GREECE

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INTERNATIONAL DEVELOPMENTS

1. WHAT ARE RECENT TAX DEVELOPMENTS IN YOUR COUNTRY WHICH ARE RELEVANT FOR M&A DEALS AND PRIVATE EQUITY?

Greece transposed in April 2016 into its domestic legislation Council Directives 2014/86/EU and 2015/121/EU which amended the provisions of the EU Parent-Subsidiary Directive (Council Directive 2011/96/EE). As a consequence, the Greek Income Tax Code introduced the special anti-avoidance provision as well as the anti-hybrid rule.

Furthermore, within 2017 the applicable framework regarding domestic and EU cross border transfer of assets/spin offs has been amended. In line with the EU Merger Directive (Council Directive 2009/133/EC) 'transfer of assets' is an operation whereby a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer. Based on the new rules, upon the transfer of assets the receiving company should not attribute to the contributed assets a taxable value greater than the value that they had in the transferring company prior to the transfer whereas the transferring company is entitled to attribute to the securities it receives their market value. The transferring company is permanently exempted from capital gains tax upon the subsequent transfer of the securities received unless relevant transfer takes place within the next three years following the transfer of the assets. In the latter case, for the purpose of computing the capital gains tax the value of the securities is equal to the value of the contributed assets immediately prior to the transfer.

2. WHAT IS THE GENERAL APPROACH OF YOUR JURISDICTION REGARDING THE IMPLEMENTATION OF OECD BEPS ACTIONS (ACTION PLANS 6 AND 15 SPECIFICALLY) AND, IF APPLICABLE, THE AMENDMENTS TO THE EU PARENT-SUBSIDIARY DIRECTIVE AND ANTI-TAX AVOIDANCE DIRECTIVES?

Greece has participated in the discussions of the OECD BEPS actions and was a member of the ad-hoc Committee for drafting the Multilateral Instrument (BEPS Action 15).

Regarding BEPS Action 6 on Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, no specific action towards implementation have been taken yet. That said, Greece has historically not incorporated the limitation-on-benefits (LOB) clauses in its double taxation treaties, but has in some treaties included the principal purpose test (PPT) regarding specific types of income (i.e. interest, royalties). In this connection, reference should be made to Commission Recommendation of 28.1.2016 on the implementation of measures against treaty abuse, which recommends that, where a PPT based general anti-avoidance rule is included in tax treaties, in order to comply with CJEU jurisprudence, the PPT shall be modified compared to BEPS Action 6 to exclude from its scope situations which reflect a genuine economic activity.

The amendments introduced to the EU Parent-Subsidiary Directive by Directives 2014/86/EU and 2015/121/EU regarding the adoption of an anti-hybrid rule and a special anti-abuse clause have been transposed in essence verbatim into domestic law. In particular, participation exemption for dividends received from qualifying EU companies shall only be granted to the extent that such profits are not deductible by the subsidiary. Furthermore, according to the anti-abuse clause, dividends participation exemption at parent company level and, where a Greek subsidiary distributes dividends, withholding tax exemption are not granted if an arrangement or series of arrangements exist which, having been put into place for (one of) the main purpose(s) of obtaining a tax advantage that defeats the object or purpose of this Directive, are not genuine having regard to all relevant facts and circumstances, i.e. are not put into place for valid commercial reasons which reflect economic reality. Since dividends participation and withholding tax exemption apply as per domestic legislation also to purely domestic dividend distributions, the aforementioned restrictions apply similarly to such distributions.

Greece has since 2014 introduced in its domestic legislation provisions similar to those of the Anti-Tax Avoidance Directive ("ATAD"), namely:

- a GAAR provision
- CFC rules
- An interest limitation rule based on the company's EBITDA

There are no exit tax rules as per the ATAD. However with respect to business restructurings between related parties whereby intangible assets or a transfer package consisting of functions, assets, risks and business opportunities are being transferred, be it within or outside Greece, relevant transfers should be against an arm's length remuneration and any gain is taxable without the possibility of its payment in installments.

