Greece

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General

1. What are recent tax developments in your country which are relevant for M&A deals?

A new Income Tax Code (ITC) was enacted with effect for fiscal years starting as of 1 January 2014 and onwards heavily influenced by the international tax developments. In particular, the new ITC introduced for the first time a business restructuring provision based on the recommendation of the Committee on Fiscal Affairs of 22 June 2010 on the Transfer Pricing Aspects of Business Restructurings, CFC and thin – cap rules in line with Council's Resolution of 8 June 2010 on the coordination of CFC and Thin Cap rules. New provisions were introduced, which taxpayers may optionally use for business restructurings (i.e. mergers, spin-offs etc.) as an alternative to existing incentive laws and, contrary to such existing laws allowed under conditions for transfer of losses of the restructured (i.e. absorbed etc.) entity. Furthermore, new statutory depreciation rates have been introduced as well as an explicit provision on tax residency of companies according to their place of effective management. Finally, the new Code of Tax Proceedings that is also effective as from 1 January 2014 has introduced a general anti-abuse rule ("GAAR") in line with the European Commission Recommendation of 6 December 2012 on aggressive tax planning.

2. What is the general approach of your jurisdiction regarding the implementation of OECD BEPS actions (action Plan 6 specifically) and, if applicable, the amendments to the EU Parent-Subsidiary Directive?

Greece is a member of the ad hoc group drafting the multi-lateral instrument, which shall, if signed, modify existing bilateral tax treaties in order to swiftly implement certain BEPS measures including those on treaty abuse (i.e. BEPS action Plan 6).

Furthermore, there are several anti-abuse measures contained in Greece's bilateral tax treaties, including (general or income type related) subject-to-tax clauses and income type related PPT clauses.

The recent amendments to the EU Parent-Subsidiary Directive requiring adoption of a specific GAAR provision ("PSD GAAR") as well as of a linking rule regarding hybrid financial instruments are currently in the process of being transposed into domestic legislation. In addition, a GAAR has been incorporated in the Code of Tax Proceedings that has been in force since 1 January 2014.

In particular, according to the domestic GAAR, the Greek tax administration may disregard any artificial agreement or series or arrangements that are aimed at tax avoidance and lead to a tax advantage. Such arrangements are treated according to their commercial substance. An agreement/series of arrangements are considered artificial if lacking commercial substance. The goal of an agreement/series of arrangements is perceived to be tax avoidance if, regardless of taxpayer's subjective intention, it is contrary to the object, spirit and purpose of the tax provisions that would otherwise apply.

To be noted that the WHT relief available for dividends under tax treaties overrules the GAAR, thus the impact of the GAAR on tax treaty relief is expected to be low.

3. What are the main differences among acquisitions made through a share deal versus an asset deal in your country?

a. Share deal

b. Asset deal

a.Share deal

Contrary to asset deals, share deals are not burdenedby indirect taxes. An exception applies to the transfer of listed shares (either on a Greek or overseas stock exchange), in which case the seller is liable to pay a 0.20% transfer tax on the sale value.

In the field of direct taxation gain from both share and assets deal are included in the selling company's corporate income and taxed at the ordinary corporate income tax rate, i.e., of 29%, for income accrued as of 1 January 2015 and onwards. However, contrary to asset deals, the buyer is not entitled to depreciate the acquisition value of the shares and to deduct business expenses incurred for the acquisition of the shares.

b.Asset deal

Asset deals are burdened by indirect taxes. Specifically, stamp duty is levied at a 2.4% rate in Greece if the transferred business's assets qualify as a transfer of a business as a going concern. Stamp duty is in principle paid by the acquirer, but the parties may agree otherwise. If a taxpayer sells assets in the context of a single asset deal, VAT is in principle due at a 23% rate which is recoverable. Moreover, the transfer of real estate is subject to real estate transfer tax at a rate of 3.09%.

In the field of direct taxation, as in the case of share deals, gains from the transfer of assets are included in the selling company's corporate income and taxed at the ordinary corporate income tax rate, i.e. of 29%, for income accrued as of January 1, 2015 and onwards. The buyer is entitled to deduct for corporate income tax purposes business expenses incurred for the acquisition of the assets and depreciations.

Buy-side

4. What strategies are in place, if any, to step up the value of the tangible and intangible assets in case of share deals?

Taxpayers cannot step up the value of the tangible and intangible assets in a share deal. A step-up of values could be achieved by the seller through internal restructuring that takes place prior to the sale of shares, to the extent possible. Such restructuring could be tax-neutral to the extent that it qualifies for the application of Greek tax incentives under law 1297/1972.

5. What are the particular rules of depreciation of goodwill in your country?

Goodwill may be realised in an acquisition of a business as a going concern, an acquisition of separate intangible assets of a business or a merger following the acquisition of the shares of the company being merged.

From an accounting perspective if goodwill that is invoiced separately (e.g. in the context of a transfer of a business as a going concern or single asset transfer) has an indefinite useful economic life, then it is not subject to amortisation but should be tested for impairment on an annual basis according to Greek Accounting Standards rules. In case the useful economic life of goodwill cannot be reliably estimated, goodwill is amortised equally within a period of ten years. From a tax perspective, goodwill is amortised at an annual rate of 10%.

