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PREFACE

There have been significant recent changes in the global tax landscape as highlighted in the OECD annual report on global tax policy reforms published on 5 September 2018. The report noted the impact of major tax reform in a number of countries, notably in the United States, Argentina and France. At the time the US tax reform became effective on 1 January 2018, Goldman Sachs estimated there was US$3.1 trillion of overseas profit kept outside the United States, which highlights the significance of this reform. One aspect of the US tax reform was lowering of corporate taxes, which reflects a global trend, with the average corporate income tax rate across the OECD dropping from 32.5 per cent in 2000 to 23.9 per cent in 2018. Other tax reform trends identified were the lowering of personal income taxes and new excise taxes, to deter harmful consumption, such as sugar taxes.

An area where coordinated tax reform has not materialised, despite being identified as a key area in the BEPS Action Plan in 2015, is in the taxation of the digital economy. The OECD produced an interim report in April 2018, with further work scheduled for 2019, with the aim of arriving at a 'consensus based solution by 2020'. Although there is widespread recognition of the need for change, consensus on how such change should come about has been limited. Some countries, including the UK, have decided to take unilateral action, pending an international solution. The UK's 2018 Autumn Statement announced a digital services tax (DST) to be introduced from April 2020. The proposal is that a 2 per cent tax will apply to the revenues above £25 million of certain digital businesses to reflect the value they derive from the participation of UK users, with consultation on the detail of the legislation to take place between now and the introduction of the tax in the Finance Act 2020. One may conclude that this reflects the UK's view on the likelihood of an OECD solution by 2020. The UK is not alone: Malaysia revealed plans in November 2018 to introduce a consumption tax on the supply of digital services to Malaysian residents from 1 January 2020; Quebec is introducing a digital sales tax in January 2019; and Chile, Uruguay and Colombia all have plans to tax foreign suppliers of digital services. Potentially, as more countries start to fill the vacuum with their own domestic digital taxes, the possibility of conflict with the regimes in other countries arises.

The potential for tax conflict, rather than competition, is not restricted to the digital economy and is much more likely than in recent years. It is possible that 2019 will see some nations retaliate to US tax reforms and also see the US and certain jurisdictions use tariffs and duties as weapons in their trade wars. Brexit is another potential source of tax conflict.

It is hoped that this volume will prove to be a useful guide to the tax rules in the jurisdictions where clients conduct their businesses. Each chapter aims to provide topical and current insights from leading experts on the tax issues and opportunities in their respective jurisdictions. While specific tax advice is always essential, it is also necessary to have a broad understanding of the nature of the potential issues and advantages that lie ahead; this book provides a guide to these.

I should like to thank the contributors to this book for their time and efforts, and above all for their expertise. I would also like to thank the publisher and the team for their support and patience. I hope that you find the work useful, and any comments or suggestions for improvement that can be incorporated into any future editions will be gratefully received.

The views expressed in this book are those of the authors and not of their firms, the editor or the publishers. Every endeavour has been made to ensure that what you read is the latest intelligence.

Tim Sanders
London
January 2019

Chapter 10

GREECE

Aspasia Malliou and Maria Kilatou[1]

I INTRODUCTION

As of July 2013, the Greek Income Tax Code (2238/1994) was replaced by Law 4172/2013. Therefore, as of 1 January 2014 onwards, income tax for individuals and legal entities is based on the provisions of Law 4172/2013 (the new Income Tax Code) (ITC) effective from 1 January 2014, as recently amended by many laws. The ITC has been simplified to become more transparent for taxpayers, as well as including updates following the international tax law rules and developments, especially in the areas of tax evasion and tax avoidance. In light of this, the ITC as well as the new Tax Procedures Code (Law 4174/2013 (TPC)) have made a number of significant changes to the tax rules, including measures designed to combat tax avoidance and tax evasion. These changes, indicatively, refer to:

a the controlled foreign corporation (CFC) rules for taxation on the non-distributable profit of a legal entity established in a low-tax jurisdiction at the level of the Greek tax resident, which have been introduced for the first time into Greek tax legislation, as well as changes in the definition of 'preferential tax regime';

b the introduction of a general anti-abuse provision applicable to any 'artificial arrangement' adopted by the TPC, also effective as of 1 January 2014. The TPC, which is a separate piece of legislation, attempts to establish a common legal framework for the procedure before the tax authorities concerning the filing of tax returns, tax audits, out-of-court petition procedures, collection of taxes and other procedural issues; and

c the definition of tax evasion applicable to most tax objects. Specifically, under Article 66 of the TPC, tax evasion is committed by persons who intentionally avoid the payment of taxes such as income tax, tax on the real estate ownership (ENFIA), special real estate tax, VAT, turnover, premium tax, withholding taxes, shipping tax, etc., by hiding any taxable income or assets from the tax authorities. Moreover, the number of persons considered to be perpetrators or accomplices of tax evasion has been recently expanded.

The filing of an administrative (out-of-court) petition and a judicial petition does not affect criminal proceedings. A criminal court may decide to suspend criminal proceedings until the issuance of a final decision of an administrative court if this is considered as critical to its judgment.

All the measures and provisions under the above legislation, the ITC and the TPC as currently in force, have been recently adopted, and only a few interpretative advanced rulings

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have been provided by the Ministry of Finance for many of them. In this respect, there is no precedent; therefore, the application of the new provisions should be examined thoroughly and judged on a case-by-case basis.

II COMMON FORMS OF BUSINESS ORGANISATION AND THEIR TAX TREATMENT

As per the provisions of Article 2 of the ITC, a taxpayer is defined as a person subject to income tax according to the provisions of the ITC.