According to the Greek CFC rule, if a foreign entity is treated as a CFC, its total income is attributed to the Greek taxpayer, according to the percentage of such taxpayer's participation. A restriction of CFC taxation only to non-genuine arrangements applies only with respect to foreign companies established in the EU or an EEA jurisdiction with which exchange of information is in place. In deviation from the ATAD, a foreign entity is not treated as a CFC in either of the following cases:

- no more than 30% of net income before tax realised by the foreign entity qualifies as passive income, (e.g. dividends & capital gains, interest and other income from financial instruments, royalties, income from immovable property etc.)
- no more than 50% of at least one type of passive income items stems from related party transactions.

GENERAL

3. WHAT ARE THE MAIN DIFFERENCES AMONG ACQUISITIONS MADE THROUGH A SHARE DEAL VERSUS AN ASSET DEAL IN YOUR COUNTRY?

A. Share deal

Tax advantages:

Contrary to asset deals, no indirect taxes are due in connection with share deals. 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.

Tax disadvantages:

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 currently at 29%. 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

Tax advantages:

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 currently at of 29%. The buyer is entitled to deduct for corporate income tax purposes business expenses incurred for the acquisition of the assets and to perform depreciations on the assets acquisition costs.

Tax disadvantages:

Asset deals are subject to indirect taxes. Transfers of business as a going concern is subject to stamp duty at a 2.4% rate which is computed on the higher between the business net asset value or the consideration agreed. Stamp tax is in principle paid by the acquirer, but the parties may agree otherwise and is deductible for tax purposes. Transfers of single assets are in principle subject to VAT at 24%, which is recoverable. Moreover, the transfer of real estate is subject to real estate transfer tax at a rate of 3.09%.

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?

A step-up of value of the tangible and intangible assets of the target company may be achieved by the purchaser through internal restructuring that takes place following the purchase of the shares by means of a merger or division to be implemented with application of Greek tax incentive law 1297/1972. Based on relevant law, the assets of the entity being merged /divided are contributed at their market value and any capital gain is reported in tax free reserves to be taxed at the time the company is dissolved. Taxpayer is entitled to performed depreciations on the basis of the stepped up value that corresponds to the undepreciated value of the relevant assets at the time of the merger.

All above restructurings should meet the business purpose test otherwise the tax neutrality of the merger / other restructuring could be challenged.

5. WHAT ARE THE PARTICULAR RULES OF AMORTISATION OF GOODWILL IN YOUR COUNTRY?

Goodwill may be realised in the context of either a business assets acquisition as a going concern, or as an acquisition of separate intangible assets or a merger to take place following the acquisition of shares of the target company to be merged.

According to Greek GAAP, goodwill with indefinite useful economic life (UEL), is not subject to amortisation but should be annually tested for impairment. In case the UEL cannot be reliably estimated, goodwill is amortised equally within ten years. Tax wise, goodwill is amortised at a 10% rate annually.

In cases of mergers, goodwill reflects the difference between the shares acquisition cost and the net asset value of the assets and liabilities of the merged company. If that difference is positive, it represents goodwill, which should be recorded in a special account and be subject to amortisation depending on its UEL. If the difference is negative, it constitutes a gain from bargain purchase and should be recorded as profit in the Income Statement of the respective consolidated accounts.

6. WHAT ARE THE LIMITATIONS TO THE DEDUCTIBILITY OF INTEREST ON BORROWINGS IN THE CASES OF ACQUISITION OF SHARES AND ASSETS?

In case of share deals and based on the guidelines of the Ministry of Finance interest on loans for the financing or the acquisition of the shares is not tax deductible. Relevant position does not seem to derive from the wording of the law while its correctness is questionable since capital gains to be earned upon the subsequent transfer of the shares will be fully taxable in the lack of a capital gains participation exemption regime in Greece.

Interests on the borrowings for the financing of the acquisition of business assets are deductible subject to the earning-stripping rules. In particular, net interest expense, if in excess of EUR 3 million, is deductible provided that it does not exceed 30% of the company’s EBITDA, EBITDA to be assessed under the Greek accounting principles following its readjustments for tax purposes. 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 effective as of 2014 and the limitation of the interest deduction on borrowing for financing the acquisition of shares it is uncertain whether relevant interest would be deductible if the entity holding the shares were to be merged with the target/operating entity. Moreover, the tax neutrality of the merger can be achieved only if the merger is carried out for valid commercial reasons. Therefore, it is questionable whether a merger to be implemented for the sole purpose of facilitating a debt push down could meet the business purpose test.

