# Tax on Inbound Investment

*Contributing editors*
**Peter Maher and Lew Steinberg**

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*Contributing editors*

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# Greece

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**Acquisitions (from the buyer's perspective)**

**1 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?**

We distinguish between these more common forms of acquisition:
- transfer of shares or parts in a company and in particular:
  - company shares not listed on a stock exchange;
  - shares and other transferable securities listed on a stock exchange; and
  - equity stakes or parts in partnerships.

Transfer also includes the contribution of such securities in order to subscribe or increase a company's capital, that is, transfer of an entire business, in other words transfer of all shares, equity stakes or parts in it.

These forms of acquisition may be analysed as follows.

**Transfer of shares or parts in a company**

***Company shares not listed on a stock exchange (either domestic or non-domestic)***

Capital gain arising upon the transfer by individuals of company shares not listed in a stock exchange that take place from 1 January 2014 onwards are taxed at a rate of 15 per cent. In the case of Greek legal entities, such capital gains are treated as income from business activities and are subject to corporate income tax. Capital gain is defined as the difference between the acquisition price the taxpayer paid and the consideration upon the transfer. Any expenses associated directly with the purchase or sale of securities are included in the acquisition price and sale price. Sale price is the price the contracting parties have declared that is recorded in the transfer agreement, which cannot be below the value of the equity of the company issuing the securities being transferred, at the time of transfer. Acquisition price includes the price computed based on the value of the equity of the company issuing the securities being transferred, at the time of acquisition of the securities, or the price recorded in the transfer agreement at the time the securities are transferred, whichever is lower.

The equity of companies that keep double-entry accounting books means the equity shown in the last monthly trial balance for the company before the date of transfer. Any entries made by the date of transfer in those accounts are taken into account. To calculate the acquisition price in these cases, regard is paid to company transactions up to the time of the transfer, such as any share capital increases or decreases, irrespective of whether they change the number or value of securities, etc. It is self-evident that where shares are offered gratis as part of a share capital increase by capitalising reserves (premium on capital stock reserve, taxed profits reserve, etc), those shares will affect the acquisition price of the shares and consequently the goodwill generated when shares in that company are sold.

The equity of companies that keep single-entry accounting books is the capital shown in the articles of association from the time the company was incorporated and any amendments to those articles of association. Regard is also paid to the purchase of any fixed assets, subsidies and grants that have not been included in the acquisition cost of fixed assets and the coverage of other costs, and other items demonstrating an increase in capital for which the company has not amended its articles of association. In the case of companies and other entities that do not keep accounting books (such as NGOs), the acquisition cost will be deemed to be zero if it cannot be determined due to the absence of official invoices, etc. These matters are subject to audit by the competent auditing authority in all events. If a natural person has engaged in successive acquisitions of securities and then transferred all or part of them, the acquisition price of the securities sold will be deemed to be the average acquisition price based on the total acquisition cost of the securities divided by the total quantity. Where the transferred securities have been acquired as part of an inheritance, donation or parental grant, the acquisition price of those securities will be the tax paid for acquiring them since all expenses, including that tax, associated with purchasing securities and acquisition of securities in general are included in the acquisition price of securities.

Where the goodwill calculations generate a negative figure, that negative figure will be carried forward for the next five years and only offset against future goodwill gains generated exclusively from the transfer of those securities. In order to calculate the final result (profit or loss) from such transfers, regard is paid to the algebraic sum of the transactions that have taken place in the same tax year for all categories of securities. Note that where the result of securities transfers is a loss, the loss will be recognised for tax purposes unless it is a loss from the transfer of securities of foreign origin, in which case it is not recognised, but may be offset against income generated from other member states of the EU or EEA.