A 'person' means an individual, legal person or legal entity. A 'legal person' means an entity with corporate status and legal personality. A 'legal entity' means an entity irrespective of whether it has been incorporated, is a legal personality and conducts a profitable activity, and that is not an individual or legal person. Following the above definition, the ITC provides a non-exhaustive list of taxable legal entities such as offshore companies, cooperatives or other entities of a similar nature, foundations, trusts, funds, joint ventures, civil societies, assets, inheritance, donation management companies, civil law companies, participatory or silent companies, and private investment companies.

i Corporate

The following legal persons, *inter alia*, are subject to the ITC:

a capital companies incorporated in Greece or abroad;
b partnerships incorporated in Greece or abroad;
c non-profit public or private entities, governed by private or public law, incorporated in Greece or abroad, including associations and foundations, with the exception of profits derived from the pursuit of their purpose, the latter not constituting tax objects;
d cooperatives and their unions;
e civil societies, civil (including non-profit) companies, and participatory or silent companies that conduct a business or a profession;
f foundations, trusts, funds, joint ventures; and
g the above-mentioned legal entities.

ii Non-corporate

Up to now, no special tax regime existed in Greece for non-corporate entities. However, recently, the Independent Authority of Public Revenue (IAPR) of the Greek Ministry of Finance issued a ruling with respect to the tax treatment of the foreign trusts and foundations, which are commonly used as vehicles for wealth and succession planning purposes, within the framework of Greek income, gift and inheritance taxation. In the income tax field, the Circular Pol. No. 1114/2017 examines the period after the introduction of the new Income Tax Code (ITC) and the period before it (the Old ITC).

Specifically, as of 1 January 2014, the ITC recognises trusts and foundations as taxable legal entities for corporate income tax purposes. On individuals' taxation level, any distribution of profits, acquired by the settlor under his or her capacity as beneficiary of the foreign trust or foundation, falls within the definition of dividends, being that considered as taxable income, and is subject to Greek income dividend tax of 10 per cent with effect for payments performed up to the tax year 2016, and 15 per cent for the tax year 2017 onwards (plus solidarity tax contribution). In the event the settlor or founder and the beneficiary of the trust or foundation is not the same person, the transfer of the trust's assets to the beneficiary is treated as a gift or inheritance for tax purposes and is taxed according to the gift or inheritance tax scale, which is applicable based on the relationship between the settlor or founder and the recipient of the assets. Undistributed income, which arises in the trust or foundation, could be treated pursuant to the provisions of CFC rules referred to above, provided that all the conditions are cumulatively met. In case of the trust's or foundation's dissolution and liquidation, the distributed amounts that exceed the initial capital transferred to the trust or foundation are considered as dividends and are subject to Greek income dividend tax of 10 per cent, with effect for payments performed up to the tax year 2016 and 15 per cent, for the tax year 2017 onwards (plus solidarity tax contribution). There is no taxable event to the extent the distributed amounts do not exceed the initial capital since they are considered as capital repayment. Finally, the transfer of assets into the trust or foundation upon its settlement is not considered as taxable event.

Up to 31 December 2013, Greek Law 2238/1994 recognised only foundations as taxable legal entities for corporate income tax purposes. On individuals' taxation level, any distribution of profits, acquired by the settlor under his or her capacity as beneficiary of a foreign trust, is subject to income tax at the level of the settlor of the trust depending on the source of income (e.g., interest, dividends, capital gains), while, as per the distribution of profits from a foundation, acquired by the founder under his or her capacity as beneficiary of the foreign foundation, is subject to income tax according to the tax scale applicable on freelancers pursuant to Greek Law 2238/1994. In case the settlor or founder and the beneficiary of the trust or foundation is not the same person, the transfer of the trust's or foundation's assets to the beneficiaries is treated as a gift or inheritance for tax purposes and is taxed according to the gift or inheritance tax scale that is applicable based on the relationship between the settlor of the trust or foundation and the recipient of the assets. The trust's dissolution and liquidation is not considered a taxable event, while, in the event of the foundation's dissolution and liquidation, the distributed amounts that exceed the initial capital transferred to the foundation are subject to income tax according to the tax scale applicable on freelancers pursuant to Greek Law 2238/1994. There is no taxable event to the extent the distributed amounts do not exceed the initial capital since they are considered as capital repayment. Finally, the transfer of assets into the trust or foundation upon its settlement is not considered as taxable event.

III DIRECT TAXATION OF BUSINESSES

As of 1 January 2016, the corporate income tax rate is 29 per cent, while as of 1 January 2019 for any corporate income profits for legal entities keeping 'double-entry' or 'single-entry' accounting books deriving during the tax year 2019, corporate income tax rate is 28 per cent, which is gradually decreasing to 27 per cent as regards corporate income profits deriving during the tax year 2020, to 26 per cent as regards corporate income profits deriving during the tax year 2021, and finally to 25 per cent as regards corporate income profits deriving during the tax year 2022. According to the ITC provisions, any source of income of taxable legal entities shall be deemed business income subject to corporate taxation.

i Tax on profits

Business income is defined as the sum of the global total income from business activity after the deduction of business expenses, depreciation and bad debt provisions. Moreover, capitalisation or non-distributable profits that have not been taxed shall be deemed, under conditions, as business income.

The ITC adopts a dual system for the deductibility of business expenses. All business expenses are deductible, subject to some general conditions, with the exception of some explicitly enumerated expenses. Specifically, an exhaustive list of non-deductible expenses, irrespective of their purpose, is provided by law (Article 23 of Law 4172/2013). Expenses that do not fall within the ambit of the aforementioned provision are, in principle, deductible as long as the following requirements are cumulatively met:

a the expenses are incurred in the interest of the business or in the ordinary course of the business;

b the expenses correspond to an actual transaction, and the value of the transaction is not deemed lower or higher than the market value, based on elements available to the tax administration; and

c the expenses have been recorded in an enterprise's books along with the supporting documentation.

Special reference is provided in the ITC as to the deductibility of expenses made for scientific and technological research. Specifically, the ITC provides that expenses of scientific and technological research are deductible from gross income of enterprises at the time of their realisation increased by 30 per cent.

The total expenses paid to a legal person or a legal entity who is a tax resident in a 'non-cooperative state' or is subject to a 'preferential tax regime' are not deductible for tax purposes unless the taxpayer proves that these expenses relate to real and ordinary transactions, and do not result in transfer of profits, income or capital for tax avoidance or tax evasion. Exceptionally, deduction of expenses paid to an EU or EEA Member State tax resident is not precluded if a legal basis for the exchange of information between Greece and the Member State in question exists.