8. ARE THERE ANY TAX INCENTIVES FOR EQUITY FINANCING?

Equity financing of newly incorporated entities is exempt from capital accumulation tax at 1%. Relevant exemption was introduced back in 2014 as an incentive for stimulating the set-up of newly formed companies.

Any additional capital injection by means of a share capital increase is subject to capital accumulation tax at 1%. In addition, payment of share capital into an AE is subject to a duty of 0.1% payable to the Greek Competition Committee.

9. ARE LOSSES OF THE TARGET COMPANY(IES) AVAILABLE AFTER AN ACQUISITION IS MADE?

Under the general rules, losses are carried forward for a period of five years. No carry back is available.

In cases of change of control as well as in case of a transfer of a participation exceeding 33% in value or number, the right to carry forward tax losses ceases to apply, 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.

In the context of a merger the losses carry forward right of the entity being absorbed is lost. Exceptionally, if the merger is implemented according to the provisions of the ITC (which in general introduced provisions similar to those of the Merger Directive, also for purely domestic restructurings), tax losses of the absorbed company survive the merger, provided the restructuring is carried out for valid commercial reasons

10. ARE THERE ANY ITEMS THAT SHOULD BE INCLUDED IN THE SCOPE OF A TAX DUE DILIGENCE THAT ARE VERY SPECIFIC TO YOUR COUNTRY?

Particular attention should be paid to the years which a tax due diligence should cover, since consecutive extensions of the statute of limitations have taken place since 2006. Thus, it is still uncertain whether tax liabilities of the periods from 2000 to 2010 have been time barred or not. In this connection, relevant jurisprudence should also be closely followed, in view of several cases pending before the Administrative Supreme Court regarding compatibility of such extensions with the Greek Constitution.

Moreover, there are special rules for tax recognitions of bad debt provisions and write-offs or "haircuts".

11. IS THERE ANY INDIRECT TAX ON TRANSFER OF SHARES (STAMP DUTY, TRANSFER TAX, ETC.)?

Acquisitions of shares are exempt from VAT and stamp tax.

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).

12. ARE THERE ANY RESTRICTIONS ON THE CORPORATE TAX DEDUCTIBILITY OF ACQUISITION COSTS?

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

13. 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.

14. ARE THERE ANY PARTICULAR TAX ISSUES TO CONSIDER IN THE ACQUISITION BY FOREIGN COMPANIES?

Dividends distributed by Greek companies are subject to dividends withholding tax which is currently 15%. 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 two-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.

15. CAN THE GROUP REORGANISE 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), and impact (e.g. 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, the new ITC 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 carry forward of tax 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 five 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 five years following the merger unless the proceeds from the sale are used to finance qualifying payments.

Although only the ITC provides for a special anti-abuse provision requiring that the restructuring be performed for valid commercial or business reasons, Greek tax administration has recently scrutinised reorganisations performed under the other applicable frameworks from an anti-abuse perspective.

16. IS THERE ANY PARTICULAR ISSUE TO CONSIDER IN CASE OF TARGET COMPANIES OF WHICH MAIN ASSETS ARE REAL ESTATE?

Eligibility for the exemption from the Special Real Estate Tax (“SRET”) should be reviewed both from the acquirer and from the target entity perspective. SRET is a property tax that applies to companies holding Greek real estate on January 1st of each year unless such companies are entitled to apply one of the available exemptions. The tax is computed at a 15% rate on the statutory value of the immovable property. Special due diligence should be performed to review the compliance of the target entity with the respective property tax and the proper collection of the supporting documentation required for the purpose of validly claiming an exemption, which sometimes has been proved difficult to collect. Exemptions are applicable among others to companies that generate in Greece higher amounts of business income than rental income, to listed companies and other regulated entities as well as to entities disclosing the details of their ultimate shareholders, who need to have obtained a Greek tax identification number.

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). Therefore, it is possible to reorganise real estate companies e.g. by way of merger without triggering capital gains and real estate transfer taxes.

Restrictions on the subsequent transfer of real estate assets apply in cases of tax-neutral mergers under tax incentives law 1297/1972 as stated above (see question 15).

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. The relevant provision that entered into force on January 1st 2014 has been under suspension from January 1st 2015 and up until December 31, 2017 and thus no guidelines regarding its application exist so far.

