PANORAMIC

TAX ON INBOUND INVESTMENT

Greece



LEXOLOGY

Tax on Inbound Investment

Contributing Editor

Graham Samuel-Gibbon

Taylor Wessing

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Greece

Bernitsas Law

BERNITSAS

Fotodotis Malamas fmalamas@bernitsaslaw.com

ACQUISITIONS (FROM THE BUYER'S PERSPECTIVE)

Tax treatment of different acquisitions

What are the differences in tax treatment between an acquisition of stock in a company and the acquisition of business assets and liabilities?

For Greek tax purposes, three types of transaction should be examined:

- acquisition of stock in a company, which has no tax impact on the buyer. The buyer will post in its accounts the participation in the company, and it will adjust the value of the participation in the case of future impairment;
- transfer of assets (on an asset-by-asset basis and not as a whole). These transactions are subject to value added tax (VAT) at the ordinary rate (currently 24 per cent); and
- acquisition of a business (business is defined as the complex of assets and liabilities organised as an economic unit that operates the business activity of the seller). This transaction is treated for tax purposes as a transfer of business subject to stamp duty at the rate of 2.4 per cent. The buyer is usually liable for the payment of stamp duty, but the contracting parties (seller and buyer) may agree otherwise.

In all the above three cases, the seller will be liable for income tax calculated on the potential capital gain from the disposal of the shares, assets or business.

Law stated - 12 August 2024

Step-up in basis

In what circumstances does a purchaser get a step-up in basis in the business assets of the target company? Can goodwill and other intangibles be depreciated for tax purposes in the event of the purchase of those assets, and the purchase of stock in a company owning those assets?

The step-up in business assets entails tax deductions that reduce the tax cost for the buyer. The step-up in basis is provided for under specific tax incentive provisions and it does not apply in all cases of mergers and acquisitions. The depreciation of assets in the case of step-up may decrease the taxable profits or increase the tax losses of a company, resulting in increased available cash for the buyer. In the case of goodwill and other intangibles, such assets are included in the balance sheet of the buyer only upon acquisition of a business or upon a merger of legal entities. Goodwill amortisation is deductible for tax purposes only in the case of business acquisition, but not in the context of a merger. In the latter case, goodwill amortisation is deducted for accounting purposes only but not for tax purposes. Other intangibles may be depreciated for tax purposes by their purchaser at the rates provided for in Law No. 4172/2013 (the Income Tax Code (ITC)). In the case of purchase of stock in a company owning intangible assets, their depreciation for tax purposes relates only to the continuation of the same business activity.

Law stated - 12 August 2024

Domicile of acquisition company

Is it preferable for an acquisition to be executed by an acquisition company established in or out of your jurisdiction?

It is preferable for the acquisition of stocks in a company to be executed by a company established either in Greece or in the European Union. Such a structure provides significant tax benefits in relation to withholding tax on dividends, interest and royalties. In addition, no corporate income tax applies on the transfer of shares between EU group legal entities. The same tax benefits also apply in the case of a transfer of business. However, apart from any tax concerns, administration costs and other risks should be also considered.

Law stated - 12 August 2024

Company mergers and share exchanges

Are company mergers or share exchanges common forms of acquisition?

The type of acquisition depends not only on the applicable tax provisions but also on business considerations. Company mergers are the usual form of acquisition as a merger can be executed under different tax incentive laws, whereas the number of available options for share exchanges is limited.

Law stated - 12 August 2024

Tax benefits in issuing stock

Is there a tax benefit to the acquirer in issuing stock as consideration rather than cash?

The issuance of stock as consideration instead of cash may be tax-exempted under specific tax incentive laws. In this regard, and depending on the corporate structure that the acquirer considers to apply, cash consideration may not be the most efficient option for tax purposes.

Law stated - 12 August 2024

Transaction taxes

Are documentary taxes payable on the acquisition of stock or business assets and, if so, what are the rates and who is accountable? Are any other transaction taxes payable?