Adjustments for tax purposes may occur in cases such as where thin capitalisation rules apply, in the event that audit verifications are impossible due to infringements of the tax legislation, when the accounting books are not duly kept or when differences are incurred owing to the implementation of certain transfer pricing methods.

Depreciations

Depreciations have been introduced in the ITC. Depreciation rates vary from 4 to 40 per cent depending on the asset in question. The income tax legislation provides for depreciation either in favour of the owner of the assets or of the lessee on the occasion of a financial leasing agreement. Some basic categories that can be mentioned are the depreciation of intangibles at a rate of 10 per cent, while buildings are depreciated at a rate of 4 per cent.

For fixed assets valued up to €1,500, a one-off depreciation may be opted for in the year when the assets are acquired.

Newly established companies are eligible to postpone their depreciation claim for all their fixed assets for the first three years.

Income acquisition time

In principle, any taxable income, including business income, is taxed on an accrual basis. In that respect, the income acquisition time is considered to be the time when the right to collect the income is acquired; thus, the exact time that the right to collect the income is born is critical. By derogation from the main rule, only individuals' income from their employment and pensions shall be taxed upon receipt.

Capital and income

Capital income is a distinct category of income and includes income, in cash or in kind, from dividends, interest, royalties and immovable property.

As mentioned above, any source of income of taxpayers, in the form of legal entities, and the capital income as well, is considered business income and taxed with the applicable corporate tax rate.

On the other hand, individuals (taxpayers) are subject to income tax at various tax rates, depending on the classification of their taxable income in question.

In general, the applicable withholding tax rates per category of capital income are as follows:

a dividends distributions are subject to withholding tax at a rate of 10 per cent, with effect for payments performed up to tax year 2016, and 15 per cent for tax year 2017 onwards, exhausting any further tax liability for individuals (final tax);

b interest payments are subject to a withholding tax rate of 15 per cent, exhausting any further tax liability for individuals (final tax); and

c royalties payments are subject to withholding tax at a rate of 20 per cent, exhausting any further tax liability for individuals (final tax).

However, the imposition of withholding tax on the payment of capital income exhausts the tax liability only for individuals and foreign legal persons or entities without a permanent establishment in Greece, while capital income is added to Greek legal persons', entities' or foreign legal persons' (with permanent establishment in Greece) total income, and will be taxed as business income, as analysed below.

Losses

According to the ITC, businesses can carry forward tax losses, offsetting them against business profits for five consecutive tax years. A new rule on the abuse of provisions for the transfer and set-off of losses is introduced if, during a tax year, the direct or indirect holding or voting rights of an enterprise are changed to a percentage exceeding 33 per cent while in the same or the following tax year, or both, the activity of the company in which the holding or voting rights are acquired is changed to a percentage exceeding 50 per cent of its turnover in relation to the immediately preceding tax year by the change of holding or voting rights.

Offsetting of losses incurred abroad is allowed only if they are carried over from another EU or EEA Member State, provided that they are not exempt on the basis of the double tax treaty (DTT) concluded and applied by Greece.

Rates

As of 1 January 2016, the corporate income tax rate is 29 per cent for any business income for legal entities keeping 'double-entry' or 'single-entry' accounting books, while as of 1 January 2019 for any corporate income profits for legal entities keeping 'double-entry' or 'single-entry' accounting books deriving during the tax year 2019, the corporate income tax rate is 28 per cent, which is gradually decreasing to 27 per cent as regards corporate income profits deriving during the tax year 2020, to 26 per cent as regards corporate income profits deriving during the tax year 2021, and finally to 25 per cent as regards corporate income profits deriving during the tax year 2022.

Administration

Income tax returns are filed during the period starting from 1 February to 30 June of the year following the tax year to which they relate. For legal entities, the tax prepayment (which is actually an advance payment for the following tax year) is 100 per cent of the tax corresponding to the profits of the tax year for which the return is filed. The corporate income tax prepayment is also increased to 100 per cent for partnerships, non-profit legal persons of public or private law, civil law societies, civil law profit or non-profit companies, joint-stock or undisclosed companies to the extent they exercise trade or business, as well as joint ventures or partnerships.

Audits and the collection of taxes are conducted by the competent tax authorities determined by the seat of the legal entity in question. By derogation of the main rule, SAs, irrespective of their seat, fall within the ambit of FAE, the central tax authority for SAs, registered in Athens, Piraeus and Thessaloniki.

A tax clearance may be granted by the tax administration to a taxpayer to proceed with acts and transactions only if it is established that the taxpayer does not have any due tax liabilities and has submitted all tax returns in the past.

The following types of tax audit are provided for in the TPC:

a a remote tax audit performed from the offices of the tax administration based on tax returns, financial statements, accounting books, documentation and other information; and

b an on-site tax audit, either a full on-site audit with prior written notice, unless there is evidence of tax evasion, and a partial on-site audit without prior notice.

The selection of the cases to be audited will be based on risk analysis criteria or other criteria that are specified by the Directorate of Independent Authority of Public Revenue.

Any enforceable tax assessment act issued by the tax administration is subject to an out-of-court procedure as provided under TPC. Taxpayers have the right, within a 30-day period from the notification of the act, to file an out-of-court petition requesting the review of the tax assessment act by the Dispute Resolution Directorate (Internal Review Unit) of the IAPR. It is provided that the direct filing of a petition before the competent administrative courts against acts of tax assessment is inadmissible, and therefore is rejected.

The relevant decision of the Dispute Resolution Directorate shall be issued within 120 days of the filing of the out-of-court petition. A summons to a hearing of the taxpayer before the Dispute Resolution Directorate (Internal Review Unit) is not mandatory unless it is considered necessary by the administration. If a decision is not issued within this time frame, it is considered that the petition has been implicitly rejected.

Taxpayers can submit interpretation queries to the Greek Ministry of Finance, which may revert with advance rulings applicable on an *ad hoc* basis.

Tax grouping

Company law only provides for a consolidated balance sheet for accounting purposes.

In principle, Greek tax law does not provide a special tax regime for tax grouping. Each member of the group has a separate tax liability. Profits and losses cannot be shifted between affiliated companies. Furthermore, pursuant to the transfer pricing provisions, intra-group transactions must be in compliance with the arm's-length principle.