**Company shares listed in a stock exchange (either domestic or non-domestic)**

Note that capital gains realised by individuals upon the transfer of shares and other transferable securities listed in a stock exchange (whether the Athens Exchange or a foreign exchange) from 1 January 2014 onwards is considered to be income from the goodwill from transfer of capital and is taxed at a rate of 15 per cent, only if the transferor (an individual who is tax resident in Greece) participates in the share capital of the company with a holding of at least 0.5 per cent and the transfer relates to securities acquired after 1 January 2009. In other words, it exempts cases from goodwill tax that relate to:
- securities acquired before 1 January 2009, irrespective of the transferor's holding in the company's share capital; and
- securities acquired after 1 January 2009 where the transferor's holding in the company's share capital is below 0.5 per cent.

Since certain shareholders with a holding of 0.5 per cent or more in the share capital of a société anonyme (at the time of sale) may have acquired shares in the company both before and after 1 January 2009, it has been accepted that if those shares are sold, the first in first out (FIFO) method will apply so that after the elapse of a certain time period the shares that had been acquired by that critical time period will have been eliminated and the law will apply in all cases from that point on.

To that end, a list must be requested from securities companies that must be held by the natural person and submitted in the case of an audit. In the case of Greek legal entities, capital gains realised from transferring these securities will be deemed to be income from business activities and will be subject to income tax for legal entities, as appropriate. The acquisition and sale prices of securities that are traded on a



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regulated market or multilateral trading facility, including the Athens Exchange's Alternative Market (such as shares, Greek Treasury bonds, derivative financial products) are set by the transaction documentation issued by securities companies, credit institutions or any operator who executes transactions, on the date the transaction is settled.

Expenses associated directly with the purchase or sale of securities are included in the acquisition or sale price. Consequently, commission charged by securities companies, HELEX transfer fees, ATHEX fees, stock exchange transaction tax at 2 per mille, etc, affect the final result generated by the sale of securities. Note that the provisions of article 9(2) of Law No. 2579/1998 and article 27(2) of Law No. 2703/1999, which impose a 0.2 per cent tax on the value of shares that are sold, are applicable.

**Company 'parts' in other types of companies**

The points above on the transfer of shares in companies not listed on a stock exchange apply to transfers of equity stakes or parts in limited liability companies or in partnerships etc, from 1 January 2014 onwards. Shares include equity stakes in general partnerships that function like shares, provided they are presented like shares in accordance with article 284(1) of Law No. 4072/2012 and each stake in the partnership corresponds to one or more shares.

Although not expressly specified in the law, the transfer of equity stakes or parts in companies also includes income from the goodwill from transfers of holdings in joint ventures given that, under the provisions of article 293(3) of Law No. 4072/2012, if a joint venture carries on commercial activity the provisions on limited partnerships apply to it by analogy. Moreover, those same provisions also include the transfer of equity stakes in limited liability companies, private companies, social enterprises and civil associations.

**Transfer of a business as a 'going concern'**

These points also apply to the transfer of entire businesses, in other words the transfer of all shares and equity stakes or parts in it, as well as the transfer of a sole-trader enterprise or branch thereof from 1 January 2014 onwards. If a sole-trader enterprise that keeps single-entry accounting books is being transferred, the sale price and acquisition price will be the price stated in the transfer agreement. If the acquisition price cannot be computed, it will be deemed to be zero. More specifically, when the tax authority is carrying out an audit, the assets of a sole-trader enterprise in the year of the transfer and in the year operations commenced, such as the business' fixed assets, inventories, receivables, liabilities, etc, help determine the sale and acquisition value of the business being transferred. Capital gains arising upon the transfer of a sole-trader enterprise do not relate to the sale of fixed assets and merchandise per se to the new owner, since they are gross income of the transferor in all events. It is self-evident that in the case of depreciated business assets, the entire sale price is taxable revenue from business activity.

**2 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 valuation of the assets of a target company may be subjective depending from whose perspective it is viewed, namely the seller, the buyer or the tax authorities, whose interests may all be at odds.

The most usual method of objective valuation, followed often in the most serious business transactions, is valuation by neutral certified auditors. Goodwill and other intangible assets are subject to wide interpretation and looser methods of valuation because of their nature.