The sale of shares is not subject to documentary taxes in Greece. These transactions are also VAT-exempt, but the seller has the right to opt for VAT with regard to expenses related to the shares. In the case of listed shares, there is also a transfer tax equal to 0.2 per cent applicable on the transaction value.

Moreover, documentary taxes and, in particular, stamp duty at the rate of 2.4 per cent, apply in the case of transfer of business (business is defined as the complex of assets and liabilities

organised as an economic unit that operates the business activity of the seller). The stamp duty is calculated on the net equity of the business (net equity: assets minus liabilities). Other expenses such as notary fees, registration fees and so on should also be considered.

The ITC provides that, in the case of natural persons selling shares, if more than 50 per cent of the value of the shares is attributed to real estate owned by the legal entity, such a sale does not comprise business activity but is subject to income tax. However, this provision has been suspended until 31 December 2024.

Law stated - 12 August 2024

Net operating losses, other tax attributes and insolvency proceedings

Are net operating losses, tax credits or other types of deferred tax asset subject to any limitations after a change of control of the target or in any other circumstances? If not, are there techniques for preserving them? Are acquisitions or reorganisations of bankrupt or insolvent companies subject to any special rules or tax regimes?

Net operating losses from business activities in Greece or from the permanent establishment of a Greek legal entity in the European Union are carried forward for a period of five years. However, such losses cannot be carried forward in cases where the direct or indirect ownership of a Greek company's capital or voting rights changes within a tax year by more than 33 per cent and the company's activities change by more than 50 per cent of its turnover within the same or the following tax year. Also, any operating loss of the parent entity attributed to the liquidation of its subsidiary is deductible for tax purposes, unless the parent entity is established in Greece and the subsidiary elsewhere.

Law stated - 12 August 2024

Interest relief

Does an acquisition company get interest relief for borrowings to acquire the target? Are there restrictions on deductibility generally or where the lender is foreign, a related party, or both? In particular, are there capitalisation rules that prevent the pushdown of excessive debt?

The ITC provides that expenses related to tax-free dividends are deductible for tax purposes. Such expenses also include interest on loans used for the acquisition of legal entities. Apart from this restriction, in general, interest-bearing loans are deductible for tax purposes. However, tax legislation provides for specific restrictions on the deductibility of loans. The first restriction pertains to intragroup loans, which are subject to transfer pricing rules. Should the agreed interest deviate from the market interest (as such interest is assessed based on transfer pricing methods), the financial result of the respective legal entity will be adjusted accordingly to comply with the market rates (the arm's-length principle). Furthermore, interest on loans from third parties, other than banks, is tax deductible only for the amount that would be due if the interest rate was equal to the rate on credit facility revolving accounts to non-financial corporations, as set out in the Bulletin of Conjunctural Indicators of the Bank of Greece for the respective period. Also, the amount of the exceeding borrowing

costs is deductible if it does not exceed €3 million per year. In general, the exceeding borrowing costs are deductible only to the extent that they do not exceed 30 per cent of the company's earnings before interest, taxes, depreciation and amortisation (as calculated by the instructions of the Ministry of Finance). Moreover, interest expense paid to the parent legal entity by a subsidiary is not deductible for tax purposes as dividends are distributed by the subsidiary to the parent entity free of withholding tax. The last restriction pertains to non-cooperative jurisdictions, as interest payable to legal entities established in these countries is not deductible for tax purposes.

Law stated - 12 August 2024

Protections for acquisitions

What forms of protection are generally sought for stock and business asset acquisitions? How are they documented? How are any payments made following a claim under a warranty or indemnity treated from a tax perspective? Are they subject to withholding taxes or taxable in the hands of the recipient? Is tax indemnity insurance common in your jurisdiction?