Foreign tax credit

Foreign-source income is usually taxable with a credit for foreign income taxes paid up to the amount of Greek tax corresponding to the foreign-source income. The credit cannot exceed the amount of Greek tax payable on the same amount.

ii Other relevant taxes

Business activity in Greece (consisting of taxable supplies of goods or services for VAT purposes) is subject to VAT. The standard VAT rate amounts to 24 per cent. Special provisions for VAT grouping are not applicable according to the Greek VAT legislation. Legal entities belonging to a group should register for VAT numbers individually.

Capital duty is payable on the nominal capital increase of legal entities, plus an additional 0.1 per cent surcharge for the benefit of the Competition Committee.

Save for the provisions of Greek VAT law, stamp duty at a rate of 1.2, 2.4 or 3.6 per cent may apply, depending on the transaction. Stamp duty is imposed on the relevant contractual agreement or transaction since it qualifies as transaction duty. In this respect, each transaction may be burdened either with VAT or stamp duty, but not both at the same time. Thus, the characterisation of the transaction is crucial for the imposition of indirect taxation, and each case should be examined on a case-by-case basis so as to determine whether it falls within the scope of VAT or stamp duty.

Foreign legal entities or companies are burdened with an annual special real estate tax rate of 15 per cent of the objective value of their real estate property unless they disclose their shareholders up to the level of the individual, ultimate beneficial owner, who is obliged to acquire a tax registration number in Greece.

Many additional exemptions are also available.

IV TAX RESIDENCE AND FISCAL DOMICILE

Greece (a member of the OECD since 1961) has signed and ratified 57 bilateral conventions for avoiding double taxation with third countries. See Section VII.iii for further information.

i Corporate residence

Legal entities of any type, as long as they are considered to be Greek tax residents, are subject to corporate tax in Greece on their worldwide income.

A legal entity is considered to be a Greek tax resident in the following cases: it is incorporated or established under Greek law; it has its registered office in Greece; or the place of its effective management is in Greece at any time during the tax year. The 'effective place of management' concept should be reviewed on an *ad hoc* basis as per the factual background of each case. To this end, indicative criteria are listed (such as the place of the day-to-day management of the company, place of strategic decision taking, place where the annual general meeting of shareholders or partners or the board of directors takes place, place where the accounting books of the company are held, residence of the members of the board of directors) without, however, excluding additional factors that, while they might not on their own substantiate the existence of tax residence in Greece, are taken into account when determining the place of effective management (such as the residence of the majority of shareholders or partners). It has been clarified that these provisions do not apply to companies subject to tax under Law 27/1975 and Legislative Decree 2687/1953 (shipping entities).

ii Branch or permanent establishment

The definition of PE in the ITC is compliant with Article 5 of the OECD Model, with the only exception of technical projects for which a three-month period is provided for the substantiation of a PE, as compared with the 12 months provided in the Model.

In the past, the domestic provision (under the previous ITC) was interpreted by the tax authorities in a manner that resulted in the substantiation of a PE for the provision of services in many cases (such as the dependency element regarding dependent, independent or undisclosed commission agents, judged each time on the factual background) and consequently for such PE to be burdened with Greek taxation. In this respect, the provision of services on technical projects in Greece has always been challenged by the Greek tax authorities. Recently, it has been established by the Supreme Administrative Court that the crucial element is whether the services provided are essential for the completion of the project and subsequently the substantiation of a PE for the foreign provider.

In any case, the provisions of various DTTs override the provisions of domestic law, which is applicable in the absence of any DTTs.

V TAX INCENTIVES, SPECIAL REGIMES AND RELIEF THAT MAY ENCOURAGE INWARD INVESTMENT

i Holding company regimes

In principle, as per the provisions of the ITC, holding companies are taxable legal entities for corporate income tax purposes.

Shipping companies operating under the special regime of Law 27/1975

Owing to the beneficial tax regime for shipping companies operating under Law 27/1975, Greece attracts Greek and foreign ship-owning companies with vessels flying a Greek flag and foreign ship-owning companies with vessels flying a foreign flag if their management is exercised by Greek companies or foreign companies established in Greece (operating under a special regime of offshore companies) that are subject to tonnage tax.

The Greek tonnage tax regime applies to category 'A' and 'B' vessels. Category 'A' vessels includes cargo vessels, tankers, steel hull vessels for dry or liquid cargo that ply to or between foreign ports, passenger vessels and drilling platforms. Category 'B' vessels include small boats and any other motor vessels not listed under category 'A'. The gross tonnage is calculated by multiplying coefficient rates by each scale of gross registered tonnage. This taxable tonnage is then multiplied by an age-corrected rate. A credit for the tonnage tax paid abroad is provided.

A shipowner, whether an individual or a legal entity, who is the registered owner of the relevant ship on the first day of each calendar year is liable to pay the ship's tonnage tax. The person managing the ship and collecting the hire fee as well as the manager's representative, subject to the latter having accepted the relevant appointment in writing, are also jointly and severally liable to pay the ship's tonnage tax.

Various exemptions to and reductions of the tonnage tax apply; for example, vessels built in shipyards in Greece, under a Greek flag, are exempt from tax for the first six years. A 50 per cent reduction for vessels operating regular routes between Greek and foreign ports or solely between foreign ports is also provided.

The payment of the tonnage tax exhausts all income tax liability of the ship-owner with respect to income derived from the ship's operation. The exhaustion of tax liability also applies to the shareholders or partners of a (Greek or foreign) shipping company; it also covers all capital gains arising out of the sale of the vessel realised at the level of the shipowner, the shipping company or its shareholders. If a company that owns a Greek-flagged ship also has other commercial activities than the operation of the ship, exemption from income tax applies to the net profits that correspond *pro rata* to the gross income the owner derives from ships subject to the tonnage tax regime.

