offered are:

- the stabilisation of the tax rate for 12 years;
- income tax deferral;
- accelerated depreciation; and
- beneficial taxation for expatriate executives.

Shipping Tax Regime

A tonnage tax regime applies in respect of ship-owning companies as well as companies chartering bare vessels (bareboat charterers) or companies leasing vessels (ship lessees). The tax is calculated on the basis of the capacity and age of the vessels and exhausts any further income tax obligation of the ship-owning company, bareboat charterer or ship lessee, as well as such entities' shareholders with regard to income arising from the operation and exploitation of the vessels.

As regards vessels under foreign flags, tonnage tax is imposed only in relation to those vessels that are managed in Greece by foreign companies that have established offices in Greece for such management or by companies established in Greece – in both cases, under a specially regulated regime. Under such regime, the income of such management companies is exempt from tax. In addition, vessels flying flags of EU or EEA member states can also be subject to the tonnage tax regime in respect of defined types of vessels, regardless of the place of management.

Greek companies and foreign companies that have established an office in Greece under the aforementioned special regime and engage in

activities other than the management of vessels – for example, brokering in chartering, sale and purchase and building in respect of ships under the Greek or a foreign flag with a total tonnage of more than 500 gross registered tonnes – are subject to an annual contribution calculated on the basis of the amount of funds (in euros or other currency) that is required by law to be imported into Greece annually in order to cover their operating expenses.

Family Offices

A recently introduced regime offers tax incentives for the establishment in Greece of family offices managing and administering the wealth, assets and investments of Greek tax-resident individuals and their families. Qualifying family offices should incur annual expenditure of at least EUR1 million and should employ at least five employees. The taxable gross revenues of family offices are determined by adding a 7% profit mark-up on all costs incurred, thereby ensuring the full tax deductibility of the relevant costs. Services provided between the family office and its members fall outside the scope of VAT.

2.4 Basic Rules on Loss Relief

Tax losses incurred by the conduct of a business within a certain financial year can be carried forward to be offset against profits made during the next five consecutive years. Previously untaxed profits that are taxed as a result of their distribution or capitalisation cannot be offset against tax losses incurred in the relevant year. Special rules apply for the amortisation of losses arising from an exchange of bonds under the Greek PSI programme, as well as in respect of banks, financial leasing and factoring companies from specified debt write-offs and disposals of loans and credits.

Tax losses incurred abroad can neither be used to determine taxable profit in the same fiscal year nor carried forward – with the exception of tax losses arising from the conduct of business through permanent establishments in EU/EEA member states, provided that the relevant profits are not exempt from Greek income tax by virtue of a double taxation treaty between Greece and the relevant EU or EEA member state.

2.5 Imposed Limits on Deduction of Interest

According to a rule transposing part of the EU Anti-Tax Avoidance Directive into Greek domestic law, subject to a de minimis threshold of EUR3 million annually, “exceeding borrowing costs” are not deductible by local corporations and local PEs of non-resident entities to the extent that they exceed 30% of EBITDA – with a possibility to carry forward the non-deductible portion without any time limitation. “Exceeding borrowing costs” is defined as the amount by which the otherwise deductible borrowing costs of a company exceed taxable interest revenue and other economically equivalent taxable revenue.

Companies that are part of consolidated groups as per Greek Generally Accepted Accounting Practice (GAAP) may deduct all of their exceeding borrowing costs if the ratio between their share capital and total assets is equal to (or higher or lower by no more than) 2% of the group ratio, provided that the method of valuation of all assets and liabilities is the same as in the consolidated financial statements. These companies can also deduct exceeding borrowing costs up to the amount arising from application to their EBITDA of the group ratio of exceeding borrowing costs (in respect of lending from third parties) over group EBITDA.

The above-mentioned interest limitation rules do not apply to several types of financial undertakings, such as credit institutions, insurance companies, and specific institutions for occupational retirement. Regarding related-party transactions, this rule is applied after any transfer pricing adjustment.

Another restriction on the deduction of interest is that the portion of interest expenses corresponding to any rate exceeding the interest rate for credit lines to non-financial corporations referred to in the most recent Bulletin of Conjunctural Indicators of the Bank of Greece (as at the time of the loan) is not deductible. This limitation does not apply to interest on bank loans or bond loans, nor to interest paid to related parties.

2.6 Basic Rules on Consolidated Tax Grouping

There is no consolidated tax grouping regime in Greece.

2.7 Capital Gains Taxation

Capital gains from the disposal of assets (including shares in other corporations) are fully included in the taxable basis of corporations for income tax purposes in the financial year in which they are realised.

Greek legal persons and Greek PEs of non-resident EU/EEA legal persons are exempt from tax on capital gains arising from the disposal of shares in EU Parent–Subsidiary Directive-qualifying subsidiaries (see **6.3 Taxation on Dividends From Foreign Subsidiaries**) insofar as they hold at least 10% participation in those subsidiaries for a minimum holding period of 24 months. The provision applies for income generated from 1 January 2020 onwards.