As both the seller and the purchaser seek protection upon the sale of stocks or business assets, various clauses are included in the respective agreements. Such clauses usually include tax warranties on compliance issues (such as the proper and timely filing of tax returns, maintenance of books and records in accordance with the tax legislation and tax risk provisions) or on tax liabilities that may arise in the context of a future tax audit for the years that the company or the business assets were controlled by the seller. Such clauses are usually included in the sale and purchase agreement or the transfer agreement. The deed of tax covenant rarely documents warranties, indemnities and other tax clauses for the protection of the contracting parties. Regardless of the protection form, claims under a warranty or indemnity may be subject to income tax in cases where the amount due exceeds the losses or damages incurred by the respective party.

Law stated - 12 August 2024

POST-ACQUISITION PLANNING

Restructuring

What post-acquisition restructuring, if any, is typically carried out and why?

Following the completion of the acquisition, post-acquisition restructuring is the most important process aimed at maximising synergies. The management of the surviving legal entity has to structure this process efficiently and in detail to avoid any future implications for the smooth operation of the business. There are four main types of post-acquisition restructuring:

- absorption;
- preservation;
- holding; and

- symbiosis.

Depending on the country in which the surviving and the acquired legal entity are established, the most usual forms of post-acquisition restructuring are absorption, preservation and holding. Where both the surviving and acquired legal entity are established in Greece, the most preferable post-acquisition restructuring is absorption. From a tax point of view, absorption is not time-consuming, a large scale of synergies is feasible and any operating costs are significantly reduced. On the other hand, if the surviving legal entity is established outside Greece, a preservation scheme is usually adopted. Under this scheme, the surviving legal entity consolidates (entirely or partially) the financial results of the related legal entity in Greece and fully controls its management.

Law stated - 12 August 2024

Spin-offs

Can tax-neutral spin-offs of businesses be executed and, if so, can the net operating losses of the spun-off business be preserved? Is it possible to achieve a spin-off without triggering transfer taxes?

Greek tax legislation provides four main tax regimes under which a tax-neutral spin-off can be executed. Only two of these tax regimes provides for the preservation of net operating losses. In particular, the tax incentives laws currently applicable in Greece are the following:

- Legislative Decree 1297/1972;
- Law No. 2166/1993;
- Law No. 4172/2013 (the Income Tax Code (ITC)); and
- Law No. 4935/2022.

Each one of these laws provides various incentives and two different accounting methods are adopted.

Legislative Decree 1297/1972

- The assets of the absorbed company are subject to revaluation by certified auditors resulting, in most cases, in goodwill;
- the surviving legal entities may benefit from the assets' revaluation and calculate depreciation on their increased net value (step-up). In this regard, Legislative Decree 1297/1972 is usually used by legal entities owning buildings of high value;
- under Legislative Decree 1297/1972, the acquisition accounting method applies (former purchase method) and any goodwill deriving from the assets' revaluation is posted in a special account in the books of the company. The law provides for the suspension of goodwill taxation until the dissolution of the transformed legal entity unless such dissolution is performed in the context of a subsequent merger, division or spin-off with another legal entity. In the latter case, no taxation will take place;
-

the transfer of real estate is tax-exempted on condition that the contributed real estate property will be used in the business activities of the company for a period exceeding the five years (commencing from the completion of the merger);

- there is no restriction as to the books of the merging legal entities;
- the minimum share capital of the surviving legal entity should amount to at least €300,000;
- the merger agreement is exempted from taxes, duties and charges in favour of the Greek state;
- seventy-five per cent of the shares of the new legal entity have to be registered and are not transferrable for a period of five years commencing from the completion of the merger;
- transactions performed within the period from the transformation balance sheet date and until the completion of the merger are attributed to the respective legal entity (absorbing and absorbed legal entity);
- tax-free reserves posted in the books of the merging legal entities are transferred to the books of the new legal entity without any further taxation. Their taxation is suspended for the period and under the terms and conditions provided by the respective tax incentive law;
- tax-free reserves deriving from previous years' profits and posted in the books of the merging legal entities are transferred to the books of the new legal entity without any further taxation. Their taxation is suspended for the period and under the terms and conditions provided by the respective tax incentive law, unless goodwill derives from their valuation;
- no losses can be carried forward by the absorbed legal entity;
- capital registration tax (CRT) is imposed on the share capital increase deriving from the asset revaluation. In this case, the share capital of the absorbed legal entity and any capitalised reserves or profits are not subject to CRT; and
- the tax incentives provided by Legislative Decree 1297/1972 are abolished if the absorbing company is dissolved before the elapse of five years from the completion of the merger. In this case, the goodwill will be subject to income tax at the rate applicable during the year of dissolution.

