

Recent Developments in Tax Legislation – Law 5162/2024 on Tax Incentives for Business Transformations

- A. Introduction
- B. Scope of Application
- C. Transformations Between Domestic Entities
- D. Cross-Border Transformations Between Domestic Entities and Entities of EU Member States
- E. Special Conditions for Cross-Border Mergers and Divisions
- F. Transformations Between Domestic Entities and Entities in Third Countries
- G. Contribution of a Sole Proprietorship or Partnership
- H. Valuation of Assets – Taxation of Capital Gains Arising from the Transformation – Depreciation and Carryforward of Losses, Reserves and Provisions
- I. Filing of Corporate Income Tax Returns
- J. Transfer of the Registered Office of an SE or an SCE – Cross-Border Conversion
- K. Taxation of a Greek Tax-Resident Shareholder or Partner of a Transparent Entity in the Event of a Cross-Border Transformation
- L. Other Exemptions – Non-Application of Benefits

A. Introduction

1. Circular E.2088/2025 (the **Circular**) provides guidelines for the proper application of Articles 47–56, 58 and 59 of Law 5162/2024 (the **New Law**) on Business Transformations.

B. Scope of Application

1. The New Law applies to mergers, divisions, including partial divisions and spin-offs, exchanges of corporate shares, and conversions. The concept of merger does not include mergers by acquisition.

2. The acquiring entity may make a cash payment as consideration for the shares of the acquired entity that are proportionately transferred by the shareholders.
3. No condition is set regarding the amount paid in relation to the nominal value of the securities issued or transferred by the acquiring entity to the shareholders or partners of the acquired entity.
4. As consideration for the securities of the acquired entity, the acquiring entity may transfer its own securities to the shareholders or partners of the acquired entity that it holds in its portfolio as treasury shares. It may not offer as consideration securities of other companies which it holds in its portfolio as participations.

C. Transformations Between Domestic Entities

1. The provisions of the New Law relating to corporate transformations apply, inter alia, where such transformations involve only domestic entities with their tax residence in Greece which are subject to the same income tax regime. In applying the New Law, it is sufficient that domestic companies are subject to the provisions of the Income Tax Code (ITC), even if they are exempt from income tax pursuant to an exemption granted by specific provisions of the ITC.
2. Tax incentives on corporate transformations also apply to:
 - a. Real Estate Investment Companies (REICs) which:
 - i. are established either through the merger of two or more companies that own real estate, or through the division or spin-off of a branch that owns real estate; or
 - ii. acquire real estate, either due to a merger through absorption of another entity that owns real estate, or due to the division or spin-off of a branch that owns real estate;
 - b. the contribution of assets in exchange for securities;
 - c. the exchange of corporate shares; and
 - d. mergers and divisions of REICs.

D. Cross-Border Transformations Between Domestic Entities and Entities of EU Member States

1. The following provisions apply in each of the cases below:
 - a. **Cross-border mergers and divisions:** domestic entities that are Greek tax residents must take the form of a corporation or limited liability company and fall within the scope of the ITC.
 - b. **Cross-border conversion of a domestic entity:** the converted entity may be a société anonyme, a Greek limited liability company (ΕΠΕ), a private company (ΙΚΕ), a partnership limited by shares or a European Company (SE).

- c. **Cross-border exchange of corporate shares:**
 - i. The domestic companies involved must take one of the forms of companies listed in Article 2 of Law 4601/2019.
 - ii. Foreign companies must take one of the forms:
 - (1) listed in Part A of Annex I to Directive 2009/133/EC, including a private company (for the purposes of cross-border conversion);
 - (2) or those listed in Annex II to Directive 2017/1132, and must be subject to:
 - (3) one of the taxes referred to in Part B of Annex I to Directive 2009/133/EC without the possibility of option or exemption; or
 - (4) to any other tax that replaces one of those taxes.
- 2. The tax incentives applicable to transformations apply irrespective of the tax residence of the shareholders or partners, who may be natural persons, legal persons or entities and tax residents of an EU Member State or third countries.
- 3. The tax benefits relating to the taxation of capital gains arising from the transformation are granted only to Greek tax residents and to foreign legal persons with a permanent establishment in Greece.