The case is somewhat different when, instead of cash, we deal with a contribution in kind, in consideration of shares issued after an increase in the share capital. Again, the tax authorities will be interested in an increased value of the assets (tangible or intangible) contributed. Apart from the contracting parties, there is the supervising authority (the Ministry of Development, formerly the Ministry of Commerce) that, being the guardian of third-party creditors of the company, has a tendency for a lower (or at least objective) valuation of the assets to be contributed. Until very recently, contribution in kind upon the formation or the increase of share capital of a société anonyme (SA) company was only conducted by the supervising authority, a three-member committee consisting of two employees of the Ministry of Development and one representative of the Chamber of Commerce (representing the interests of the businesses). This is the 'article 9 committee', named after the relevant article of SA Companies Law No. 2190/1920.

According to Law No. 3604/2007, article 14, which amended article 9, the founders of SA companies, or their board of directors, can choose to appoint certified auditors instead of an article 9 committee. Another deviation exists in the case of restructuring by virtue of Law No. 2166/1993, which gives tax and other incentives for restructurings that lead to the formation of bigger business entities. According to that law, there is no need to evaluate the assets of companies being merged or otherwise restructured by application of that Law, because the whole process of restructuring is based on the figures that appear on the balance sheets of the companies involved. The possible avoidance of valuation that law grants is considered a great advantage, and one of the most serious reasons for its adoption by companies following a restructuring process. There is, however, a disadvantage in that, contrary to the similar tax incentive in LD 1297/1972, there is no room for appreciation of assets. LD 1297/1972 not only provides for the appreciation but also allows the postponement of its taxation. Despite that advantage, the procedure of LD 1297/1972, which requires valuation, is often abandoned because of the delays involved.

Furthermore, a purchaser gets a step-up in basis in the business assets of the target company in case of any restructuring (ie, a merger, a division or split-up, a transfer of assets or spin-off against company shares or an exchange of shares), either a cross-border one under Directive 2009/133/EC as currently in force or a domestic one under the new Income Tax Code (Law No. 4172/2013 as currently in force). Articles 52–55 thereof both transpose Directive 2009/133/EC in the Greek legislation and regulate domestic restructurings. In particular, although no official (ie, by the Ministry of Finance) guidance on the interpretation and implementation of these provisions has been issued yet, it ensues from their wording that a calculation of capital gains, albeit exempted from taxation, is carried out anyway by reference to the difference between the market value and the book value of the assets transferred, which gives a step-up in basis in the business assets .

According to the new Income Tax Code, goodwill and other intangibles must be depreciated at 10 per cent annually (with the exception of software, which must be depreciated at 20 per cent annually). Said depreciation rate (10 per cent) is applicable unless the initial agreement provides for a different economic life (ie, other than 10 years), in which case the depreciation rate is equal to 1 per cent over the years of economic life. Furthermore, as per the law, in case of any of the above restructurings the receiving company must carry out the depreciation of the transferred assets in accordance with the rules applicable to the transferring company had the transfer of assets not been made. Therefore, in the event of purchase of those assets and the purchase of stock in a company owning those assets, the receiving company will acquire the transferred assets at a depreciated value and will carry out the depreciation in the future in accordance with the rules applicable to the transferring company had the transfer of assets not been made.

**3 Domicile of acquisition company**

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

Under the recent Ministry of Finance Decision No. 1032/2015 relating to legal persons and legal entities not tax resident in Greece, given that income from business activities generated in Greece is only income acquired via a permanent establishment in the country, it is clear that capital gains arising from the transfer of securities that such entities acquired will only be taxed in Greece when they have a permanent establishment in Greece and the product of the transfer can be attributed to the permanent establishment, otherwise they are exempt from capital gains tax. Consequently, if such persons are granted an exemption, there is no need to refer to DTTs, and there is also no need to submit a zero tax return. Note that the concept of 'permanent establishment' in Greece for foreign legal persons also includes foreign legal persons or legal entities that operate on a not-for-profit basis and carry on activity in Greece via an office, branch, etc (such as foreign educational institutions operating in Greece).