In addition, the shareholders of the above-mentioned companies are exempt from any tax, duty, contribution or withholding, up to a natural person, for income acquired from dividends or distribution of net profits, whether such profits are acquired directly or through holding companies. An exemption from any taxation of the transfer of shares or parts of Greek or foreign shipowner companies under Greek or foreign flags applies regardless of the reason for the transfer. On the contrary, a 10 per cent withholding tax is applicable on dividend distributions to Greek tax residents by offices that are engaged in activities such as chartering, insurance and brokerage, other than the management and exploitation of Greek or foreign-flagged ships.

According to Article 29 of Law 27/1975, exemption from inheritance tax applies with respect to transfers of vessels, stocks or shares of Greek or foreign companies that own vessels flying a Greek or foreign flag with gross tonnage of over 1,500, and of stocks or shares of holding companies that hold stocks or shares of shipping companies, whether directly or through holding companies.

Finally, an annual contribution at a rate of 5 to 7 per cent from 2016 to 2019 is imposed on offices or branches of foreign enterprises that have been established in Greece by virtue of Article 25 of Law 27/1975, and that are engaged in the chartering, insurance, average (damage) settlement, purchase, chartering or shipbuilding brokerage, or chartering of insurance of ships under the Greek or a foreign flag whose capacity exceeds 500 gross registered tons, as well as on the representation of shipowner companies or undertakings whose object is identical to one of the above-mentioned activities. Greek and foreign companies that have established an office or branch under Law 27/1975 and are engaged in the management of vessels flying the Greek or a foreign flag, as well as in other activities approved by their licence of operation, are exempt from the above-mentioned annual contribution.

ii IP regimes

The ITC provides no special IP tax regime. However, income from royalties, which is defined as income gained in exchange for the use or the right to use any kind of intellectual property rights, is considered as capital income and is subject to withholding tax according to the general provisions. Specifically, royalties paid by Greek individuals or legal persons to foreign legal persons or entities with no establishment in Greece are subject to withholding tax at a rate of 20 per cent unless the legal persons or entities are tax residents of countries with whom Greece has entered into DTTs, which will prevail over the domestic law. The withholding tax of 20 per cent exhausts the tax liability of foreign legal persons and entities without a PE in Greece. On the other hand, foreign-source royalties paid to legal persons or entities that are Greek tax residents or have an establishment in Greece shall be included in their annual income tax return to be taxed as business income.

iii State aid

Over the years, the state traditionally introduced tax-incentive laws to motivate Greek companies either to set up a new business or expand their existing business activities. These tax incentives varied from time to time based on specific legislation. The basic state aid criteria differed basically on the requirements that were set, for example, according to the business sector contemplated and the region in Greece where the business would be established. The state used to provide incentives to Greek companies in the form of a subsidy or in the form of tax deductions to their annual corporate tax liability. Owing to the recession, there have been significant cuts to subsidies granted by the state, and the legislative framework on tax incentives has changed rapidly over the past few years.

iv General

The rationalisation of the applicable rates for legal persons (flat rate for taxable legal persons with both double-entry and single-entry accounting books) along with the deductibility of any expense incurred for business purposes under the conditions provided by law have formed a neutral tax regime.

VI WITHHOLDING AND TAXATION OF NON-LOCAL SOURCE INCOME STREAMS

i Withholding on outward-bound payments (domestic law)

ITC provides the imposition of withholding tax on capital income, which is introduced as a distinct category of income and includes the income, in cash or in kind, from dividends, interests, royalties. Specifically:

a dividends distributions made by Greek legal persons are subject to withholding tax at a rate of 10 per cent with effect for payments performed up to tax year 2016 and at a rate of 15 per cent for tax year 2017 onwards, exhausting any further tax liability for foreign legal persons or entities with no establishment in Greece;

b interest payments made by Greek legal persons are subject to withholding tax at a rate of 15 per cent, exhausting any further tax liability for foreign legal persons or entities with no establishment in Greece; and

c royalties payments made by Greek legal persons are subject to withholding tax at a rate of 20 per cent, exhausting any further tax liability for foreign legal persons or entities with no establishment in Greece.

If the recipient of the above-mentioned payments is a Greek legal person or entity, or a foreign legal person or entity with a PE in Greece, the capital income is added to the total taxable business income, and the withheld tax is offset against the income tax.

Withholding tax may be reduced or eliminated according to the provisions of the available DTTs or the provisions of the domestic legislation.

On the other hand, foreign-source dividends, interest and royalties paid to legal persons or entities that are Greek tax residents or have their PE in Greece shall be included in their annual income tax return to be taxed as business income.

ii Domestic law exclusions or exemptions from withholding on outward-bound payments

As regards intra-group dividends received by Greek legal entities or Greek PEs of EU legal entities, a broad tax exemption provision is provided, subject to conditions. Specifically, the recipient taxpayer must hold at least a minimum participation of 10 per cent of the value or the quantity of the share or principal capital or voting rights of the distributing legal entity, the minimum participation percentage should be held for at least 24 months (although the exemption may be provided prior to the completion of 24 months secured by a guarantee), and the legal entity proceeding to the distribution of profits should not have its registered seat in a state characterised as a non-cooperating state. As of 1 January 2016, a new condition has been introduced by virtue of which intra-group dividends are exempt from taxation to the extent that the respective dividends have not been deducted by the subsidiary. Moreover, a general anti-abuse rule is introduced by virtue of which the tax exemption in the case of the collection and payment of dividends is alleviated if it is considered that a 'non-genuine arrangement' exists as regards the intra-group structure. A 'non-genuine arrangement' is an arrangement that has not been put into place for valid commercial reasons reflecting the economic reality. The above-mentioned general rule is open to interpretation by the tax authorities, and there is no indication which party shall have the burden of proving that the arrangement is genuine.

In addition, dividends paid by or to legal entities that are taxpayers in an EU Member State are not subject to Greek withholding tax if the above-mentioned conditions are cumulatively met. The same exemption from Greek withholding tax applies for payments of interest or royalties between affiliated companies pursuant to EU Directive 2003/49/EC if the EU recipient taxpayer holds at least a minimum participation of 25 per cent of the value or the quantity of the share or principal capital or voting rights of the distributing legal entity. The minimum participation percentage should be held for at least 24 months (although the exemption may be provided prior to the completion of 24 months if secured by a guarantee), and the legal entity proceeding to the distribution of profits should not have its registered seat in a state characterised as a non-cooperating state.

iii Double tax treaties

Greece has entered into DTTs that provide beneficial income tax provisions compared to Greece's internal income tax legislation with the following countries: Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, China, Croatia, Cyprus, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, India, Ireland, Israel, Italy, Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malta, Mexico, Moldavia, Morocco, the Netherlands, Norway, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, the United Arab Emirates, the United Kingdom, the United States and Uzbekistan.

