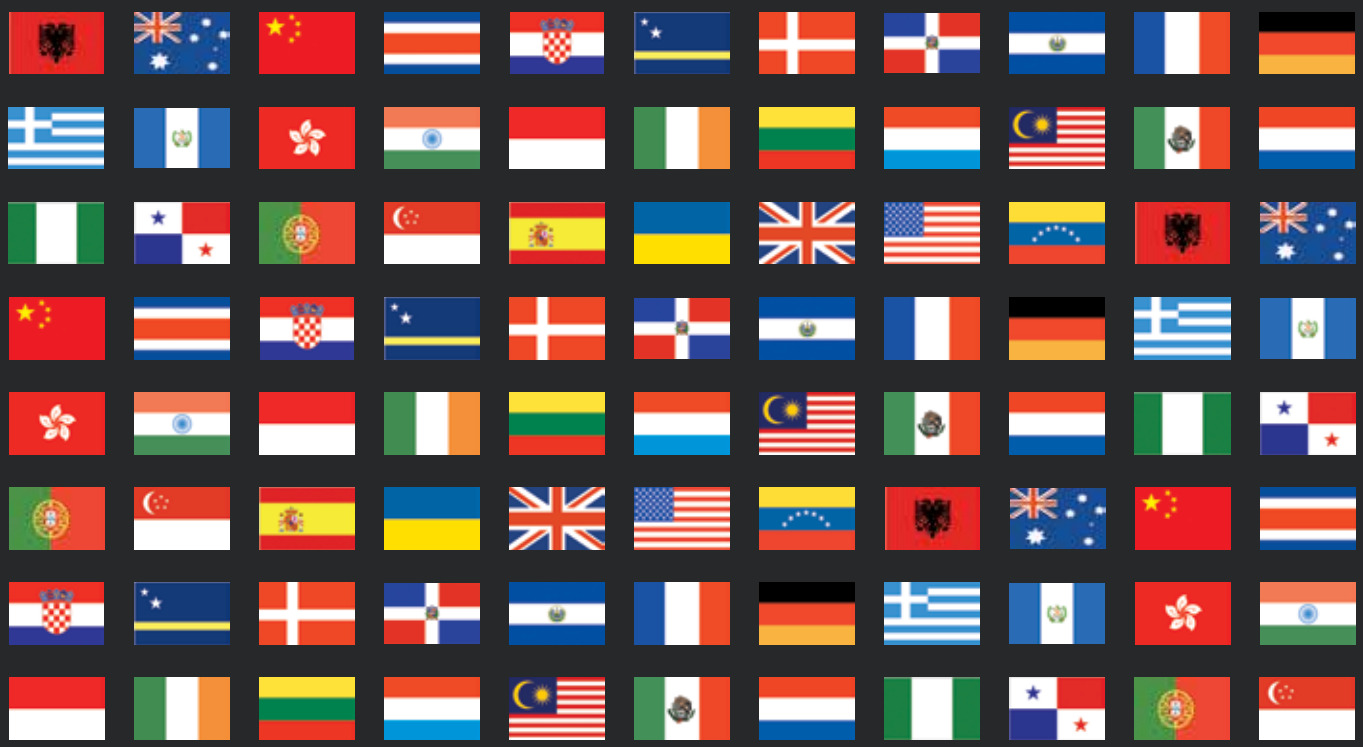
Tax on Inbound Investment

In 31 jurisdictions worldwide

Contributing editors
Peter Maher and Lew Steinberg



2015

GETTING THE DEAL THROUGH

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Tax on Inbound Investment 2015

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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 these more common forms of acquisition:

- transfer of shares or parts in a company, namely:
  - company shares not listed on the Athens stock exchange;
  - transfer of shares that are listed on the stock exchange; and
  - transfer of company 'parts' in other types of companies; and
- transfer of a business as a 'going concern'.

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)

According to the regime which is applicable to transfers of shares carried out from 1 January 2014 onwards, the tax burden amounts to 15 per cent on the capital gains realised from the sale if the seller or transferor is an individual (subject to a pertinent DTC currently in force). Otherwise, said capital gains are subject to corporate income tax under the standard tax regime. The capital gains are calculated by deducting the acquisition from the purchase value (price) of the shares. Any expenses directly related to the purchase or sale of the shares are deemed to be included in the acquisition and the sale value (price) and thus they are neither added nor deducted. The sale value is either determined based on the company's equity at the time of transfer or the consideration (purchase price) or the market value indicated in the share purchase agreement (SPA), depending on which of the three is the highest. Similarly, the acquisition value is either determined based on the company's equity at the time of acquisition or the consideration (purchase price) indicated in the SPA at the time of acquisition, depending on which of the two is the lowest. If the acquisition value cannot be determined, it is deemed to be zero provided that the acquisition was effected after 29 September 1999 (date of completion of dematerialisation process for shares listed on the Athens Stock Exchange). If the calculation of the capital gains as per above results in a negative amount (loss), said loss is carried forward in the next five years and is offset only against future capital gains from the transfer of shares and parts of corporate entities or partnerships.