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On the other hand, one should take into account Law No. 2166/1993 (mentioned above), according to which, as already analysed, in case of a restructuring subject to its provisions (ie, a domestic restructuring) the assets of the companies involved do not have to be evaluated because the whole process of restructuring is based on the figures appearing on their balance sheets. This is considered to be a significant incentive to opt for the restructuring process specified by that law. At the same time, one could opt for Incentive LD 1297/1972 (which is applicable to domestic restructurings), where the transferred assets are appreciated but the taxation of any capital gains arising therefrom is deferred.

### 4 Company mergers and share exchanges

**Are company mergers or share exchanges common forms of acquisition?**

There is no clear trend and no form of acquisition is significantly more common than another, because the preferred method varies according to the details of each particular case. It should be remembered that the Greek capital market is still in the process of defining its identity, being based to a large extent on family-driven corporations. That said, share exchanges are not particularly popular at present. Under article 573 of the Civil Code, an agreement for the exchange of goods is treated as if it were two independent sale-purchase agreements, with all the relating tax and other implications. Recently, by virtue of Law No. 3517/2006 article 2(3), a share exchange was statutorily defined as:

> *[...] the act by which a company acquires participation in the share capital of another company at a percentage that it gives to the acquiring company the majority of voting rights of the other company or, having already acquired such a participation, it further acquires a subsequent participation and, in consideration for the shares acquired, it gives to the shareholders of the second company share titles to the first (acquiring) company and possibly also cash, which latter may not exceed in amount the 10 per cent of the nominal value of such shares, and in case there is no such nominal value, it may not exceed 10 per cent of the book value of such shares.*

Tax-neutral mergers and exchanges of shares (cross-border or domestic ones) are now explicitly provided for by the new Income Tax Code. Article 42, paragraph 7 of the new Income Tax Code states that points made above relating to the transfer of securities also apply to goodwill arising from the exchange of shares or mergers. However, where a company (which owns securities (equity stakes or shares) in a Greek company) is absorbed by another company, the merger does not entail any goodwill taxation at the time of the merger.

### 5 Tax benefits in issuing stock

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

It is possible that assets used in a business that are capable of being evaluated in money terms be contributed to an existing SA company, which may issue shares in consideration for those assets, to the increase of its share capital equal to their value. For the said SA company, the mere fact that it issues shares as opposed to paying cash is an advantage from a purely business perspective. Regarding tax considerations, such a contribution will not be subject to article 13 of the Income Tax Code (see question 1) because it does not constitute a sale but an acquisition of a participation in a business. Under the recent Ministry of Finance decision referred to above, the contribution of securities to subscribe capital or increase a company's capital is treated as a transfer of securities, so the points made above apply. Such a tax would not be payable if cash was the consideration for the acquisition of those business assets.

Furthermore, as per the new Income Tax Code (Law No. 4172/2013 article 52), the receiving company may carry forward the losses of the transferring company related to the transferred assets or sector under the same terms that would be applicable to the transferring company had the transfer not taken place.

In addition, the receiving company may carry out the depreciations in accordance with the same rules that would be applicable to the transferring company had the transfer of assets not taken place.

Finally, the receiving company may assume any reserves and provisions of the transferring company relating to the transferred assets or sector, and enjoy tax exemptions under the same terms that would be applicable to the transferring company had the transfer of assets not taken place. Any rights and obligations in connection with said reserves and provisions are assumed by the receiving company.

### 6 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?**

According to Law No. 2859/2000 (the VAT Code) article 5(4), transfer of business assets or businesses as a whole, branches of businesses whether gratuitously or for consideration or as contribution to the share capital of an existing or newly formed legal entity are not considered as delivery of goods and so are not subject to VAT. The acquirer is considered for the purposes of VAT as a successor in all rights and liabilities of the transferring person. The above do not apply if any of the contracting parties is exempt from VAT. According to article 15 of the Stamp Duty Code, every contract between business persons, between a business person and a commercial company or between commercial companies that relates exclusively to the business exercised by them is subject to stamp duty at 2.4 per cent, which is payable upon drafting of the contract. It is irrelevant whether the consideration for such a contract has been paid or not. Transfers of shares are not subject to any other duty. In view of the above, the transfer of business assets or of businesses as a whole falls without the scope of VAT and therefore falls within the scope of stamp duty, in principle subject to stamp duty at a rate of 2.4 per cent. This has been confirmed through Ministerial Circular 1103/1990. In principle, the issuer of the invoice is accountable for the duty, whereas if no invoices are issued (eg, in case of the transfer of business as a whole and not for the transfer of each individual business asset), both counterparties are in principle accountable for the duty. The transfer of business in the context of a restructuring falls outside the scope of stamp duty and is subject instead to capital duty, whereas the transfer of each business asset falls within the scope of stamp duty (subject to the exemptions provided for by Law No. 2166/1993 or LD 1297/1972).