DTTs, through their integration into Greek (domestic) law, have increased legislative power over the domestic legislation according to Article 28 of the Greek Constitution. As such, the withholding tax amount differs if the recipient of a payment is resident in a tax treaty state, resulting in the application of the beneficial rate provided in the applicable DTT.

iv Taxation on receipt

Dividends, interest and royalties payments that are taxed on receipt and are not exempt under the above-mentioned conditions are attributed to the beneficiary legal persons and entities as taxable business income, while the tax withheld will be credited against the final tax liability in respect of such income at the level of the shareholder.

VII TAXATION OF FUNDING STRUCTURES

i Thin capitalisation

The thin capitalisation rules have been radically amended.

The rules under the ITC apply to all loans irrespective of their origin (whether intercompany or not, banking, etc.).

The amount of redundant interest is now taken into account for the tax-deductibility of interest rather than the equity and loans of the borrower as per the previous regime.

In principle, as of 1 January 2017, surplus interest expenses (debt interest expenses minus interest income) are not recognised as deductible business expenses to the extent that they are over 30 per cent of the taxable earnings before interest, taxes, depreciation and amortisation (EBITDA) after tax adjustments. Under the condition that the amount of net interest expenses registered in the accounting books does not exceed an annual threshold of €3 million (for tax years 2016 and 2017 onwards) although the surplus interest expenses exceeds 30 per cent of EBITDA, it is fully recognised as a deductible business expense. In the meantime, there will be a transitional period under which thin cap rules will be calculated likewise (interest on debt minus interest income) but with different percentages for each year (e.g., for FY 2014, 60 per cent, for FY 2015, 50 per cent and for FY 2016, 40 per cent). In the transitional period (i.e. tax years which commence from 1 January 2014 up to 31 December 2015) the threshold for interest expenses is €5 million.

Subject to conditions, interest expenses can be carried forward in subsequent years without a time limit.

Credit institutions are excluded from these provisions.

ii Deduction of finance costs

As per the provisions of the ITC, there are certain restrictions in relation to the deductibility of interest expenses (excluding bank loans, bond loans, etc.). Specifically, the aforementioned interest expenses are not deducted if these amounts exceed a certain predetermined interest rate defined by the Bank of Greece (the crucial time period is the conclusion or execution of the loan).

iii Restrictions on payments

From a corporate perspective, whether there are restrictions on dividend payments should be addressed on a case-by-case basis.

iv Return of capital

There are specific rules on the distribution of tax-free reserves implemented by the ITC. Since these tax-free reserves have been formed for various reasons either provided by tax, corporate or incentives legislation, the tax treatment should be determined based on the characterisation of the reserve.

VIII ACQUISITION STRUCTURES, RESTRUCTURING AND EXIT CHARGES

i Acquisition

Owing to the tax neutrality approached through the entry into force of the ITC, there is no particular vehicle for tax purposes for conducting a business in Greece unless the activity falls within the scope of Law 27/1975 or Law 89/1967. In addition, there are certain special purpose companies that may be subject to a special tax regime, such as real estate investment companies.

ii Reorganisation

Under the ITC, a provision of 'business restructurings' has been introduced. In particular, the ITC includes provisions on company restructuring and specifically on the contribution of assets in return of shares, exchange of shares, mergers and spin-offs, and transfers of the registered seat of a *Societas Europaea*.

Moreover, a business restructuring should be effected in accordance with the arm's-length principle. Specifically, it is stated that in the case of an intercompany business restructuring, either local or cross-border, in which goodwill or intangible assets are transferred or their use is assigned, then such transfer should be performed at a price that will be in compliance with the arm's-length principle. In addition, the reallocation of risks and functions in the context of this restructuring should be performed in accordance with the arm's-length principle by taking into account other comparable cases.

iii Exit

Once a business moving abroad has fulfilled its tax obligations in Greece, there is no particular exit tax regime regarding movement of the business abroad. It is worth mentioning that the ITC has certain provisions in relation to the EU Merger Directive.

IX ANTI-AVOIDANCE AND OTHER RELEVANT LEGISLATION

i General anti-avoidance

In Greece, a general anti-abuse rule has been introduced for the first time in Greece (Article 38 of Law 4174/2013) as part of the new measures to combat tax evasion, allowing the tax authorities to disregard artificial arrangements set up for tax evasion purposes. Upon assessing an 'artificial arrangement', the tax authorities should refer to the substance and business purpose of the arrangement, or lack thereof, and compare the tax burden triggered in the context of the potentially 'artificial arrangement' to the tax burden that would arise in the absence of such an arrangement.

An arrangement is considered artificial if it lacks commercial or economic substance. To determine whether an arrangement is artificial, various characteristics are examined. For the purposes of this provision, the goal of an arrangement is to avoid taxation in the event that, regardless of the subjective intention of the taxpayer, it is contrary to the object spirit and purpose of the tax provisions that would apply in the other cases. In order to determine the tax advantage, the amount of tax due, taking into consideration such arrangement, is compared to the tax payable by the taxpayer under the same conditions in the absence of such arrangement.

Finally, by virtue of specific tax provisions, transactions (e.g., expenses) between domestic entities and entities of non-cooperative states or states with beneficial tax regimes (e.g., offshore entities) are not recognised for income tax purposes.

On an EU level, ECOFIN adopted Council Directive 2018/822/EU, amending Directive 2011/16/EU as regards mandatory information on automatic exchange of reportable cross-border arrangements. The main purpose this framework, known as DAC6, is to provide a mechanism that will enhance and increase tax transparency throughout the EU as regards tax-aggressive cross-border arrangements, which effectively result in tax avoidance. Each Member State (and, therefore, Greece) must implement DAC6 into their domestic laws and regulations by 31 December 2019 and be in position to apply the new mandatory disclosure rules by 1 July 2020.