In mergers, goodwill is considered to be the amount that reflects the difference between the acquisition cost of the shares and the net asset value of the assets and liabilities of the company being merged. According to Greek Accounting Standards, if that difference is positive, it represents goodwill, which should be recorded in a special account under the title "goodwill" and be subject to amortisation depending on its useful economic life. In particular, goodwill with indefinite useful economic life will not be subject to amortisation but annual impairment tests, while if its useful economic life cannot be reliably estimated it should be amortised in equal parts within ten years. Otherwise, if the difference is negative, it constitutes a gain from bargain purchase and should be recorded as profit in the profit and loss account of the respective consolidated accounts.

In share deals, either Greek or foreign, the purchase price and relevant costs are entered into the taxpayer's books and recorded in the respective accounts of participations. Therefore goodwill is neither recognised nor recorded in the buyer's accounting books. At the end of each year, shares are evaluated in the corporation's inventory in accordance with the valuation method and rules provided by Greek Accounting Standards. From a tax perspective, any loss arising from the valuation of shares (e.g. impairment loss) is in general not recognised for tax purposes.

6. Are there any limitations to the deductibility of interest on borrowings?

In case of share deals and based on the guidelines of the Ministry of Finance interest on loans for the financing of the shares acquisition is not tax deductible. Relevant position does not seem to derive from the wording of the law while there are debatable views due to the fact that currently there is no capital gains participation exemption regime in Greece.

Based on the earning-stripping rules, which have substituted the former thin capitalisation rules, net interest expense, if exceeding 3 million euros, is deductible provided that it does not exceed 40% (30% as of 1 January 2017) of the company's EBITDA, assessed under Greek accounting principles with the applicable tax adjustments. Net interest is defined as the amount by which interest expenses exceed interest revenues. Interest which exceeds the said thresholds may be carried forward indefinitely. Credit institutions, leasing and factoring companies are exempt from the scope of the earning-stripping rules.

Interest on related parties' loans is subject to transfer pricing rules whereas interest on third party loans, other than interest on loans by banks, inter-bank loans, as well as corporate bond loans, exceeding specific statistical thresholds set by the Bank of Greece is not deductible. There are also restrictions on the deductibility of interest payable to tax residents (individuals or legal entities) in non-cooperative or preferential tax regimes.

7. What are usual strategies to push-down the debt on acquisitions?

Debt push down has been achieved in the past through the merger of the entity holding the debt and the target/operational entity. Following the introduction of the new ITC and the limitation of the interest deduction on borrowing for the financing of the acquisition of shares it is uncertain whether relevant interest would be deductible if the entity holding the shares was to be merged with the target/operating entity. Moreover, following the introduction of the GAAR and of the restructuring provisions in the new ITC, tax neutrality of the merger can be achieved only if the merger is carried out for valid commercial reasons. Greek ITC has in principle transposed in the restructuring provisions the Merger Directive provisions including the relevant anti-avoidance provision.

8. Are losses of the target company(ies) available after an acquisition is made?

Under the general rules, losses are fully carried forward for a period of 55 years. No carry back is available. It is noted that the losses carry forward right will be affected in a merger as regards the absorbed companies. However, if the merger is effected according to the provisions of the new ITC (which in general transpose the Merger Directive, but also cover purely domestic restructurings), tax losses of the absorbed company survive the merger, provided the restructuring is carried out for valid commercial reasons.

Furthermore, the new ITC introduced a rule according to which the right to carry forward tax losses ceases to apply if changes in ownership or voting rights exceed 33% in value or number, unless the taxpayer proves that the transfer was effected exclusively for commercial or business reasons and not for the purpose of tax avoidance or tax evasion.

9. Is there any indirect tax on transfer of shares (stamp duty, transfer tax, etc.)?

Acquisitions of shares are exempt from VAT. In addition, no stamp tax is imposed on share sales.

A 0.20% transfer tax applies on sales of shares listed on the Athens Stock Exchange, which burdens the seller of the shares (See above under question 3.) .

10. Are there any restrictions on the deductibility of acquisition costs?

Based on ministerial guidelines on the provisions of the new ITC shares acquisition costs are not deductible given that dividend income is tax exempt (see also above under question 6).

11. Can VAT (if applicable) be recovered on acquisition costs?

In case of shares deals VAT on acquisition costs, e.g. professional fees, is recoverable provided that the taxpayer engages in an economic activity and the relevant costs relate to such economic activity and not to a passive investment activity.

VAT paid on the value of the single assets is recoverable under the generally applicable rules.

12. Are there any particular issues to consider in the acquisition by foreign companies? *(for example non-resident taxation rules/substance rules and tax efficient exit routes)*

There are no non-resident taxation rules.