The sale of shares falls within the scope of VAT, therefore it falls outside the scope of stamp duty. Furthermore, although it falls within the scope of VAT, it is exempted from VAT pursuant to article 22 paragraph 1 of the VAT Code.

The sale of listed shares is subject to the 0.2 per cent transaction duty, as per above (see question 1).

### 7 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 (NOLs) of the acquiring company (only) survive and may be set off against profits of the same, according to the provisions of the Income Tax Code (may be carried forward for five tax years). This is provided in article 2 of Law No. 2166/1993, as amended by article 322, paragraph 3 of Law No. 4072/2012.

The survival of NOLs is also dealt with by the new Income Tax Code (Law No. 4172/2013 articles 52 and 54), dealing with intra-community deals. This provides that a target company's NOLs of previous years that are capable of being carried forward according to the general income tax provisions may be carried forward and set off against future profits of an acquiring company's permanent establishment in Greece.

Article 20, paragraph 2 of recent Law No. 3756/2009 states that the loss incurred by an acquiring affiliate from the cancellation of the shares it held in the target (mother) is not recognised for deduction from its taxable income (applicable for unified balance sheets after 1 January 2008).

In case of a transfer of assets in exchange for the transfer of securities representing the capital of the company receiving the assets, article 52 of the new Income Tax Code stipulates that the transferring company must keep the securities acquired in exchange for the transfer of assets for a time period of at least three years unless it substantiates that the



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transfer of securities does not have tax evasion or tax avoidance as a principal objective.

Furthermore, as per the general clause of article 56 of the new Income Tax Code, the benefits provided for by articles 52–54 are wholly or partially withdrawn where it appears that one of the operations referred to in those provisions has tax evasion or tax avoidance as a principal objective. The fact that the operation is not carried out for valid commercial reasons, such as the restructuring or rationalisation of the activities of the companies participating in the operation, may constitute a presumption that the operation has tax evasion or tax avoidance as a principal objective.

Finally, in certain types of restructuring under Incentive LD 1297/1972 the benefits provided for are ipso jure withdrawn if more than 75 per cent of the acquiring company's shares are transferred within a time period of five years of the date of completion of the restructuring. On the contrary, in case of a restructuring under Incentive Law No. 2166/1993, such limitation is not provided for by the law.

**Bankrupt companies**

By virtue of article 133 of the Bankruptcy Code, 'every contract and every transaction which takes place according to articles 135–145 of this code, the transfers of property thereof, the registrations in the public registries and every other necessary act are exempt from every tax, stamp duty or other right in favour of the state or third parties, with the exception of VAT which remains payable. The above mentioned exceptions are automatic, without the need to submit any application before the competent tax office.' The provisions of articles 135–145 provide for the transfer of a bankrupt company's business 'as a going concern'.

### 8 Interest relief

**Does an acquisition company get interest relief for borrowings to acquire the target? Are there restrictions on deductibility where the lender is foreign, a related party, or both? Can withholding taxes on interest payments be easily avoided? Is debt pushdown easily achieved? In particular, are there capitalisation rules that prevent the pushdown of excessive debt?**

Loans from related entities may also trigger other tax complications, such as transfer-pricing issues. There are also company law-related restrictions on loans between companies and their directors, etc. Withholding taxes exist on interest paid to individuals and non-domestic tax resident legal entities (see elsewhere hereunder). As far as non-domestic tax residents are concerned, any double tax treaty provisions as well as the Interest-Royalties Directive (2003/49/EC), if applicable, should be examined for possible exemptions or differences in tax rates. Other legal methods for avoiding tax may be available in individual cases. Debt pushdown may be achieved in the form of a transfer of loan from the target company to the acquiring company, subject to the consent of the lender and to the imposition of stamp duty at 2.4 per cent.