On a global level, according to the provisions of the Multilateral Convention to Implement Tax Treaty related measures to prevent BEPS (MLI) and Action 6 OECD/BEPS, separate rules are proposed to address situations of treaty abuse (treaty shopping for technical tax avoidance), as follows:

a A general anti-abuse rule based on the principal purpose of transactions or arrangements, according to which contracting states could deny the application of the preferential provisions of a bilateral treaty when transactions or arrangements entered into the application of a treaty in order to only obtain the tax benefits of these provisions in inappropriate circumstances (technical arrangements).

b A principal purpose test (PPT), according to which, having regard to all relevant facts and circumstances, obtaining that tax benefit is one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that tax benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the covered tax agreement. The benefit under this convention could not be granted if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit. In this case, a case-by-case analysis is required, based on what can reasonably be considered to be one of the principal purposes of transactions or arrangements.

c A simplified limitation on benefits (LOB) provision. The MLI does not include a detailed LOB provision given the substantial customisation required by contracting jurisdictions. Instead, the MLI allows parties that prefer to address treaty abuse by adopting a detailed LOB provision to opt out of the PPT and agree to 'endeavour to reach a bilateral agreement that satisfies the minimum standard'. In addition, the MLI allows parties preferring a detailed LOB provision to express their intention to incorporate the PPT as an interim measure while the detailed LOB is being bilaterally negotiated. For SPVs, funds or holding companies especially, the above limitation could arise if a significant percentage of UBO could not qualify for the tax relief for which the legal entity seems to qualify.

Greece seems to opt for the PPT rule. If the other jurisdiction chooses LOB but Greece chooses PPT, the PPT rule shall apply if the source country (place of payment) is Greece. The MLI will apply after being ratified and incorporated in the domestic legal framework of each jurisdiction. Greece has not incorporated or implemented the MLI framework. At present, the Greek tax administration is not yet familiar with the MLI framework, as it is not yet applicable in everyday practice.

ii Controlled foreign corporations (CFCs)

CFC rules have been recently introduced in the ITC with the aim of dealing with the tax avoidance of Greek companies through shifting revenues to subsidiaries in low-tax jurisdictions. Basically, these rules provide for the inclusion in the taxable income of Greek companies of undistributed 'passive' income of foreign subsidiaries under the conditions stipulated in law. As a general rule, EU entities fall outside the scope of the Greek CFC rules (unless the legal entity is deemed to be an artificial arrangement generated for the purpose of tax avoidance – in line with EU case law). If deemed a CFC, all undistributed income would be considered as taxable income of its Greek tax-resident shareholder, taxed at the rates applicable to income derived from business activities, as they are provided above.

The undistributed income of a foreign legal entity will be considered the taxable income of a Greek resident who controls the foreign entity if all of the following requirements are cumulatively met:

a the taxpayer, on his or her own or jointly with related persons, holds, directly or indirectly, shares, parts, voting rights or participations in the capital at a percentage exceeding 50 per cent, or is entitled to receive a percentage exceeding 50 per cent of the profits of the said legal entity or other entity;

b the above legal entity or other entity is subject to taxation in a non-cooperative state or a state with a preferential tax regime, namely a special regime allowing for a substantially lower level of taxation than the general regime;

c a percentage exceeding 30 per cent of the net income before taxes realised by the legal entity or other entity falls into one or more of the following categories:
- interest or any other income generated from financial assets;
- royalties or any other income generated from intellectual property;
- income derived from dividends and the transfer of shares;
- income derived from movable assets;
- income derived from real estate property, unless the Member State of the legal entity or other entity taxpayer would not be entitled to tax such income according to an agreement concluded with a third country; or
- income derived from insurance, bank and other financial activities; and

d it is not a company with a principal category of shares that are traded on an organised market.

Under Law 4337/2015, new provisions on the 'tax evasion' definition have been provided. In particular, tax evasion is committed by persons who intentionally avoid payment of taxes such as income tax, ENFIA, VAT, premium tax and shipping tax by hiding any taxable income or assets from the tax authorities. Moreover, under the new regime, the number of persons who are considered accomplices in tax-evasion crimes has been expanded. The persons falling under the said definition are those engaged with a company's effective management, administration and representation.

It should also be noted that under the new tax regime, the filing of an administrative out-of-court petition as well as a judicial petition before an administrative court does not affect criminal proceedings. However, the criminal court may suspend criminal proceedings until the issuance of a final decision of the administrative court if it decides that the decision of the administrative court is substantive.

iii Transfer pricing

The ITC provides that legal entities and other entities, when realising transactions with associated persons, should comply with the arm's-length principle. The arm's-length principle states that the terms concluded between associated persons for the performance of any transaction (supply of goods or services) must be the same as if the parties were not associated, otherwise the profits that would have arisen in the absence of the above-mentioned terms are considered as taxable profits.

The ITC defines the term 'associated person' to extend to legal persons, individuals and any other body of persons. Two persons or entities are regarded as 'associated' where:

a every person or entity holds, directly or indirectly, shares or parts of the quota in the other of at least 33 per cent estimated on the basis of the total value or number, or equivalent profit participation rights or voting rights;

b two or more persons or entities if one of them holds, directly or indirectly, shares or parts of the quota in the other of at least 33 per cent estimated on the basis of total value or number, or equivalent profit participation rights or voting rights; or

c every person or entity with which there is direct or indirect management dependence or control, or every person or entity that exercises or is able to exercise decisive influence over the other or a third person that has the possibility of direct or indirect management dependence or control or decisive influence over the other two.

The TPC provides the option of obtaining an advance pricing arrangement (APA) from the General Secretary of Public Revenues, as regards the methodology of specific future cross-border transactions with associated parties. An APA will cover any relevant criteria used for determination of the intra-group pricing. An APA term cannot exceed four years, and retroactive effect will not be possible.