E. Special Conditions for Cross-Border Mergers and Divisions

- 1. Additional conditions are established for the tax incentives of the New Law to apply. Specifically where:
 - a. **The contributing entity is a foreign entity and a tax resident of another EU Member State, and the receiving entity is a domestic entity and a Greek tax resident:** the provisions apply if, following the cross-border merger or division, the assets, liabilities, reserves, provisions and losses transferred do not relate to a permanent establishment of the receiving entity outside Greece. In other words, the condition is that upon completion of the transformation, the items transferred are connected with the domestic receiving entity and not with a permanent establishment of that company outside Greece. The domestic receiving entity acquires a permanent establishment abroad due to the fact that the contributed items with a physical presence abroad create a permanent establishment of the domestic receiving entity abroad.
 - b. **The receiving entity is a foreign entity and a tax resident of another EU Member State, and the contributing entity is a tax resident of Greece or of another EU Member State with a permanent establishment in Greece:** the provisions apply if, following the cross-border merger or division, the assets located in Greece, as well as the liabilities, reserves, provisions and losses transferred, relate to a permanent establishment of the receiving entity in Greece.

This applies to cases of mergers or divisions (division, partial division or spin-off) of a domestic entity or of an entity of another EU Member State with a permanent establishment in Greece with a foreign receiving entity that is an EU tax resident, on condition that the items transferred will be connected with a permanent establishment of the receiving entity in Greece.

- c. **The contributing entity is a Greek tax resident and the receiving entity is a foreign entity and a tax resident of another EU Member State:** the provisions apply if the cross-border merger or cross-border division entails the transfer of a business activity that constitutes a permanent establishment in another EU Member State. In this case, the contributing company is subject to income tax in Greece on the capital gain, and subject to certain conditions, further entitled to a credit against the amount of tax. The above also applies in the case of a spin-off of business sector.

F. Transformations Between Domestic Entities and Entities in Third Countries

1. The provisions of the New Law apply in the following cases:
 - a. **The contribution of a business sector or the exchange of corporate shares between a domestic entity and non-EU entity:** where at least one participating domestic entity is a Greek tax resident, and the other participating entities are established and have their tax residence in a non-EU state that has entered into a Double Taxation Convention (DTC) or an Administrative Assistance Convention (AAC) with Greece.
 - b. **The contribution of a business sector and exchange of shares between a domestic entity and a non-EU entity and vice versa:** provided there is a DTC or an AAC in force with Greece.
 - c. **The contributing or receiving entity is foreign:** where the foreign entity:
 - i. has its registered seat in an EU Member State and its tax residence in a non-EU state that has entered into a DTC or an AAC with Greece; or
 - ii. has its registered seat in a non-EU state that has entered into a DTC or an AAC with Greece and is tax resident in an EU Member State.
2. In a contribution of a business sector, the participating companies, whether domestic or foreign, must be in the form of a corporation or limited liability company. Domestic companies must fall within the provisions of the ITC even if they are exempt from income tax, whereas foreign companies must in fact be subject to income tax, without the possibility of option or exemption.
3. The provisions of the New Law apply where the following conditions are met:
 - a. **The contributing entity is a foreign entity and tax resident of a non-EU country with which a DTC or an AAC is in force, and the receiving entity is a domestic entity that is a Greek tax resident:** if, following the contribution of the business sector, the assets, liabilities, reserves, provisions and losses transferred are not connected with a permanent establishment of

the receiving entity outside Greece but with the domestic receiving entity. The domestic receiving entity acquires a permanent establishment abroad due to the fact that the contributed items with a physical presence abroad create a permanent establishment of the domestic receiving company abroad.

- b. **The receiving entity is a foreign entity and a tax resident of a non-EU country, and the contributing entity is a Greek tax resident:** if, following the contribution of the business sector, the assets located in Greece, as well as the liabilities, reserves, provisions and losses transferred, are connected with a permanent establishment of the receiving entity in Greece.
- c. **In a spin-off, where the domestic entity contributes its permanent establishment located in a non-EU country:** the capital gain arising in this case is taxed in Greece at the time the cross-border spin-off takes place, without the possibility of a tax credit in the absence of any relevant provision.
- d. **In an exchange of corporate shares:**
 - i. domestic companies may take one of the forms of companies listed in Article 2 of Law 4601/2019 and fall within the provisions of the ITC even if they are exempt from income tax;
 - ii. foreign companies must take the form of a corporation or limited liability company and in fact be subject to corporate income tax, without the possibility of option or exemption. For foreign companies, both the corporate form and the de facto liability to income tax must be evidenced by any appropriate means, such as corporate formation documents and filed income tax returns.