Law No. 2166/1993

- The absorbed legal entity has to keep double-entry books and should have published financial statements for at least one full accounting year (12 months);
- the minimum share capital of the surviving legal entity should amount to at least €300,000 (when the surviving legal entity is a société anonyme (SA);
- the assets of the absorbed company are not subject to revaluation, since the pooling-of-interests method applies. However, their accounting values have to be verified by a certified auditor. In this respect, no goodwill will arise from the accounting values;
-

no goodwill arises from the implementation of Law No. 2166/1993, as the pooling-of-interests method applies to the merger accounting;

- the transfer of real estate is unconditionally tax exempted, irrespective of the use of the property by the surviving legal entity;
- the merger agreement is exempted from taxes, duties and charges in favour of the Greek state;
- the absorbing or new SA may have common or registered transferrable shares;
- any transaction performed within the period from the transformation balance sheet date until the completion of the merger is considered to have been performed by the new legal entity;
- tax-free reserves posted in the books of the merging legal entities are transferred to the books of the new legal entity without any further taxation. Their taxation is suspended for the period and under the terms and conditions provided by the respective tax incentive law;
- tax-free reserves deriving from previous years' profits and posted in the books of the merging legal entities are transferred to the books of the new legal entity without any further taxation. Their taxation is suspended for the period and under the terms and conditions provided by the respective tax incentive law;
- no losses can be carried forward by the absorbed legal entity; and
- no CRT is imposed as the pooling-of-interests method applies.

ITC

The third tax incentive regime is provided by the newly enacted ITC. The benefits provided for in article 54 of the ITC are the following:

- contrary to Legislative Decree 1297/1972 and Law No. 2166/1993, the losses of the absorbed company are carried forward by the surviving legal entity (absorbing company);
- there is no taxation on the revaluation arising from the transferred assets;
- there is no taxation on the added value arising from the annulment of the participation of the receiver undertaking to the capital of the transferor undertaking;
- there is no taxation for the partner of the absorbed company on the added value it receives from the merger, except for any part concerning cash consideration; and
- merging legal entities may benefit under the ITC on the condition that:
    - the merging legal entities are included in Annex I of Directive 2009/133/EC;
    - their registered seat is in the European Union; and
    - they are subject to income tax (taxes included in Annex I Part B of Directive 2009/133/EC).

Law No. 4935/2022

By way of Law No. 4935/2022 (Greek Government Gazette Bulletin A 103/26.5.2022) (the Law) the Greek government introduced a new tax incentive law on mergers and acquisitions of very small, small and medium-sized businesses as defined in Commission Regulation (EU) No. 651/2014. The Law provides for the following tax incentives that may apply depending on the type of business combination and on specific economic criteria:

- reduction of the nominal corporate tax rate;
- exemption from capital gains tax in the case of asset sales;
- exemption from stamp duty; and
- tax deduction of expenses related to the acquisition of companies.

In the case of a business combination provided for by Law No. 4601/2019 (ie, mergers, divisions, partial divisions, spin-offs, contributions of sole proprietorship to a company), the nominal corporate income tax rate is reduced by 30 per cent on condition that:

- the total turnover of the combined companies is equal to or exceeds the average turnover of the past three years of the biggest company participating in the business combination;
- the combined companies are classified as very small, small or medium-sized in accordance with Commission Regulation (EU) No. 651/2014;
- the turnover of the new company is equal to or exceeds the amount of €375,000; and
- the new company employs more than nine persons full-time.