Under a grandfather clause, losses arising from the transfer of shares realised up to and including 31 December 2024 will be deductible for tax purposes after 1 January 2020 to the extent that losses were reflected in financial statement valuations up to and including 31 December 2019.

Capital gains derived from certain qualifying corporate reorganisations – for example, mergers, divisions, partial divisions, transfers of assets and exchanges of shares – are exempt from tax at the time of the relevant operation, subject to specific anti-abuse rules.

2.8 Other Taxes Payable by an Incorporated Business

Value Added Tax

Value added tax (VAT) is levied on virtually all transactions relating to goods and services. The standard VAT rate is 24%, although reduced rates are also available in certain cases (eg, for certain agricultural supplies, hotel accommodation, certain social services, etc). VAT is imposed on the total consideration received for the supply of goods or services, excluding the tax itself. VAT is not a burden for companies with the right to fully deduct input VAT.

Stamp Tax

Stamp tax is levied on documents issued or executed in Greece in respect of certain transactions that are not subject to VAT. The most common transactions that are subject to stamp tax are certain commercial leases, certain loans and transfers of ongoing business concerns.

Stamp tax is applied at different rates, depending on the type of parties to a transaction. Business transactions falling under the scope of stamp tax are, in principle, subject to a 2.4% rate applied on their value. The rate for commercial leases is 3.6%.

Real Estate Transfer Tax and VAT Treatment

The transfer of real estate except new buildings is subject to real estate transfer tax, which is imposed on the higher between the so called "objective value" (which is an imputed value computed on the basis of a specific formula provided for in the law) and the actual transfer value agreed and which is borne by the purchaser. The tax rate is 3%. An additional 3% municipality tax is applied to the amount of the real estate tax, so that the overall tax burden adds up to 3.09%. Reduced rates of real estate transfer tax apply in certain corporate reorganisations, such as mergers.

Sales of new buildings by businesses are in principle subject to VAT at 24%. Between 2020 and 2024, the sale by businesses of buildings that would normally be subject to 24% VAT are exempt from VAT upon the filing of a relevant application. The exemption covers buildings that have been completed with building permits following 1 January 2006, as well as those that will be built by the end of 2024. Constructors who opt not to apply VAT on a sale waive the right to deduct the VAT on the construction cost. Any non-recoverable VAT can be deducted as an expense for income tax purposes.

Listed Shares Sales Tax

A transfer tax at the rate of 0.1% is levied on sales and stock-lending in respect of listed shares.

Banking Levy

An annual banking levy, known as the "Law 128 contribution", applies on loans and credits granted by Greek and foreign credit and financial institutions. The applicable rates depend on the type of credit, and range between 0.12% and 0.6%.

2.9 Incorporated Businesses and Notable Taxes

Unified Real Estate Tax

Incorporated businesses owning property rights on real estate located in Greece are subject to a unified real estate tax (*Ενιαίος Φόρος Ιδιοκτησίας Ακινήτων*, commonly referred to as ENFIA), which consists of a main and a supplementary tax. The main tax applies to each property separately and is calculated based on a formula that varies depending on the type and location of the real estate assets and a number of other parameters set in the law. The basis rate for the main tax (which is then multiplied by set coefficients, depending on the particular case) ranges from EUR0.001 to EUR16.20 per square metre, depending on the type of property.

The supplementary standard tax rate is set at 0.55%, although properties that are used by the taxpayer for its business activities are subject to a supplementary tax of 0.1%. Reduced rates or a number of exemptions are available for specific categories of properties and/or taxpayers (eg, real estate investment companies).

Special Real Estate Tax

A Special Real Estate Tax (*Ειδικός Φόρος Ακινήτων*) on real estate owned as of 1 January of each calendar year is imposed for the purposes of tackling the ownership of Greek real estate by non-transparent structures. It is imposed at a rate of 15% of the value of the real estate imputed for tax purposes. It is, in practice, not applicable to a great number of incorporated businesses owning Greek real estate, owing to a number of exemptions. Recent amendments to the Special Real Estate Tax legislation extend explicitly the regulated investment vehicle exemption to EU alternative investment funds that fall under the AIFM Directive.

Capital Accumulation Tax

A special tax is imposed on capital accumulation (*φόρος συγκέντρωσης κεφαλαίων*) at a rate of 0.2% applicable as of 12 December 2023 (down from the previously applicable 0.5%). This applies to capital in cash or in kind contributed to legal entities of any form in the context of a capital increase. Such tax is not imposed on the capital accumulated upon the establishment of an entity. A duty of 0.1% on share capital is additionally imposed on companies taking the form of an AE in favour of the Greek Competition Committee.

Municipal Taxes and Taxes in Favour of Third Parties

Corporations holding or renting real estate may be liable to various municipal taxes/duties, such as cleaning and lighting duties which are collected through electricity utility bills. A property duty is levied by each municipality at a rate ranging from 0.025% to 0.035% on the objective value of immovable property located in the territory of the relevant municipality.

Municipality duties are also imposed for specific types of advertisements and advertising material.