G. Contribution of a Sole Proprietorship or Partnership

- 1. Both the contributing and receiving entity must be Greek tax residents. The receiving entity, which may be an existing or newly established entity, must take one of the forms set out in paragraph 1 of Article 2 of Law 4601/2019.
- 2. The contribution of more than one sole proprietorship does not fall within the provisions of the New Law, since a sole proprietorship does not constitute a company.
- 3. Any capital gain that arises in the books of the receiving entity is not subject to income tax, provided that the contributed business commenced operations at least two years prior to the contribution. Commencement of operations is evidenced by the date of registration with the competent tax office or with the General Commercial Registry (GEMI), as applicable. The two-year period must have been completed at the time the contribution process begins, as evidenced by any appropriate means.
- 4. A tax exemption for any capital gain that may arise upon the acquisition of the interests of the receiving entity also applies to the proprietors of the contributing sole proprietorship or

members of a partnership. This exemption is granted irrespective of the satisfaction of the condition regarding the time of commencement of operations of the contributing business and is revoked if the interests are transferred within two years from the completion of the contribution.

5. An exemption from real estate transfer tax is granted with respect to real estate contributed to the receiving entity, if the contributed property was used for the business sector of the contributing sole proprietorship or partnership for at least two years prior to the contribution and the contributed property will be used for the business sector of the receiving entity for at least two years from the contribution.
6. No real estate transfer tax is imposed on properties contributed by a sole proprietorship or by a partnership the principal business sector of which is the construction or exploitation of real estate. It is not required that the contributed properties have been used for the needs of the contributor for at least two years prior to the contribution for this exemptive provision to apply. Accordingly, the exemption from real estate transfer tax is granted irrespective of the time of establishment of the sole proprietorship or of the partnership in the construction or exploitation of real estate sector.

H. Valuation of Assets – Taxation of Capital Gains Arising from the Transformation – Depreciation and Carryforward of Losses, Reserves and Provisions

1. Merger, division and conversion:

- a. Mergers, divisions or conversions do not increase the tax basis of the assets contributed to the receiving entity or, in the case of a conversion, retained in the entity under its new legal form. The assets and liabilities are recorded in the books of the receiving entity (tax basis) at the same tax value they had immediately prior to the transformation in the books of the transferring company.
- b. The capital gain arising from the transformation does not give rise to a tax liability for the receiving entity or, in the case of a conversion, for the entity under its new legal form. The tax neutrality of the transformation is ensured by exempting the receiving entity from income tax at the time the merger or division is completed. This exemption applies on condition that the receiving entity continues to maintain, for tax purposes, the same basis and does not assign a higher value on the assets than that which the transferred assets had in the hands of the contributing entity prior to the transformation.
- c. The assets that pass to the receiving entity will be taxed in the future when a taxable event occurs, for example, when the receiving entity transfers an asset that it acquired from the contributing entity in the context of the transformation.
- d. In the event of a capitalization of all or part of the net position of the contributed capital, the capital gain is not taxed under the provisions on business income, since in that case

there would arise an issue of double taxation of the capital gain included in the relevant net position.

- e. The receiving entity that holds an interest in the contributing entity, or a contributing entity that holds interest in the receiving entity, is not subject to income tax on the arising capital gain as a result of the cancellation of the value of its participation. Any loss is not recognized for tax purposes.
- f. If a subsidiary (receiving entity) absorbs its parent entity (contributing entity), any debit difference (loss) is not recognized for tax purposes.
- g. The shareholders or partners of the entities participating in the transformation will evaluate the interests they receive from the receiving entity at fair market value at the time of the transformation. In this way the shareholder or partner enjoys a definitive exemption for the capital gain arising due to the transformation. However, the definitive exemption is revoked if the shareholder or partner transfers the interests acquired by virtue of the merger or division within two years from the completion of the transformation. In this case, their acquisition cost is deemed to be the value they had immediately prior to the transformation.
- h. The revocation of the exemption does not apply to conversions. The shareholder or partner of the entity being converted is exempt from any capital gain irrespective of a subsequent transfer of their equity interests within two years.
- i. In the case of a cash payment, the capital gain arising at the time of the transformation that corresponds to the portion of that cash payment is taxable. For an individual shareholder or partner, capital gain is taxed at a rate of 15%, whereas for legal persons or entities the capital gain is taxed as income from business activity subject to corporate income tax (currently 22%).