17. IS FISCAL UNITY/TAX GROUPING ALLOWED IN YOUR JURISDICTION AND IF SO, WHAT BENEFITS DOES IT GRANT?

No tax grouping is allowed in Greece.

SELL-SIDE

18. HOW ARE CAPITAL GAINS TAXED IN YOUR COUNTRY?

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.

19. IS THERE ANY FISCAL ADVANTAGE IF THE PROCEEDS FROM THE SALE OF SHARES ARE REINVESTED?

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

20. ARE THERE ANY LOCAL SUBSTANCE REQUIREMENTS FOR HOLDING COMPANIES?

There are no local substance requirements per se from a tax perspective for holding companies established outside 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.

Furthermore, Greece has transposed the Parent-Subsidiary Directive GAAR and has CFC rules in place, which both require a minimum substance. In the context of CFC rules such minimum substance has been specified as including e.g. the foreign company having physical premises, permanent payroll, being tax resident in the country of its establishment and being subject to tax in such jurisdiction.

21. ARE THERE ANY SPECIAL TAX CONSIDERATIONS REGARDING MERGERS/SPIN-OFFS?

Regarding direct tax treatment, please refer above to question 15.

As regards indirect taxes:

Mergers and spin-offs fall outside the scope of VAT, provided that both the transferring company and the receiving company are subject to VAT, act under such capacity and the receiving company continues the business activity of the transferring company.

Based on the generally applicable rules, mergers and spin-offs involving the transfer of assets and liabilities in exchange for shares are not subject to stamp tax.

In mergers and spin-offs performed under the regimes of Law 1297, Law 2166 and the restructuring provisions of the new ITC, no stamp tax or other taxes are imposed in respect of the merger/spin-off agreement, the contribution or transfer of assets and liabilities or other rights and obligations under the merger, corporate resolutions of the companies under merger, the participation in the share capital of the receiving company and any other agreements or acts required for the consummation of the mergers/spin offs. Similar broad exemptions also apply under the regime of article 16 of Law 2515, which explicitly refers to an exemption of the articles of association and the shares issued by the receiving credit institution.

Capital accumulation tax of 1% is in principle due on capital accumulations (i.e. conversion or merger of a company, capital increase or contributions of assets to the share capital). However, according to ministerial guidelines as regards mergers effected under the regimes of Law 1297 and Law 2166, this tax is effectively levied only to the extent that the receiving company's capital is increased by new contributions, other than those reflecting the share capital of companies already subject to capital accumulation tax (e.g. so as to meet several minimum share capital requirements imposed by company law and/or tax incentive law provisions) and other than the part of the capital reflecting any surplus values arising under an evaluation of assets, where applicable. According to guidelines on reorganisations performed under the new ITC, if the reorganisation results in the creation of a new entity, the exemption from capital accumulation tax regarding payment of initial share capital applies.

Cash or in-kind contributions of assets to Sociétés Anonymes by means of share capital increase are in principle subject to a duty of 0.1% payable to the Greek Competition Committee. However, the said duty is not applicable to transactions effected under one of the tax incentive regimes for reorganisation.

Mergers and spin offs implemented under Law 1297, Law 2166 and the restructuring provisions of the new ITC with respect to qualifying reorganisations are also exempt from real estate transfer tax (RETT). If no such laws apply, any transfer through a merger operation of rights in real estate property is subject RETT at 1.545%, whereas respective transfers through a spin off are subject to RETT at 3.09%. RETT is computed on the higher of the transfer price and the objective value i.e. the value imputed for tax purposes on the basis of statutory rules (applicable to almost the entire territory of Greece) taking into account parameters such as area, age etc.), is borne by the receiving company and is deductible for corporate income tax purposes. In mergers and spin-offs performed under Law 2166 or the new ITC as well as, under conditions, Law 1297, transfers of real estate property are exempt from RETT.

MANAGEMENT INCENTIVES

22. WHAT ARE THE TAX CONSIDERATIONS IN YOUR JURISDICTION FOR MANAGEMENT INCENTIVES?

No specific management incentives are available from a tax perspective in Greece other than the favorable tax treatment of certain fringe benefits that apply to all employees, e.g. provision of health insurance policy up to an amount of EUR 1.500 per employee; participation in collective pension plan providing favorable tax rates and deferral of taxation; lunch vouchers up to EUR 6 per day per employee.

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