A number of taxes in favour of third parties (such as the Lawyers' Pension Fund, universities, other funds and non-profit organisations) are applicable to incorporated businesses and other taxpayers, as the case may be.

3. Division of Tax Base Between Corporations and Non-corporate Businesses

3.1 Closely Held Local Businesses

Closely held local businesses usually operate in corporate forms, as companies with legal personality. SMEs and family businesses often take the form of a general partnership or limited partnership. Operation as a sole proprietorship, with a minimum level of imputed taxable profits annually, is preferred only for very small-scale businesses.

3.2 Individual Rates and Corporate Rates

An individual professional is taxed at progressive tax rates, which – depending on the level of the income – may or may not lead to an effective rate that is lower than the combined effective rate of corporate taxation and tax imposed on profits distributions (where applicable). See **3.4 Sales of Shares by Individuals in Closely Held Corporations** for further details.

3.3 Accumulating Earnings for Investment Purposes

There are no tax rules that prevent closely held corporations from accumulating earnings for investment purposes.

3.4 Sales of Shares by Individuals in Closely Held Corporations

Greek tax-resident individuals are subject to 5% income tax on profits and dividends from closely held corporations acquired as of 1 January 2020. Profits of small partnerships (in the form of an OE or EE) keeping single-entry books are taxed only at company level, with no further income taxation on profit distributions at the level of partners. AE, ΕΠΕ and IKE companies cannot keep single-entry books.

Capital Gains

Capital gains of Greek tax-resident individuals derived from the sale of shares in closely held corporations are subject to 15% income tax. Gains on the sale of shares in closely held corporations are, in certain circumstances, calculated on an imputed manner set by the relevant rules on the basis of the level of the corporation's equity.

Capital gains realised by employees and shareholders as a result of transferring shares in non-listed start-up companies purchased through the exercise of stock option rights acquired within a period of five years of the company's establishment are subject to 5% capital gains tax on the condition that there is a minimum period of three years between the stock options grant and the disposal of the relevant shares. In the case of all other companies except start-ups, employees are subject to 15% capital gains tax on the condition that there is a minimum period of two years between the stock options grant and the disposal of the relevant shares. If minimum holding periods are not met, the relevant benefits are classified and taxed as employment income.

Capital Losses

Capital losses from sales of shares and other securities can be carried forward for five years to be set off against future capital gains deriving from similar transactions only.

Exemptions

Under domestic legislation, foreign tax-resident individuals are exempt from tax on capital gains derived from the sale of shares in Greek companies, provided they are resident in a jurisdiction that has a double-taxation treaty with Greece.

Withholding Tax

Foreign tax-resident individuals are subject to withholding tax on distributions of dividends and profits from Greek companies, subject to relief or reduced rates under double-taxation treaties.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

The individuals' tax regime provided for dividends from shares in closely held corporations also applies to shareholdings in publicly traded corporations. Greek and foreign tax-resident individuals are exempt from income tax on gains derived from the sale of exchange-listed shares, except where they hold at least 0.5% of the total share capital and the shares have been acquired on or after 1 January 2009, in which case they are taxed at 15%. See **3.4 Sales of Shares by Individuals in Closely Held Corporations** for further details.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

Under domestic legislation, entities or individuals that are not resident in Greece will be subject to income tax in Greece only by way of withholding on Greek-source interest, royalties and dividends. Any tax so withheld exhausts their Greek tax liability. This is provided that they do not have a PE in Greece to which the relevant profits would be attributable.

Under domestic law, 5% withholding tax applies to dividends acquired as of 1 January 2020. Dividends distributed to qualifying EU parent companies are exempt from any withholding tax, provided that:

- the parent company participates in the subsidiary with a minimum holding of 10% in the capital or voting rights for at least 24 months;
- the beneficiary company receiving the dividend payment is included in the list of companies referred to in Annex I Part A of the EU Parent–Subsidiary Directive;
- the beneficiary company is tax-resident in an EU member state and, under the terms of an income tax treaty concluded with a third state, is not considered resident for tax purposes outside the EU; and
- the beneficiary company is subject to one of the taxes listed in Annex I, Part B of the Directive (without the possibility of an option or of being exempt) or to any other tax that may be substituted for any of those taxes.

Until completion of the minimum holding period, a bank guarantee for the amount of withholding tax that would otherwise be due can be deployed instead of payment of the withholding tax and a posterior refund claim. A special anti-avoidance rule prohibits the withholding tax exemption on the above-mentioned qualifying dividend payments if the exemption is claimed in the context of artificial arrangements that are not put in place for valid commercial reasons reflecting economic reality but, rather, are aimed mainly at obtaining a tax advantage.

Under domestic law, 20% withholding tax applies on Greek-source royalties and 15% withholding tax applies on Greek-source interest.