2. Spin-off of business sector:

- a. In the case of a spin-off of business sector, the foregoing rules apply mutatis mutandis to the capital gain realized by the receiving entity.
- b. With respect to the contributing entity, there is no issue of taxation of any capital gain it realizes due to the transformation at that time, given that the contributing entity evaluates the securities it receives from the receiving entity at their fair market value.
- c. The relevant capital gains exemption is definitive on the condition that the interests are retained for a period of two years from the completion of the spin-off.
- d. In the event of a transfer of interests due to a further transformation within two years from the completion of the previous transformation, the exemption from capital gains taxation continues to apply.
- e. The exemption does not apply if the contributing entity transfers the interests acquired within the two-year period.

3. Exchange of corporate shares:

- a. The acquiring entity values, for tax purposes, the securities of the acquired entity that it receives at their fair market value and in this way no tax implications arise at the time of the exchange. In the event of a subsequent sale of the interests in question, any capital gain realized upon the sale is subject to tax, with the initial value being that resulting from the valuation at the time of the exchange.
- b. Any interests of the acquiring entity obtained by the shareholder or partner of the acquired entity have a value equal to that of the interests in the acquired entity that the shareholder or partner held before the exchange.
- c. Where the shareholder of the acquired entity is a natural person, no capital gain arises at the time of the exchange but will arise later at the time of the transfer of those interests. The capital gain constitutes income from the transfer of securities and is taxed in accordance with the relevant provisions of the ITC.
- d. Where the shareholder of the acquired entity is a legal person or entity, any capital gain arising later, at the time of the transfer of the new interests, will be taxed at that time.
- e. The foregoing applies mutatis mutandis where, at the time of the exchange, a loss arises from the valuation of the shares of the acquired entity, which will be taken into account at the time of a subsequent transfer of the interests, for which the acquisition value is deemed to be that which the exchanged interests had immediately before the exchange.
- f. A taxable event occurs in the event of a reduction of the share capital of the acquiring entity with a return of cash and/or interests to the shareholder of the acquired entity. This return must be in an amount up to the difference (capital gain) between the fair market value of the exchanged interests and the value those securities had for the shareholder immediately before the exchange. This amount is taxed:
 - i. as income from business activity if the shareholder is a legal person, a legal entity or a natural person carrying on a business activity; and
 - ii. as income from capital gains on the transfer of securities if the shareholder is a natural person.
- g. In the case of a cash payment, the rules set out above with respect to mergers apply.

4. Depreciation and the Carryforward of Losses, Reserves and Provisions

- a. The receiving entity must apply the same depreciation rules as those applied by the contributing entity, namely the same depreciation rate and depreciation must be calculated on the same value and using the same method as applied by the contributing entity prior to the transformation.
- b. With respect to the carryforward of tax losses, if at the time of the transformation, the contributing entity has a tax loss, whether arising in the tax year during which the transformation takes place or from prior tax years, the loss shall be recorded in a separate

account in the books of the receiving entity, so that it may be carried forward for offset against its profits.

- c. The receiving entity may carry forward the reserves and provisions formed by the contributing entity, together with the tax exemptions and conditions that would have applied to the contributing company had the transformation not taken place.
- d. In a spin-off of a business sector, the reserves and provisions transferred pertain to the contributed unit.
- e. The commencement of the minimum holding period for the required qualifying participation relevant to the exemption of intra-group dividends, the conditional exemption for legal persons that are Greek tax residents from capital gains tax on the transfer of participation securities, as well as the exemption for certain intra-group payments, is not affected by the transformation.

I. Filing of Corporate Income Tax Returns

- 1. The time determined for the submission of tax returns is the date of completion of the transformation, as evidenced by the registration with GEMI.
- 2. Companies resulting from a conversion shall file a corporate income tax return for the tax year within which the conversion is completed.