In the case of contribution of a sole proprietorship to a company, the nominal corporate income tax rate is reduced by 30 per cent on condition that:

- the contributing sole proprietorship commenced activities at least three years before the date of the contribution;
- the new company keeps double-entry books; and
- in the event of more sole proprietorships, the turnover of the new company is equal to or exceeds the average turnover of the past three years of the biggest company participating in the business combination by 150 per cent.

In the case of cooperation of legal persons:

- the nominal corporate income tax rate of each of the cooperating legal persons is reduced by 30 per cent on condition that each of the cooperating legal persons contributes an amount equal to 10 per cent of its share capital to a new legal entity and the total amount of the share capital is not lower than €125,000; and
- a tax benefit exceeding €125,000 for each of the cooperating legal persons over a period of three years commencing from the date of implementation of the tax benefit cannot be claimed.

The following applies to all combinations under above-mentioned Law No. 4935/2022:

- the reduction of the corporate income tax rate by 30 per cent applies for nine years commencing from the year following the year of completion of the combination; and
- the tax benefit cannot exceed the threshold of €500,000 within this nine-year period.

Capital gains arising from the sale of assets in the context of business combinations, are tax exempted on condition that:

- the turnover of the new company is equal to or exceeds the amount of €375,000;
- the transfer of assets to a third party pertains to items transferred by the combined companies and takes place within a five-year period from the completion of the combination; and
- the total value of the transferred assets of the new company exceeds the threshold of 30 per cent of the average turnover of the past three years of the combined companies.

A stamp duty exemption is provided for cooperation agreements signed in the context of the Law, including the contribution, transfer of assets of the combined companies, decisions of the competent bodies of the combined companies, the participation rate in the companies resulting from the combination, transfers of assets and liabilities or obligations and rights in rem.

Registration of the assets of the combined companies with the land registry incurs €300 in fixed charges payable to the registrar agent. The above actions are fully exempted from other duties, fees or charges.

In the case of purchase of participation in another legal entity, the related expenses incurred by the acquiring company are fully deducted on condition that:

- the total turnover of the acquired company and of the acquiring company is equal to or exceeds €450,000;
- the total amount of the expenses deducted does not exceed the threshold of 30 per cent of the average turnover of the acquiring company during the past three years before the purchase of the participation; and
- the above two limitations do not apply in the event that the sole activity of the acquiring company is participation in other companies (ie, it is a holding company) or if it has been established before the lapse of one year from the acquisition date.

Additional tax incentives are provided for by the capital registration tax, and where losses are carried forward under Law No. 2166/1993, Legislative Decree 1297/1972 and the ITC, the following apply:

- losses carried forward by combined companies under Law No. 2166/1993 may be transferred to a new company and set-off against its profits only to the extent that this is provided for by taxation provisions and on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds €450,000;
- the amount of non-deductible losses is depreciated on an annual basis. However, such depreciation is not deductible for tax purposes;
- losses carried forward by the absorbing company are subject to the time limitations of the ITC (ie, carried forward for a maximum of five years);
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the new company may apply the tax exemptions provided by article 3, paragraph 1 of Law No. 2166/1993 to the tax year following the date on which the transfer of losses to the new company was completed;