Interest and Royalties

Interest and royalties paid to qualifying EU associated companies are exempt from any withholding tax, provided that:

- the beneficiary company receiving the interest or royalties participates in the payor with a minimum holding of 25% in the capital or voting rights for at least 24 months, or the payor participates in the beneficiary company with the same minimum holding, or a third company participates in the payor and the beneficiary with the same minimum holding;
- the beneficiary is included in the list of companies referred to in the Annex to the EU Interest Royalties Directive;
- the beneficiary is tax-resident in an EU member state and is not considered as resident for tax purposes outside the EU under the terms of an income tax treaty signed with a third state; and
- the beneficiary company is subject to one of the taxes listed in the EU Interest Royalties Directive (without the possibility of an option or of being exempt) or to any other tax that may be substituted for any of those taxes.

Until completion of the minimum holding period, a bank guarantee for the amount of withholding tax that would otherwise be due can be deployed instead of payment of the withholding tax and a posterior refund claim.

Further Exemptions

Withholding tax exemptions on the above-mentioned types of payments also apply – under similar conditions to those applicable to payments to EU qualifying companies – in respect of payments to beneficiaries in Switzerland.

Interest payments effected as of 1 January 2020 towards non-resident individuals and legal entities that do not maintain a permanent establishment in Greece are exempt from interest withholding tax insofar as such interest is on corporate bonds listed on trading venues within the EU or on organised markets outside the EU, provided such markets are regulated by an

authority accredited by the International Organization of Securities Commissions.

Treaties

Domestic withholding tax rates on interest, dividends and royalties can be reduced or eliminated if payments are made to beneficiaries in income tax treaty jurisdictions.

Greece currently has income tax treaties in force with countries throughout the world. All tax treaties follow the OECD Model in principle, except for those concluded with the USA and the UK.

4.2 Primary Tax Treaty Countries

Based on data from the Bank of Greece, the primary tax treaty countries that foreign investors use to make investments in local corporate stock or debt are Germany, France, Switzerland, Cyprus, Italy, the USA, Luxembourg, the Netherlands, and the UK.

4.3 Use of Treaty Country Entities by Non-treaty Country Residents

Where appropriate documentation (including a tax residence certificate signed by the competent foreign authorities) is available, it is rare for local tax authorities to challenge the use of treaty-country entities by non-treaty country residents. In any event, on 26 January 2021 Greece ratified the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), which came into force on 1 July 2021 and has adopted the principal purpose test in order to prevent arrangements and transactions whose main purpose is to obtain the benefits of the tax treaty.

4.4 Transfer Pricing Issues

Taxable profits are subject to readjustment in the case of transactions between related parties that are not in line with the arm's-length principle. An individual or legal entity participating directly or indirectly in the capital or management of an enterprise is defined as a related party for transfer pricing purposes. A 33% threshold applies with regard to the minimum direct or indirect participation in the capital or the exercise of voting rights, above which entities are defined as related. The exercise of managerial control or decisive influence over an enterprise is also used as a means to define related parties, irrespective of any participation in the controlled enterprise's capital or voting rights.

A Greek taxpayer may request a corresponding adjustment to its profits following a primary transfer pricing adjustment in the context of a tax audit of an associated entity taxable in Greece. A relevant tax refund or set-off is only effected on the condition that the associated entity has paid the tax assessed as a result of the primary adjustment.

Most transfer pricing disputes revolved around the applicability of more lenient penalties for failure to comply with transfer pricing documentation requirements and the burden of proving compliance with the arm's-length principle. This latter issue has evolved over time. Administrative courts have confirmed that – as long as the taxpayer produces the appropriate transfer pricing documentation – the burden lies with the tax authority, which is required to justify any challenge made to the taxpayer's position.

More recently, the role of each related party in the development, enhancement, maintenance, protection and exploitation (DEMPE) functions of intangible assets has become increasingly significant to the scrutiny of related-party transactions between domestic licensees and foreign IP-holding entities. Matters concerning the reliability of comparable data, the definition of related

parties, the use of full or interquartile range, the reasonableness of comparability adjustments and – more recently – the appropriateness of selected transfer pricing methods and allocation keys for expenses have also been coming into the discussion.

As tax authorities focus increasingly on transfer pricing, the discussions surrounding it are expected to increase.

4.5 Related-Party Limited Risk Distribution Arrangements

Limited risk distribution arrangements are extensively applied by multinational enterprises doing business in Greece. Tax authorities are carefully scrutinising these arrangements in the context of transfer pricing audits and primarily focusing on whether the return of the local entity can be considered consistent with the arm's-length principle following in-depth reviews of its functional and risk profile.

The reliability of comparables is also challenged in this context. In some instances, the tax authorities challenge the selection of the transfer pricing method or of the tested party.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

The current legal framework fully endorses the arm's-length principle, defined in Article 9 of the OECD Model and interpreted by the OECD Transfer Pricing Guidelines, following the revisions introduced as a result of Actions 8–10.

4.7 International Transfer Pricing Disputes

Greek tax authorities have been focusing increasingly on transfer pricing when auditing Greek taxpayers during the past decade. Considering the lack of extensive case law on transfer pricing issues, aggressive approaches are often witnessed on the Greek tax authorities' part.