J. Transfer of the Registered Office of an SE or an SCE – Cross-Border Conversion

- 1. The transfer of the registered office of an SE or an SCE from Greece to another Member State of the EU, or from another EU Member State to Greece, without dissolution of the entity or establishment of a new legal entity, does not give rise to taxation of the capital gains inherent in the assets and liabilities of the SE or SCE that are allocated to its permanent establishment in Greece. If, following the transfer of the registered office of the SE or SCE from Greece to another EU Member State, the remaining assets of the entity do not constitute a permanent establishment in Greece, the resulting capital gain is subject to tax.
- 2. The permanent establishment shall continue to compute depreciation on the value of the assets allocated to it, under the same terms and conditions that would have applied if the transfer of the registered office had not taken place.
- 3. Provisions or reserves formed by the SE or SCE prior to the transfer of its registered office, which did not arise from the economic activity of a permanent establishment of the entity abroad, are not taxed at the time of the transfer of the registered office, provided that the entity maintains a permanent establishment in Greece and the reserves continue to be recorded unchanged in the books of the permanent establishment. Otherwise, they are subject to income tax under the general provisions.
- 4. The permanent establishment retains the right to carry forward tax losses from prior years of

the SE or SCE that transferred its registered office to another Member State. The right to carry forward losses from prior years is recognized to the extent that such losses relate to the items allocated to the permanent establishment.

5. The statutory provisions relating to depreciation, provisions and reserves, as well as the right to carry forward losses, also apply in the case of a transfer of registered office from another EU Member State to Greece, provided that prior to the transfer of the registered office, the SE or SCE maintained a permanent establishment in Greece.
6. The foregoing also applies in the case of a cross-border conversion.

K. Taxation of a Greek Tax-Resident Shareholder or Partner of a Transparent Entity in the Event of a Cross-Border Transformation

1. Article 11 of Directive 2009/133/EC is transposed into national law with respect to tax-transparent entities, for which the persons liable to income tax are their participants (shareholders/partners) rather than the legal person itself.
2. There are currently no tax-transparent entities under Greek law. The introduced rule covers the case where a tax-transparent entity as defined by the laws of its state of incorporation and established in another EU Member State, has a Greek natural or legal person participant.
3. If a foreign tax-transparent entity participates in a cross-border transformation, a tax credit shall be granted in Greece to its Greek participant for the tax which, absent the application of the aforementioned Directive, would have been imposed on the tax-transparent entity in respect of its income, profits or capital gains, in the same manner and for the same amount as if the tax had actually been assessed and paid.

L. Other Exemptions – Non-Application of Benefits

1. For transformations carried out under the New Law, the agreement for the transfer of the real estate of the companies or businesses being reorganized is exempt from real estate transfer tax, and the corresponding return is not submitted to the tax authorities.
2. In the case of the contribution of a sole proprietorship or partnership, the exemption is granted subject to specific conditions, and the transfer of the real estate of the contributed sole proprietorship or partnership requires the submission of a real estate transfer tax return.
3. By way of exception, the contribution of a sole proprietorship to an existing entity is subject to capital concentration tax.
4. The benefits provided are revoked in whole or in part if the principal purpose or one of the principal purposes of any transformation is tax evasion or tax avoidance.
5. Contrary to the previously applicable provisions, the newer provisions extend to the benefits under the articles relating to income taxation and to other benefits granted by the law with respect to other taxes.

**KEY CONTACTS****Fotodotis Malamas**

Partner

fmalamas@bernitsaslaw.com

**Katerina Batsika**

Associate

kbatsika@bernitsaslaw.com

This Briefing is intended to provide general information and is not meant to constitute a comprehensive analysis of the matters set out herein or to be relied upon as legal advice. It is not meant to create a lawyer-client relationship. Legal and other professional advice should be sought before applying any of the information in this Briefing to a specific situation.

Bernitsas Law Firm is a partnership of attorneys regulated by Presidential Decree 81/2005 and Law 4194/2013, as currently in force, with its registered address at 5 Lykavittou Street, Athens 106 72, Greece. If you no longer wish to receive Briefings from us, please [click here to Unsubscribe](#).