As per the deductibility or non-deductibility rules of the new Income Tax Code, interest from loans received by a business entity from third parties, except for bank loans, interbank loans and bond loans issued by societes anonymes, is not deductible from gross income so long as it exceeds the interest that would be payable if the applicable interest rate was equal to the interest rate applicable to current account loans with non-financial business entities mentioned in the Bulletin of Conjunctural Indicators issued by the Bank of Greece for the closest time period prior to the borrowing date.

Furthermore, as per the new thin capitalisation rules, interest is also not deductible so long as the excess amount of interest expenses (interest payable) as compared to the amount of interest income (interest receivable) exceeds:

- 60 per cent of taxable earnings before interest, taxes, depreciation and amortisation (EBITDA) from 1 January 2014 onwards;
- 50 per cent of taxable EBITDA from 1 January 2015 onwards;
- 40 per cent of taxable EBITDA from 1 January 2016 onwards; and
- 30 per cent of taxable EBITDA from 1 January 2017 onwards.

Notwithstanding the above, interest expenses (ie, extra interest expenses exceeding 30 per cent of EBITDA) are fully recognised as deductible business expenses, provided the amount of net interest expenses entered in the accounting books does not exceed €3 million a year. That limit of €3 million applies to interest expenses incurred in tax years commencing from 1 January 2016 onwards, while in the transitional period (ie, in tax years commencing from 1 January 2014 to 31 December 2015) the limit for interest expenses is €5 million.

In addition, any amount paid to an individual or legal entity being a tax resident in a non-cooperative country or being subject to a preferential tax regime as further determined in the new Income Tax Code, is not deductible unless the taxpayer or paying entity substantiates that said amount relates to actual transactions, carried out in the ordinary course of business and not resulting in the transfer of profits, income or capital outside the Greek jurisdiction with the aim of tax avoidance or tax evasion. This rule is not applicable if the amount is paid to a tax resident in an EU or EEA member state, provided that there is a legal basis for information exchange between Greece and said member state.

Finally, it should be noted that as per the new general anti-avoidance rule introduced into the Greek tax law through Law No. 4174/2013, the tax authority may disregard any artificial arrangement or series of arrangements aiming at tax avoidance and leading to a tax benefit. An arrangement is deemed to be artificial if it lacks commercial substance. In order to decide whether the arrangement or the series of arrangements has led to a tax benefit, the tax authority compares the amount of tax due by the taxpayer after acceptance of such arrangements with the amount of tax that would be due by this taxpayer under the same circumstances but for such arrangements.

### 9 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?**

Apart from conducting due diligence, protection for the acquiring company is sought by inserting contractual clauses (guarantee clauses) to the effect that the seller will be responsible for:

- any hidden debt or liability that does not appear in the accounting books of the company;
- tax audits that may be conducted after the acquisition on tax years prior to the acquisition; and
- generally, any liability or debt that refers to the time prior to the acquisition.

From a direct tax (income tax) perspective, any payments made following a claim under a warranty or indemnity are not treated as income and therefore they do not constitute taxable items, because they only constitute payments to compensate a damage or loss suffered (cash flows), thus only a cash flow. Therefore, they fall outside the scope of income tax, thus neither being subject to withholding tax (WHT) nor being taxable in the hands of the recipient. On the other hand, from an indirect tax (VAT, stamp duty) perspective, such payments do not fall within the scope of VAT because they do not constitute a consideration for a service rendered, therefore they fall within the scope of stamp duty, which shall be due upon payment at a rate of 2.4 per cent.