During the holding period dividends distributed by Greek companies are subject to dividends withholding tax which is currently 10%. Relevant withholding tax can be reduced or eliminated in case of distributions to foreign residents qualifying under the applicable Double Tax Conventions and/or the EU Parent Subsidiary Directive. In particular, no tax is imposed if the receiving EU parent company has a minimum 10% shareholding participation in a Greek company for an uninterrupted 2-year period and has a legal form qualifying for application of the Parent-Subsidiary Directive. On the other hand there is no profit withholding tax upon the remittance of profits from the permanent establishment to the head office.

In terms of exiting a Greek holding structure, foreign companies disposing their shares in Greek companies are not subject to Greek corporate income tax on their gain, provided that the shares were not held through a Greek permanent establishment of such foreign companies. Therefore share deals are preferable from the foreign tax resident seller perspective.

13. Can the group re-organise after the acquisition in a tax neutral environment through mergers or a tax group?

There are several frameworks for achieving a tax-neutral restructuring in Greece. Greek laws providing for a tax neutral restructuring are the Greek tax incentive laws (i.e. 2166/1993 or 1297/1972), law 2578/1998 on cross-border mergers among EU entities and the new ITC, transposing the EU Merger Directive into national legislation and applicable to both EU and domestic restructurings. Available options are mergers, spin-offs, contributions of businesses or business sectors, share exchanges and changes in the legal form of the company.

The requirements, procedure (requirement for prior valuation, implementation at book or fair market values), tax exemptions (exemption from corporate income tax, real estate transfer tax, indirect taxes) and impact (entitlement to carry forward tax losses, restrictions upon future sale of assets, legal and economic effects of the merger) vary depending on the legal framework to apply. Therefore an analysis is to be made prior to opting for the tax framework to apply in each merger taking into account the background of the companies involved.

From a practical perspective and despite the fact that the Ministry of Finance has not yet released guidelines regarding the implementation of the restructuring provisions of the new ITC, relevant framework has been extensively used for recent business restructurings. This is because, contrary to other applicable laws, the restructuring provisions of the new ITC allow under conditions for the transfer of losses of the restructured (i.e. absorbed etc.) entity.

The most straight forward and commonly used tax incentive law is Law 2166/1993 which is implemented at book values while its economic effects apply retroactively from the commencement of the merger procedure, i.e. from the transformation balance sheet date.

On the other hand, in case it is intended for the entity being restructured to step up the value of its assets, then Law 1297/1972 is to be opted for which however requires a prior valuation of the assets and liabilities of the entity being restructured and therefore renders the process more time consuming. The tax exemptions granted by means of Law 1297/1972 are to be revoked in case that (a) the company is dissolved prior to the lapse of 5 years following the merger, unless such dissolution results from certain forms of reorganisations and (b) the real estate property of the company is disposed of within 5 years following the merger unless the proceeds from the sale are used to finance qualifying payments.

14. Is there any particular issue to consider in case of companies of which main assets are real estate?

Following changes in legislation back in 2012 real estate companies equally qualify for the application of Greek tax incentive laws (i.e Laws 2166/1993 and 1297/1972) and the provisions transposing the EU Merger Directive into domestic legislation (i.e. Law 2578/1998 and the restructuring provisions of the new ITC, which also apply to purely domestic restructurings).

However, contrary to the provisions of the Greek tax incentive laws and Law 2578/1998, the restructuring provisions of the new ITC do not provide for an exemption from real estate transfer tax which is currently imposed at 3,09%.

In addition, restrictions on the transfer of real estate assets apply in cases of tax-neutral mergers under tax incentives law 1297/1972 as stated above.

Finally the new Greek ITC introduced a specific provision for real estate rich companies, i.e. companies deriving more than 50% of their value from real estate. Based on relevant provision capital gains from the transfer of shares of real estate rich companies are treated similarly to the capital gains from the transfer of the real estate. Relevant provisions seem to apply only with respect to private individual sellers and not to companies.

Sell-side

15. How are capital gains taxed in your country? Is there any participation exemption regime available?

Capital gains (or losses) are generally regarded as ordinary business income (or losses) and are treated accordingly for tax purposes. No capital gains participation exemption exists. However, no corporate income tax is levied on the capital gain where the transferor is a foreign company and the capital gain (loss) is not attributable to a permanent establishment thereof in Greece, since corporate entities are currently taxed for the income generated through a permanent establishment in Greece.

16. Is there any fiscal advantage if the proceeds from the sale are reinvested?

No specific advantage exists if the transaction price of the sale of the shares is reinvested by the seller company.

17. Are there any local substance requirements for holding/finance companies?

There are no local substance requirements per se from a tax perspective for holding/finance companies established in Greece.

A legal entity is considered as a Greek tax resident according to domestic tax residence rules and thus is subject to Greek corporate income tax on its worldwide income if it is incorporated, seated or effectively managed at any time of the year in Greece. Effective management is perceived as being exercised in Greece taking into account i.a. the place of:

- exercise of day-to-day business
- strategic decision-making
- annual shareholders' meetings
- bookkeeping
- BoD minutes;
- residence of BoD members
- residence of the majority of shareholders may potentially also be considered along with the above mentioned factors

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