Under Law 4337/2015, the penalties imposed for the delayed filing or non-filing or filing of an inaccurate summary information table as well as of the transfer pricing documentation file are calculated based on the value of intra-group transactions (as 1/1,000th of the value of the transaction).

iv Tax clearances and rulings

A tax clearance, valid for two months, may be granted by the tax administration to a taxpayer to realise acts and transactions only if it is established that the taxpayer does not have any due tax liabilities and has submitted all tax returns in the past.

If the issuance of a tax clearance is not possible, liability certification, valid for one month, may be granted to realise acts and transactions where the taxpayer has been included in a debt regulation programme.

A prohibition on granting a tax clearance or liability certification is provided for cases of state safeguarding measures for financial crimes or in the event of assessed due liabilities in the name of the taxpayer.

In cases of real estate property transactions (transfers, etc.), there is a certain type of liability certification that is issued for that particular reason.

In principle, Greek tax legislation does not provide a general framework for the acquisition of advance tax rulings. Under certain circumstances, the state issues an official approval decision – for example, for setting up an office under Law 89/1967 or the implementation of an APA procedure as referred to above.

X TAX COMPLIANCE

In the context of the continuous improvement of international tax compliance, Greek Law 4493/2017 ratified the Memorandum of Understanding and the Agreement between the

Government of the Hellenic Republic and the Government of the United States of America on the improvement of international tax compliance, and the implementation of the Foreign Account Tax Compliance Act (FATCA) on preventing tax evasion. Based on the Agreement for the implementation of FATCA legislation, Greece and the United States agreed on the automatic exchange of information on financial accounts held by Greek tax residents in US financial institutions and financial accounts held by US tax residents in Greek financial institutions.

In addition, in the context of mutual administrative assistance and cooperation in tax matters on an international and EU basis (OECD, EU) for the automatic exchange of information, Greece has adopted the global standard for the automatic exchange of information of financial accounts (Common Reporting Standard (CRS)). By virtue of law 4378/2016 (Government Gazette A' 55/106), amending Law 4170/2013, Greece implemented Council Directive 2014/107/EU 'amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation', adopting the use of the CRS at European level. By virtue of Law 4428/2016 (Government Gazette A' 190/2016) Greece ratified its participation in the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information. According to the new provisions, financial institutions that are tax resident in Greece must adopt specified due diligence procedures for the purpose of identifying bank accounts of individuals and legal entities and report their findings annually to the Ministry of Finance.

XI YEAR IN REVIEW

The entry into force of a new tax procedural code as of 1 January 2014, along with the introduction of CFC rules and general anti-avoidance rules as currently in force, brought about significant changes to the concepts of tax evasion and tax avoidance. In view of the new tax legislation, the Greek tax authorities have been adopting a stricter attitude towards legal entities and individuals upon a tax audit to prevent techniques that lead to a tax advantage. However, another aspect that should be addressed is the type of measures against individuals representing or participating (participation in partnerships) in a company that has tax liabilities owing to financial crimes. In particular, it is explicitly provided in the TPC that the state will impose safeguarding measures cumulatively on the company, and at the same time against the general partners of partnerships and any person who is appointed for any reason to the administration or management or representation of any legal entity or other entity as from the time the liability to attribute the taxes was born or the time the tax evasion was committed until the time the measures have been activated, irrespective of whether they have ceased to act under said capacity by any way or by any reason.

With reference to the joint liability of executives, the number of persons who are considered as perpetrators or accomplices of tax evasion crimes has been expanded to include those engaged in the effective management, administration and representation of legal entities, directly by law, by private consent or by a court decision.

The option of taking enforcement actions prior to the legal deadline for the payment of taxes or default notice, or the lapse of 30 days starting from the notification of the default notice, is provided in the case of a suspicion of fraud that endangers the collection of taxes.

XII OUTLOOK AND CONCLUSIONS

Since 1 January 2014, our tax legislation has been trying to keep up with new trends, taking into consideration the fact that tax evasion in Greece has been a major and unsolved issue. In particular, for first time in Greece, tax avoidance and CFC rules have been introduced, and the transfer pricing legislation has been updated to a great extent. Greece, being a member of the OECD, will have to follow the changes launched by the OECD in terms of base erosion and profit shifting and the global initiative to abolish BEPS.

The main burden on Greek taxpayers during this period is over-taxation both on income and on real estate property. Moreover, in view of the new tax legislation, Greek tax authorities have adopted a stricter attitude towards legal entities and individuals upon a tax audit to prevent mechanisms that lead to a tax advantage.

Notwithstanding the above, and owing to the recession in Greece, the government is not taking the necessary measures to provide tax relief and tax incentives that would attract new investment into the country. In view of this, it is imperative that the tax burden is reduced, since Greece is suffering from both high unemployment and much higher tax rates than other EU Member States.

Appendix 1

ABOUT THE AUTHORS

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Aspasia has over 25 years of specialisation in advising on tax law and representing clients before the administrative courts and the Council of State. She has vast experience in advising on income, inheritance, donation and capital gains tax imposed on individuals and companies, the tax arising from a broad range of transactions and indirect taxation. She studied economics at the University of Athens, so she is business-minded.

She has taken part in committees set up to examine tax legislation in the context of public consultations at the Ministry of the Economy and working groups at the Hellenic Federation of Enterprises for the improvement of the taxation system. Aspasia is secretary of the Greek Association of Tax Law and Fiscal Studies, in which capacity she has organised and participated in numerous seminars, lectures, conferences and working groups on the interpretation of tax legislation. Aspasia has taught courses on tax law at ALBA Graduate Business School, and taught seminars at the Ministry of Finance and the Athens Law Society on developments in tax. She has been widely published in newspapers and periodicals and conducts research for tax law publications. Since 2011, Aspasia has been editor of the *Tax Law Bulletin*, a leading Greek publication she has contributed to as a director for the past 25 years.

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Maria is a tax lawyer, advising companies and individuals on tax planning and structuring, direct and indirect taxes, filing requirements and regulatory compliance. She advises on income tax, VAT and stamp duty liability for companies and individuals, as well as the taxes arising from the purchase, sale, transfer and ownership of real estate and movable assets. Maria has experience in the area of transfer pricing, as well as the application of European and international tax legislation to Greek nationals and residents. She also represents high net worth individuals on tax-related disputes and in cases of audits by the tax authorities.

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