## Post-acquisition planning

### 10 Restructuring

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

Post-acquisition planning depends on the structure that has been finalised, the size of its capital and the identity and diversification of its shareholders. It also depends on whether the main aim is the reinvestment or the distribution of profits. There is no typical trend apart from the common tactic to form holding companies in low-tax jurisdictions within the EU. A general tax-planning tool used is the tax-free reserves that minimise the tax burden and increase the production capacity of the company. However, as per article 72, paragraph 13 of the new Income Tax Code companies finalising their balance sheets from 31 December 2014 onwards may not form and keep tax-free reserve accounts anymore except for those provided for by investment laws or by any other special law.



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**11 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?**

Tax-neutral spin-offs are provided only by virtue of Law No. 2166/1993 or LD 1297/1972. However, the transfer of an NOL of a spun-off business is not possible due to the fact that NOLs are treated as losses of the company as a whole, and may not be isolated to the spun-off business. It is useful to note, as a minor exception to the non-divisibility of NOLs within the same company, that the NOLs of the exporting operation (branch) of a company may only be carried forward to be set off against NOLs of the same branch and not against the total profits of the company. A spin-off under Law No. 2166/1993 and LD 1297/1972 is exempted from transfer taxes.

A tax-neutral spin-off of a business may also be carried out in case of a transfer of assets (spin-off of business) in exchange for the transfer of securities representing the capital of the company receiving the assets in accordance with article 52 of the new Income Tax Code (Law No. 4172/2013) – either a cross-border one (in this regard, as already stated elsewhere, the provision also transposes Directive 2009/133/EC as currently in force) or a domestic one. In particular, as per the aforementioned provision, any capital gains calculated by reference to the difference between the market value of the transferred assets, sector or business and their book value are exempted from taxation. Moreover, as per the same provision, in such case the receiving company may carry forward the losses of the transferring company related to the transferred assets, sector or business under the same terms that would be applicable to the transferring company had the transfer not taken place. However, it does not ensue from the wording of the law that the transfer of assets is exempted from transfer taxes. Therefore, a spin-off exempted from transfer taxes is only provided for by Law No. 2166/1993 or LD 1297/1972.

**12 Migration of residence**

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

Article 6 of Law No. 2190/1920 defines a residence of a Greek SA company only as a city or municipality in Greece. The only instance where transfer of an SA company's residence is provided is by virtue of article 29(3) of the same law. The latter sets only the increased quorum requirements for adopting a resolution for migration, but no other consequences are mentioned in the law because, following migration, the company shall no longer be subject to Greek laws. Law No. 4172/2013, which adopted Directive 2009/133/EC within the Greek legal system, allows transfer of seat of European companies and European cooperatives from one member state to another.

In case of emigration, the following should be taken into account. A legal entity is considered as a tax resident in Greece either if:

- it has been incorporated or established in accordance with the Greek law;
- it has its registered seat in Greece; or
- during any period of time within a tax year the place of effective management is in Greece.

In order to decide whether the place of effective management is in Greece, one should be based on the factual background and the specific circumstances of each individual case. In this regard, the following criteria must be indicatively taken into account:

- the place where the everyday management is exercised;
- the place where the strategic decisions are made;
- the place where the annual GSM is held;
- the place where the books and records are kept;
- the place where the company's board of directors' or any other executive body's meetings are held; and
- the place of residence of the board of directors or any other executive body's members. The place of residence of the majority of the shareholders may also be taken into account, though only in conjunction with the above.

**Update and trends**

Although there are no significant changes in the taxation of inbound investment per se, the recent changes in the corporate tax rates (increased from 26 to 29 per cent) and the taxation of dividends (increased from 10 to 15 per cent) are worth noting. Apart from the aforementioned, the social security contributions have been recetly increased drastically in proportion to the income of taxpayers. These significant burdens have already a great impact on Greek businesses. It is believed that bankruptcies will increase and the market will soon be dominated by bigger companies who can cope with the increased need for cash flow. Other than that, as a positive remark, it may be said that firstly the corporate tax environment in Greece tends to stabilise and secondly the tax rates can now only get better.