- the combination agreement or any other contract or agreement, the transfer of assets of the combined companies or any other act or agreement related to the transfer or contribution of assets or liabilities or rights in rem or other obligations, the decisions of the competent bodies of the companies, as well as any registration in the Government Gazette, is exempted from capital registration tax on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds €450,000;
- registration of the assets of the combined companies with the land registry incurs €300 in fixed charges payable to the registrar agent. The above actions are fully exempted from other duties, fees or charges;
- a capital registration tax exemption is provided for business combinations defined under Legislative Decree 1297/1972. In particular, the agreement on merger or transformation or transfer of assets of the combined companies or any other act or agreement related to the transfer or contribution of assets or liabilities or rights in rem or other obligations, the decisions of the competent bodies of the companies, as well as any registration in the Government Gazette, is exempted from capital registration tax on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds €450,000; and
- a capital registration tax exemption is provided for business combinations defined under the ITC. The agreement on merger or transformation or the transfer of assets of the combined companies or any other action or agreement related to the transfer or contribution of assets or liabilities or rights in rem or other obligations, the decisions of the competent bodies of the companies as well as any registration with the General Commercial Registry, performed under articles 52 to 55 of the ITC is exempted from capital registration tax on condition that the turnover of the new company (excluding transactions between the combined companies) is equal to or exceeds €450,000.

No ministerial circular has been issued up to now for the implementation of Law 4935/2022.

Law stated - 12 August 2024

Migration of residence

Is it possible to migrate the residence of the acquisition company or target company from your jurisdiction without tax consequences?

The transfer of a company's seat requires that the latter does not enter the stage of dissolution and liquidation, but is transferred to another jurisdiction. In other words, it changes nationality without ceasing to exist. This possibility is especially beneficial when the partners or shareholders of a company wish to obtain presence in another EU member state without following the typical – and possibly time-consuming – process of dissolving and liquidating the existing company and setting up a new company in the country of destination. Sometimes this solution is also preferred for tax purposes, particularly in cases where the

company wishes to further pursue its activity in a member state with a more favourable regime.

Greek law provides in principle for the possibility of transferring the seat of a Greek company only for the corporate form of the private company to another state, but does not provide for the opposite (ie, the transfer of a company seat from another state to Greece). In the absence of a legislative provision, the question arises as to both the legality of this alternative and the procedure to be followed. However, the establishment and operation of commercial companies falls within the narrow core of the freedom of establishment provided for in EU law. In this context, the Greek General Commercial Registry has stated that it cannot refuse the transfer of company seats from an EU member state to Greece.

EU member states cannot impose restrictions on the free establishment of companies in their territory. The Court of Justice of the European Union has affirmed the position that the transfer of seat is permissible (see, among others, ***Cartesio*** (Case C-210/06), where a Hungarian company had its headquarters transferred to Italy, and ***Daily Mail*** (Case C-81/87), where a British company wished to have its seat transferred to the Netherlands for tax purposes). In fact, the court affirmed that the imposition of restrictions on this possibility may only be justified for imperative reasons of public interest. Such reasons may be, for instance, the prevention of harm to the interests of creditors and employees (see ***Polbud*** (Case C-106/16)).

However, although the transfer of seat as a change of nationality of a company appears to be established in EU law, it is up to the state of departure and the state of destination to regulate the process through which the transfer takes place, which creates a relative rigidity in completing the transfer of seat.

This lack of appropriate legal tools leading to fragmentation and legal uncertainty is now covered by Directive (EU) 2019/2121 on corporate transformations, transposed into domestic legislation by way of Law No. 5055/2023 (Government Gazette Bulletin A 161/29.92023). It regulates, among others, the cross-border conversion, according to which a company is converted to a legal form of the state of destination, transferring at least its registered office to the member state of destination and at the same time retaining its legal personality. In essence, a company will be able to have its registered office transferred to a member state, while being converted to an arrangement of the relevant legislation of the state of destination. The Directive seeks to crystallise the fundamental principle of freedom of establishment and to resolve an issue that has so far remained unregulated and for which fragmentary solutions are provided by the competent national authorities.

With regard to the tax implications that may arise from the transfer of the residence of a legal entity from Greece to another jurisdiction, the ITC, as amended and in force, provides for the imposition of an exit tax.