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

According to the regime which is applicable to transfers of shares carried out from 1 January 2014 onwards, the tax burden amounts to 15 per cent on the capital gains realised from the sale if the seller is an individual and is participating in the company's share capital by at least 0.5 per cent and the shares to be transferred were acquired on 1 January 2009 onwards (subject to a pertinent DTC currently in force). Otherwise, if the seller or transferor is a legal person, said capital gains are subject to corporate income tax under the standard tax regime; whereas if the seller or transferor is an individual participating in the company's share capital by less than 0.5 per cent or the shares to be transferred were acquired prior to 1 January 2009, said capital gains are exempted from income tax. The capital gains are calculated by deducting the acquisition from the purchase value (price) of the shares. Any expenses directly related to the purchase or sale of the shares are deemed to be included in the acquisition and the purchase value (price) and thus they are neither added nor deducted. The acquisition and the sale value are determined according to the transaction documents issued by the intermediating brokerage firm or the credit institution, or as notified to Hellenic Exchanges SA on the day of settlement of the transaction. If the acquisition value cannot be determined, it is deemed to be zero provided that the acquisition was effected after 29 September 1999 (the date of completion of dematerialisation process for shares listed on the Athens Stock Exchange). If the calculation of the capital gains as per above results in a negative amount (loss), said loss is carried forward over the next five years and is offset only against future capital gains from the transfer of shares and parts of corporate entities or partnerships. According to Law No. 2579/1998, article 9, paragraph 2, as amended by Law No. 3296/2004, article 12, Law No. 3943/2011, article 16 and Law No. 4110/2013, article 10, transfers of shares that are listed on the Athens stock exchange are taxed at 0.2 per cent (subject to a pertinent DTC currently in force). This tax is calculated on the value of the shares transferred as it appears on the tag issued by the intermediating brokerage firm. The tax burdens the of the shares, individual or corporate entity, unions or trusts, regardless of their residence, origin or place of residence or domicile and even if they are exempt from the payment of other taxes or duties by virtue of other provisions.

According to Law No. 2703/1999, article 27, paragraph 2, the same applies to transfers of shares listed on a recognised foreign stock exchange (according to lists compiled by the Ministry of Economics, all major stock exchanges are included) realised by individuals residing in Greece, Greek companies or companies that have a permanent establishment in Greece. The tax due is calculated at the value of the transfer appearing in the relevant transfer documents and is payable by the seller at the tax office to which the latter is registered.

Company 'parts' in other types of companies

A Greek limited company is not the equivalent of a common law limited company. Greek company types are copied originally from the French system. Essentially, this means that when we talk about shares under Greek law, we mean shares in a Greek SA company, the equivalent of a French *société anonyme*. All other companies and partnerships have company 'parts' or 'equity stakes', not shares. Greek SA companies, although more regulated than the limited companies of the Anglo-American type, play the most significant role in the Greek company world because they cover a wide range of business enterprises, from small, family owned SA companies to the biggest Greek-listed companies. The above analysis regarding company shares not listed on a stock exchange is also applicable to most, if not all, companies except the SA.

Transfer of a business as a 'going concern'

The term 'transfer of business' refers to the transfer of a grid of rights and liabilities, governed by article 479 of the Greek Civil Code, as opposed to the individual transfer of specific assets of a business; the following do not apply to the latter. The above analyses regarding company shares listed or not listed on a stock exchange are also applicable hereto.

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. Of course the tax authorities will favour higher taxation, that is, higher valuation of the assets to be transferred. The seller will wish to set a higher value (consideration) but not necessarily to pay tax for it, which unfortunately in Greece often leads to 'under the table' cash transactions. The seller, on the other hand, will usually be interested in paying less and showing more.

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 to 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 an 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 Law No. 1297/1972, there is no room for appreciation of assets. Law No. 1297/1972 not only provides for the appreciation but also allows the postponement of its taxation. Despite that advantage, the procedure of Law No. 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 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?

In principle, the domicile or residence of the acquiring entity is irrelevant for tax purposes, especially following the adaptation of Greek law to EU Directive 2009/133/EC by virtue of Law No. 4172/2013. On the other hand, one should take into account Incentive Law 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 Law No. 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. However, no official guidance on the interpretation and implementation of the provisions pertaining thereto has been issued yet.

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. The said contribution will however be subject to tax on the accumulation of capital (at 1 per cent), in the same way as an ordinary increase of share capital with cash would be. 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 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 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 transfer of securities does not have tax evasion or tax avoidance 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 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 which 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 (currently 7.17 per cent).

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, if the net amount of interest payable does not annually exceed €5 million (from 1 January 2014 onwards) and €3 million (from 1 January 2016 onwards) respectively, it is fully deductible. In any case, the non-deductible amount of interest may be carried forward with no time limitation.

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 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.

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 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 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 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 EC 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

Following a series of new tax laws that have been introduced in recent years, it seems that the tax and legislative framework might be becoming more stable. This is a stabilisation which is very much needed for the attraction of foreign investments. Real estate remains the main source of foreign direct investment in Greece with some considerable, albeit small in number, acquisitions of public land for touristic exploitation. It is anticipated that the financial crisis that Greece has been experiencing since 2008 will soon come to an end, but there are no clear signs on how development will reach a satisfactory pace. Apart from the traditional fields of tourism and agriculture, the sectors of the economy that already attract a lot of attention are energy and transportation. In terms of the taxation framework, if no more changes take place soon what will remain is a relatively 'lighter' and more flexible tax system, which is becoming faster and more sophisticated in tackling tax avoidance schemes formerly outwith the reach of the Greek tax authorities.

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 DTCs currently in force. Intra-group dividend payments are exempted from tax, including WHT, on certain conditions. Interest from Greece 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 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 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 the above are applicable. The most straightforward way is the sale of a controlling majority share capital.

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 REISA's 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. Similarly, tax on the transfer of a going concern by virtue of article 13 of the Income Tax Code is payable before the transfer is concluded. Moreover, in the latter case, the law holds the contracting buyer co-liable for the payment of tax. Restructuring of businesses according to incentive Legislative Decree 1297/1972 is favoured by postponement of income taxation on capital appreciation. According to article 2 of Law No. 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

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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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