Further to the above, it should be noted that tax benefits provided for by investment laws (formation of tax-free reserves, tax exemptions, etc) may be subject to the condition that the beneficiary does not move its residence to another jurisdiction.

**13 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?**

Interest payments are subject to 15 per cent WHT, whereas dividend payments are subject to 10 per cent WHT. Said WHTs exhaust income tax liability if the recipient is an individual or a non-resident legal entity. These are subject to the Parent-Subsidiary Directive (2011/96/EU) and the Interest-Royalties Directive (2003/49/EC) respectively, as well as to the pertinent double tax conventions (DTCs) currently in force. Intragroup dividend payments are exempted from tax, including WHT, on certain conditions. Interest from Greek government bonds and T-bills is not subject to WHT if the recipient is an individual or a non-resident legal entity. Interest on loans granted by credit institutions, including default interest, is not subject to WHT.

**14 Tax-efficient extraction of profits**

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

Favourable holding regimes, outsourcing of activities, know-how, licences, intellectual property rights and management fees are often adopted, as well as transactions with controlled companies.

All of the above can potentially be challenged by the tax authorities and there is a considerable degree of uncertainty about how they will be treated by a tax audit. In this regard, it should be noted that a general anti-avoidance rule was introduced for the first time into the Greek tax law through Law No. 4174/2013. According to this rule, the tax authority may disregard any artificial arrangement or series of arrangements aiming at tax avoidance and leading to a tax benefit. An arrangement is deemed to be artificial if it lacks commercial substance. In order to decide whether the arrangement or the series of arrangements has led to a tax benefit, the tax authority compares the amount of tax due by the taxpayer after acceptance of such arrangements with the amount of tax that would be due by this taxpayer under the same circumstances but for such arrangements (see question 8).

## Disposals (from the seller's perspective)

**15 Disposals**

**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?**

All of the above are applicable. The most straightforward way is the sale of a controlling majority share capital.



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### 16 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? Are there special rules dealing with the disposal of stock in real property, energy and natural resource companies?**

Yes, if a DTC in force is applicable. Otherwise, please refer to our analysis in question 1. Special rules apply to the sale of shares of a real estate investment company; it is subject to a special tax regime with a minimum share capital of €25 million. In particular, capital gains from the sale of said shares by an individual prior to their listing on an organised market are exempted from income tax, whereas if the seller is a legal entity, capital gains are not exempted from tax, subject to a DTC in force. Furthermore, capital gains from the sale of said shares by an individual subsequent to their listing on an organised market are not exempted from income tax if the seller participates in the Real Estate Investment Companies' share capital by at least 0.5 per cent (otherwise, exemption), whereas if the seller is a legal entity, capital gains are not exempted from tax, subject to a DTC in force.

No special rules apply to the disposal of shares of energy and natural resource companies (subject to possible special tax exemptions provided for by relevant government concession agreements ratified by the Greek parliament).

### 17 Avoiding 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 avoiding the tax?**

No. As far as tax on the transfer of shares is concerned, the law obliges SA companies not to recognise anyone as a shareholder without submission of documents proving that they acquired the shares and proof that the relevant tax has been paid. Moreover, in the latter case, the law holds the contracting buyer co-liable for the payment of tax. Restructuring of businesses according to Incentive LD 1297/1972 is favoured by postponement of income taxation on capital appreciation. According to article 2 of LD 1297/1972, any capital appreciation that may occur on a merger or restructuring, subject to the conditions of this law, is not taxed upon restructuring but is registered on special accounts of the new entity until the date of its dissolution, and only then will tax be payable.

Tax on capital gains from the transfer of business assets is also deferred in case of any restructuring (ie, mainly a merger, a division or split-up, a transfer of assets or spin-off against company shares or an exchange of shares) under articles 52–55 of the new Income Tax Code, either a cross-border (under Directive 2009/133/EC as currently in force, which said articles transpose in the Greek legislation) or a domestic one. However, no official guidance on the interpretation and implementation of these provisions has been issued yet. It should be noted that the new law does not provide for the time at which in such case the deferred tax will be due.

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