In particular, Greece incorporated the provisions of Directive 2016/1164/EU (Anti-Tax Avoidance Directive) regarding exit tax liability into domestic legislation.

The exit tax liability may arise in cases where a legal entity or branch transfers its:

- residence;
- activities; or
- assets to an EU or non-EU country.

Greece does not have the right to tax the transferred assets because of such transfer. The tax basis (gain) is the difference between the market value of the assets and their value for tax purposes. Such gain is subject to income tax at the rate applicable in the tax year of the exit. The market value may be assessed by:

- independent valuers;
- certified auditors; and
- on the basis of the book value or transfer pricing principles.

Taxpayers that transfer their assets to EU or EEA countries have the right to pay the respective exit tax in five instalments. However, the Greek state may request a guarantee for the deferral of the tax payment. Moreover, tax returns should be filed with the tax authorities at least three days before the exit.

If Greece is the recipient country, the taxpayer will have to accept the value of the assets as assessed by the country of origin.

Law stated - 12 August 2024

Interest and dividend payments

Are interest and dividend payments made out of your jurisdiction subject to withholding taxes and, if so, at what rates? Are there domestic exemptions from these withholdings or are they treaty-dependent?

Tax is withheld in Greece on payments effected to foreign tax residents according to the following rates:

- dividends: 5 per cent; and
- interest: 15 per cent.

The rates in the double taxation treaties concluded between Greece and other jurisdictions apply where they are lower than the above rates provided under Greek tax law.

With regard to dividends, no withholding tax applies on condition that:

- the receiving legal entity has a participation of at least 10 per cent in the distributing legal entity;
- the minimum holding period is at least 24 months (subject to providing a bank guarantee, in which case the withholding tax does not apply for the interim period up to the completion of 24 months); and
- the receiving legal entity is:
    - included in the forms detailed in Annex I Part A of Directive 2011/96/EU (Parent-Subsidiary Directive), as in force;
    - tax resident in an EU member state according to the legislation of such state and not considered as tax resident in a third country; and
    -

subject, without the option or exemption, to one of the taxes mentioned in Annex I Part B of the Parent-Subsidiary Directive, or to any other tax that may replace them.

A general anti-abuse rule is applicable if the corporate structure aims to avoid the payment of taxes in Greece.

With regard to interest, no withholding tax applies on condition that:

- the receiving legal entity has a participation of at least 25 per cent, on the basis of the value or number, in the share capital, right to profits, or voting rights of the paying taxpayer;
- the minimum shareholding period is at least 24 months (alternatively, a bank guarantee may be provided prior to the completion of the 24-month holding period); and
- the receiving legal entity is:
    - included in the forms detailed in Annex I Part A of Directive 2003/49/EC (Interest and Royalties Directive);
    - tax resident in an EU member state according to the legislation of such state and not considered as tax resident in a third country; and
    - subject, without the option or exemption, to one of the taxes mentioned in Annex I Part B of the Interest and Royalties Directive, or to any other tax that will replace those taxes.

It is clarified that the tax exemption for interest payments between associated enterprises in accordance with the provisions of the Interest and Royalties Directive applies equally for payments between Greek companies.

Law stated - 12 August 2024

Tax-efficient extraction of profits

What other tax-efficient means are adopted for extracting profits from your jurisdiction?

Profits may be extracted from Greece in the form of share capital refund to the shareholder. In particular, on condition that the refunded amount does not exceed the value of the shareholder's contributions to the share capital, no withholding tax will apply. Profits may also be extracted as dividends, in which case withholding tax at the rate of 5 per cent will apply (subject to the favourable provisions of the Parent-Subsidiary Directive or the applicable double tax treaty).

Subject to the tax avoidance rules, profits may also be extracted in the form of interest and royalty payments, in which case withholding tax at the rate of 15 per cent and 20 per cent respectively will apply (subject to the favourable provisions of the Interest and Royalties Directive or the applicable double tax treaty).