As regards using "new" information received to re-open earlier years, this was somewhat impossible for the tax authorities until recently – given that earlier years were usually already time-barred (unless exceptional time limitation rules applied with regard to specific financial years). Lately, however, Greek tax authorities tend to focus on auditing more recent years. Combined with the fact that the finding of "new" information may lead to an extension of the prescription period to ten years for specific financial years, this could lead to the more frequent re-opening of previous years. In addition, the use of "new" information resulting from exchanges of information upon request has also been observed lately.

It should be noted that, in addition to the abovementioned matters, the Greek tax authorities have focused on providing the procedural framework for MAPs and on aligning the domestic framework with the recommendations received in the context of the MAP Peer Review Report (Stage 1). Until recently, however, the application of MAPs was rare and therefore the local tax authorities have yet to develop any consistent practice or view in this respect.

5. Key Features of Taxation of Non-local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

Compensating adjustments are allowed under Greek legislation. Increased scrutiny from the tax auditors should be anticipated insofar as downward adjustments are concerned.

Taxpayers may perform compensating adjustments upon filing their annual tax returns or upon filing amending tax returns within the standard five-year statute of limitation. Upon initiation of a tax audit, Greek law allows the submission of an amending tax return up to the time of notification of the relevant preliminary tax assessment to the taxpayer.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-local Corporations

In general, local branches of non-local corporations are not taxed differently to local subsidiaries of non-local corporations when it comes to their Greek profits. A tax on remittance of profits to the head office that applied previously has now been repealed. In practice, the deductibility of interest payments to the head office may sometimes be challenged by the tax authorities.

5.3 Capital Gains of Non-residents

Capital gains of non-resident corporations on the sale of stock in local corporations are not subject to tax, provided that the stock is not held through a PE in Greece. Under a rule whose application has been suspended several times (and is still suspended until 31 December 2024), gains derived from the transfer of real estate property – as well as from the transfer of shares in companies that derive more than 50% of their value, either directly or indirectly, from real estate by individuals who are not engaged in business activities – are subject to capital gains tax at 15%. In view of the consecutive suspensions, it has not been clarified whether such rules may also apply to non-resident companies directly or indirectly transferring stock in local corporations deriving more than 50% of their value from Greek real estate.

5.4 Change of Control Provisions

Tax losses carried forward are forfeited if the direct or indirect participation in the capital or voting rights of a local company changes by more than 33% within a financial year, while at the same time – within the same or the next financial year – the local company changes its business activity in a way that affects more than 50% of its turnover when compared with the turnover prior to the change.

Tax losses are not forfeited if the company is able to prove that the activity change is grounded on reasons that are economically justifiable in the context of the company's business – for example, cost cutting, achieving economies of scale, or intercompany restructuring.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

Currently, no formulas are used to determine the income of foreign-owned local affiliates selling goods or providing services. Tax authorities can determine taxable income through indirect techniques – such as analysing the price-to-turnover ratio or cash position – and other techniques set out in the legislation.

Taxable profits are subject to re-adjustment in the case of transactions between related parties that are not in line with the arm's-length principle.

5.6 Deductions for Payments by Local Affiliates

Payments by local affiliates for management and administrative expenses incurred by a non-local affiliate may be disallowed if:

- they are not in accordance with arm's-length standards;

- they are not considered to serve the business purposes of the local affiliate; or
- they are not properly documented and recorded in the books reflecting the transactions of the relevant fiscal period.

Payments to persons residing in states deemed as non-co-operative or preferential are not deductible, unless the taxpayer proves that these expenses are incurred for real transactions and do not result in profit-shifting aimed at tax avoidance or evasion.

If the states in question are EU/EEA member states, payments to persons that are resident in such states are deductible in principle. The regimes that are deemed to be non-co-operative or preferential are set annually by means of governmental decision on the basis of criteria set in the law, including (for preferential regimes) the criterion of taxation of profits or gains at a rate that is equal to or less than 60% of the applicable Greek income tax rate for corporations.

5.7 Constraints on Related-Party Borrowing

There are no constraints relating specifically to related-party borrowing by foreign-owned local affiliates paid to non-local affiliates, apart from that interest must be in line with the arm's-length standard.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

Local corporations are taxed on their worldwide income, with the exception of business income attributable to a PE in one of the few jurisdictions that has a double-taxation treaty with Greece that provides an exemption method. Any foreign tax paid can be credited against the Greek income tax payable, provided that the foreign tax does not exceed the Greek tax corresponding to such income.

6.2 Non-deductible Local Expenses

There are no local expenses that are treated as non-deductible owing to exemptions on foreign income, in particular. Certain limitations on the deductibility of interest on loans used to finance participations that yield tax-exempt dividends and capital gains income apply equally to foreign and domestic income.

6.3 Taxation on Dividends From Foreign Subsidiaries

Dividends from foreign subsidiaries are included in the tax basis of local corporations for income tax purposes.

An underlying tax credit in respect of tax paid on the profits from which dividends are derived at the source state is allowed with regard to dividends sourced from countries with which Greece has signed a double-taxation treaty that provides for such a credit mechanism (eg, China, Cyprus and the UK).