For domestic companies, the ITC provides for a tax exemption on condition that the provisions of the Parent-Subsidiary Directive or the provisions of the Interest and Royalties Directive are met.

Law stated - 12 August 2024

DISPOSALS (FROM THE SELLER'S PERSPECTIVE)

Disposal methods

How are disposals most commonly carried out – a disposal of the business assets, the stock in the local company or stock in the foreign holding company?

There is no golden rule for the disposal of interest in a legal entity. The sale of interest in the local company is mainly used in cases where the local legal entity is large or very large. In this case, any capital gain from the disposal of stocks is taxed outside Greece, unless the seller is a Greek legal entity.

On the other hand, for medium and small companies, the holding company, apart from the sale of stock, also examines the disposal of business assets or the disposal of business as a whole. The period for the completion of the disposal, the required administration and tax costs are considered before concluding on the disposal type.

The disposal of stock in a foreign holding company is used mainly in cases where the transfer of stock in a local company or the transfer of business assets may entail tax implications in Greece.

Law stated - 12 August 2024

Disposals of stock

Where the disposal is of stock in the local company by a non-resident company, will gains on disposal be exempt from tax? Might a disposal of stock in a foreign holding company trigger taxes in the local company in your jurisdiction? Are there special rules dealing with the disposal of stock in real-property, energy and natural-resource companies?

In accordance with Law No. 4172/2013 (the Income Tax Code (ITC)), as of 1 January 2020, Greek legal persons are exempt from tax on capital gains deriving from the disposal of shares in legal entities that reside in an EU member state if:

- the Greek legal person that sells the shares holds at least 10 per cent of the investment; and
- the holding period is at least 24 months.

The capital gain is not subject to income tax upon capitalisation or distribution. However, expenses related to the shareholding are not deductible for tax purposes.

Potential losses from share transfers are tax deductible provided that:

- a valuation has been effected by 31 December 2019;
- the losses have been posted in the company's accounting books and were reflected in the statutory financial statements audited by the statutory auditors; and
- they will become final by 31 December 2024.

If the losses are lower or higher than the valuation, then the lower amount of the two will be recognised for tax purposes.

Law stated - 12 August 2024

Mitigating and deferring tax

If a gain is taxable on the disposal either of the shares in the local company or of the business assets by the local company, are there any methods for deferring or mitigating the tax?

In accordance with the ITC, as of 1 January 2020, Greek legal persons are exempt from tax on capital gains deriving from the disposal of shares in legal entities that reside in an EU member state if:

- the Greek legal person that sells shares holds at least 10 per cent of the investment; and
- the holding period is at least 24 months.

The capital gain is not subject to income tax upon capitalisation or distribution. However, expenses related to the shareholding are not deductible for tax purposes.

Potential losses from share transfers are tax deductible provided that:

- valuation has been effected by 31 December 2019;
- the losses have been posted in the company's accounting books and were reflected in the statutory financial statements audited by the statutory auditors; and
- they will become final by 31 December 2024.

If the losses are lower or higher than the valuation, then the lower amount of the two will be recognised for tax purposes.

Law stated - 12 August 2024

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics relating to tax on inbound investment?

Article 28 of Law No. 5024/2023 on Capital Gains Tax provides for a time deferral on capital gains tax in the event of contributions of Greek or foreign securities to cover or increase

the capital of Greek or non-Greek legal entities or persons in exchange for securities of the recipient.

The capital gains tax time deferral applies on condition that:

- the contributor of the securities is a natural person and the sole shareholder of the recipient;
- the recipient is established in a tax cooperative jurisdiction (not necessarily in the European Union); and
- the scope of its business relates to commercial, production or agricultural activities or the provision of services.

Capital gains tax is imposed at the time of transfer of the securities by the transferor, and the acquisition value is considered the initial value of the securities transferred.

From the 2023 tax year onwards, the above contributions of securities are not considered to be business transactions for income tax purposes.

Law stated - 12 August 2024