Inbound dividends received by Greek companies from qualifying EU subsidiaries are exempt from income tax under the conditions detailed in **4.1 Withholding Taxes**.

The exemption from Greek income tax on dividends received by Greek companies from qualifying EU subsidiaries applies to the extent that such profits are not deductible by the subsidiary. This amendment targets hybrid instruments and aims at preventing situations of double non-taxation due to mismatches in the tax treatment

of profit distribution between the states in which the subsidiary and the parent company are situated.

6.4 Use of Intangibles by Non-local Subsidiaries

Gains or royalties derived from the transfer or licensing of an intangible developed by a local corporation to a non-local subsidiary are included in the taxable basis of the local corporation for income tax purposes. Transfers of intangibles between related parties due to business restructuring – whereby intangible assets or a transfer package consisting of functions, assets, risks and business opportunities are being transferred (whether within or outside Greece) – should be made in exchange for arm's-length remuneration and any gain is taxable.

6.5 Taxation of Income of Non-local Subsidiaries Under Controlled Foreign Corporation-Type Rules

Under Controlled Foreign Corporation (CFC) rules, which were recently revised to incorporate part of the EU Anti-Tax Avoidance Directive into Greek domestic law (along with the BEPS measures), local corporations can be taxed on the income of their non-local subsidiaries and PEs as earned. In accordance with such rules, profits earned by a CFC are added to the taxable profits of the local corporation, under the following conditions:

- the local corporation by itself – or together with its associated enterprises – holds directly or indirectly a participation of more than 50% in the voting rights, or owns directly or indirectly a percentage of more than 50% of the capital, or is entitled to receive more than 50% of the profits of the relevant CFC (legal person or entity);
- the actual corporate tax paid on the CFC's profits is less than 50% of the corporate tax that would have been charged on such profits in Greece; and
- 30% or more of the income before taxes accruing to the CFC falls within the following categories:
  - (a) interest or any other income generated by financial assets;
  - (b) royalties or any other income generated from IP;
  - (c) dividends and income from the disposal of shares;
  - (d) income from financial leasing and income from insurance, banking and other financial activities; and
  - (e) income from companies that undertake invoicing and realise income from sales and services and income from goods and services purchased from and sold to associated enterprises, adding no or little economic value.

CFC rules do not apply to companies or PEs resident in EEA member states, provided that such entities carry out a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by all relevant facts and circumstances. In such cases, the tax authorities bear the burden to prove the absence of a substantive economic activity.

In the case of distribution by a CFC of profits that are included in the taxable basis of the local corporation, any CFC income taxed in a previous fiscal year is deducted from the relevant taxable basis.

6.6 Rules Related to the Substance of Non-local Affiliates

There are no uniform local rules related to the substance of non-local affiliates. Guidelines can

be found on a case-by-case basis with regard to certain specific anti-avoidance provisions. In addition, national legislation transposing EU Directives must be interpreted also on the basis of the CJEU's case law. Factors that can be taken into account are local management, physical presence, full-time employees, active VAT number and taxation. Financial statements and information about the business organisation can also be taken into account, along with the other factors.

6.7 Taxation on Gain on the Sale of Shares in Non-local Affiliates

Gains on the sale by local corporations of shares in non-local affiliates are fully included in the taxable basis for income tax purposes, with the exception of gains on the disposal of shares in EU Parent–Subsidiary Directive-qualifying subsidiaries in respect of which legal persons are exempt under certain conditions (see **2.7 Capital Gains Taxation**).

7. Anti-avoidance

7.1 Overarching Anti-avoidance Provisions

Apart from the above-mentioned specific anti-avoidance provisions, on 1 January 2014 a general anti-abuse rule was introduced for the first time in Greece, as part of the wider measures to combat tax evasion or avoidance. Such rule was recently amended to incorporate part of the EU Anti-tax Avoidance Directive into Greek domestic law.

The rule allows tax authorities – having regard to all relevant facts and circumstances – to ignore an arrangement or a series of arrangements that, having been put in place for the main purpose of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine. An arrangement is not considered genuine if it is not put in place for valid commercial reasons that reflect economic reality. In such cases, the tax liability is determined as the tax liability that would arise in the absence of such an arrangement.

In accordance with the relevant guidelines, the burden of proof is on the tax authorities. Moreover, no avoidance is considered to exist solely by reason of a taxpayer seeking to reduce its tax burden.

A specific anti-abuse rule applies in respect of tax-neutral corporate reorganisations such as mergers, share-for-share exchanges, spin-offs and demergers effected under the framework of the Income Tax Code. According to this rule, tax benefits are withdrawn in whole or in part where the principal objective (or one of the principal objectives) behind the reorganisation is tax evasion or avoidance.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

Tax authorities can audit the accuracy of tax returns, as well as the general compliance of taxpayers with their tax obligations, on the basis of procedures provided for in the Tax Procedures Code currently in force and – depending on the year audited – pursuant to the legislation applicable to periods prior to the Tax Procedures Code's enactment in 2013. The State's right to assess taxes in addition to those deriving from a taxpayer's tax return is time-barred, in principle, and lapses after a period of five years from the end of the year in which a tax return is due to be filed (ie, effectively six years after the audited year).

There are a number of derogations from this principle, either on the basis of specified exceptions or due to transitional provisions related to the regime that applied prior to the enactment of the Tax Procedures Code. Exceptions include cases of tax evasion, cases where the relevant taxpayer has not filed a tax return within the five-year period, and cases of emergence for the tax authorities of new data or new information that could not have come to their knowledge within the five-year period. In such cases, the prescription period is ten years in principle. Also, where the Greek tax authorities have requested information from foreign authorities, the right to assess taxes is time-barred to lapse one year after the receipt of the information.

The Greek tax authorities are obliged to publish annually the number of full and partial tax audits prioritised for the following year on the basis of risk-analysis criteria and other available information. In addition, they are subject to percentage-based audit targets.

Taxpayers can challenge a tax assessment by filing an out-of-court administrative appeal against such assessment.

9. BEPS

9.1 Recommended Changes

Greece is largely compliant with the principles developed and the measures recommended by the OECD/G20 BEPS action plan. In addition, being an EU member state, Greece is bound to transpose into domestic law the EU Directives that implement OECD/G20 BEPS conclusions at an EU level.

Since the introduction of a new income tax code on 1 January 2014, Greece has implemented various measures in compliance with the BEPS principles (as also implemented by the EU) – for example, CFC rules, interest deduction limitations, rules neutralising the effects of hybrid mismatch arrangements, rules on the mandatory disclosure of potentially aggressive tax-planning arrangements and rules on reporting obligations of digital platform operators. Greece has also transposed into domestic law the EU Directives providing for the automatic exchange of information on cross-border tax rulings and advance pricing agreements between EU member states.

Hybrids

Greece has transposed the provisions of the EU Anti-Tax Avoidance Directive and – with effect from 1 January 2022 – of EU Directive 2017/952 amending the EU Anti-Tax Directive as regards hybrid mismatches with third countries. See **9.6 Proposals for Dealing With Hybrid Instruments** for further details.

Updated Domestic Frameworks

Greece has recently updated its domestic legal framework regarding the MAP provided under tax treaties and the EU Arbitration Convention, through the introduction of special rules in the Tax Procedures Code and the publication of administrative guidelines. Also, mandatory binding arbitration mechanisms for resolving issues under MAP will be available through the MLI, which is now effective.

The current legal framework fully endorses the arm's-length principle, as defined in Article 9 of the OECD Model Tax Convention and interpreted by the OECD Transfer Pricing Guidelines, following the revisions introduced as a result of Actions 8–10. As regards Action 13, see **9.10 Transfer Pricing Changes**.

9.2 Government Attitudes

In general, the Greek government fully endorsed the BEPS project from the outset and Greece is a member of the Inclusive Framework on Base Erosion and Profit Shifting. Also, as Greece is an EU member state, it is bound to transpose into domestic law relevant EU Directives, such as Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise (MNE) groups and large-scale domestic groups in the EU, in implementation of the OECD Pillar Two rules. The allocation of taxing rights for MNEs to end market and source jurisdictions under Pillar One may have a positive impact on fiscal revenues in Greece going forward.

9.3 Profile of International Tax

International tax has a high public profile in Greece, most notably with regard to transfer pricing and the general objective of transparency. Transfer pricing has become an area of primary focus, both in terms of public opinion and at the level of tax authorities. A fully dedicated team within Greece's Independent Authority for Public Revenue deals with the transfer pricing legislative framework, including the issuance of decisions on APAs and MAPs.

9.4 Competitive Tax Policy Objective

At this time, the primary focus in Greece is on the collection of taxes and the enhancement of attitudes towards tax compliance. Such measures do not appear to be conflicting with the BEPS outcomes. In any event, what should be ensured is that BEPS-related measures and anti-tax avoidance rules are not implemented by the tax authorities in an overly restrictive manner.

9.5 Features of the Competitive Tax System

There are no significant features of Greece's tax system that are particularly vulnerable to measures aiming to achieve the BEPS objectives, in particular. Also, as an EU member state, Greece is obliged to take all required actions in order for state aid to comply with EU rules.

9.6 Proposals for Dealing With Hybrid Instruments

As regards legislation for dealing with hybrid instruments, Greece has transposed into domestic law the amendments made to the EU Parent–Subsidiary Directive, in accordance with which dividends paid by EU-based qualifying subsidiaries are not taxed if such profits are not deductible by the subsidiary and are taxed to the extent that such profits are deductible by the subsidiary.

As mentioned in **9.1 Recommended Changes**, Greece has transposed the provisions of the EU Anti-Tax Avoidance Directive and – with effect from 1 January 2022 – of EU Directive 2017/952 amending the EU Anti-Tax Avoidance Directive as regards hybrid mismatches with third countries. Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities, with the possible effect of a deduction in both states or a deduction of the income in one state without inclusion in the tax base of the other. The legislation lays down rules whereby one of the two jurisdictions in a mismatch should deny the deduction of a payment leading to such an outcome.

9.7 Territorial Tax Regime

Greece generally imposes tax on worldwide income, in the sense that it also exercises taxation rights in respect of the foreign-source

income earned by Greek tax residents. Foreign tax residents are taxed in Greece under a territorial system – ie, they are only taxed on Greek-source income. It is notable that profits distributed by EU subsidiaries are exempt from corporate income tax in Greece, subject to specific requirements under the rules transposing the Parent–Subsidiary Directive.

Legal persons are exempt under conditions from tax on capital gains arising from the disposal of shares in EU Parent–Subsidiary Directive-qualifying subsidiaries (see **2.7 Capital Gains Taxation**). In such cases, apart from the generally applicable interest deductibility limitations, interest incurred as a result of financing the relevant participations may in certain circumstances not be deductible. The BEPS-related interest deductibility limitation of up to 30% of EBITDA operates subject to a de minimis threshold of exceeding borrowing costs set at EUR3 million annually, which makes it likely to affect a smaller number of Greek enterprises.

9.8 Controlled Foreign Corporation Proposals

As mentioned in **9.7 Territorial Tax Regime**, Greece does not have a territorial tax regime. Greek CFC rules, amended in line with the EU Anti-Tax Avoidance Directive, only capture profits of CFCs that fall under certain categories. When it comes to subsidiaries established in EEA member states, Greece does not have sweeper CFC rules. Even if such states are low-rate jurisdictions, the relevant subsidiaries and PEs are beyond the scope of the CFC rules if such entities carry on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by all relevant facts and circumstances.

9.9 Anti-avoidance Rules

In the context of the MLI, Greece has adopted the principal purpose test rule in order to prevent the abuse of benefits derived from its tax treaty network. Greece has explicitly opted out of the Simplified Limitation of Benefits. As detailed in **7.1 Overarching Anti-avoidance Provisions**, Greece incorporated a general anti-abuse rule into domestic law in 2014.

Both inbound and outbound investors may, therefore, be affected by a combination of the domestic law provisions, the anti-avoidance rules included in the double-taxation treaties, and the EU rules as transposed into domestic law. Consequently, new structures should be carefully reviewed from all of these perspectives.

9.10 Transfer Pricing Changes

As mentioned in **9.1 Recommended Changes**, prior to BEPS, the applicable legal framework for transfer pricing in Greece fully endorsed the arm's-length principle as defined in Article 9 of the OECD Model Tax Convention and interpreted by the OECD Transfer Pricing Guidelines. Currently, it also follows the revisions introduced as a result of Actions 8–10 of the OECD BEPS project. In general, no radical changes have taken place under the BEPS transfer pricing changes. As regards documentation, the required content of the local transfer pricing files is not yet fully aligned with BEPS Action 13 – particularly in relation to value chain analysis.

In the aftermath of BEPS, Greece has also introduced into domestic legislation the automatic exchange of CbC reports between EU member states, as well as among the signatories of the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (concerning MNEs with an annual consolidated turnover exceeding EUR750 million). A relevant bilateral agreement

has also been concluded with the USA. The first reporting year was the year commencing 1 January 2016. Surrogate reporting and local notification requirements have also been adopted.

Information on the ownership of intangible assets in the group, as well as related-party transactions for the licensing of rights on intangible assets, forms part of the transfer pricing documentation required under domestic law. As mentioned in **4.4 Transfer Pricing Issues**, the role of each related party in the DEMPE functions of intangible assets is an element of increasing significance in terms of the scrutiny of related-party transactions between domestic licensees and foreign IP-holding entities.

9.11 Transparency and Country-by-Country Reporting

Although transparency, CbC reporting and mandatory disclosure of potentially aggressive tax-planning arrangements are positive measures in terms of combatting tax avoidance, care should be taken that the relevant implementation rules and their interpretation by the tax authorities lead to the minimum possible compliance burden for enterprises. Where applicable, measures should be adopted to ensure that the relevant procedures do not lead to the unnecessary disclosure of commercial information.

9.12 Taxation of Digital Economy Businesses

Greece has not implemented any changes specifically relating to the taxation of transactions effected or profits generated by digital economy businesses operating largely from outside the jurisdiction. At a local direct taxation level, Greece has a legal framework regarding the taxation of short-term rentals in the sharing economy through digital platforms.

Greece has transposed Directive 2021/514/EU amending Directive 2011/16/EU on administrative co-operation in the field of taxation, towards imposing reporting obligations for digital platform operators with the aim of enabling tax administrations to assess and control gross income earned from commercial activities performed with the intermediation of digital platforms.

9.13 Digital Taxation

See **9.12 Taxation of Digital Economy Businesses**.

9.14 Taxation of Offshore IP

Greece imposes withholding tax on royalties paid to offshore owners in exchange for the use of IP. Rates can be reduced or eliminated if payments are made to beneficiaries in income tax treaty jurisdictions. Moreover, payments to persons residing in states deemed as non-co-operative or preferential are not deductible, unless the taxpayer proves that these expenses are incurred for real transactions and do not result in profit-shifting aimed at tax avoidance or evasion.

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