

THE REAL ESTATE  
INVESTMENT  
STRUCTURE  
TAXATION REVIEW

FIFTH EDITION

Editors

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# PREFACE

The real estate sector plays a crucial role in the global economy and social environment.

In particular, the commercial property sector offers the infrastructure needed for the growth and development of entrepreneurship and business, including offices, shops, industrial and logistics premises, and hotels. In Europe alone, commercial real estate represents a business of €8.5 trillion, which contributed €427 billion to the EU economy in 2021. It is also a fundamental source of employment. In 2021, the European real estate sector employed 4.2 million people – more than the car manufacturing and telecommunications sectors combined.<sup>1</sup>

Moreover, the sector also provides residential accommodation and is seen as a tool with which to meet social and public needs. New types of properties are emerging and have increasingly been included in investment portfolios, such as senior living, student accommodation and the life sciences market.<sup>2</sup> Since 2013, institutional investment in the residential sector has increased almost four times, to €606 billion in 2021. It has grown at a faster rate than commercial property and, over the same time line, its share of total institutionally invested property has doubled to 23 per cent.

The traditional retail and office sectors continue to represent a significant part of investors' portfolios, but their share has been declining over time in favour of residential property, particularly affordable and social housing. In responding to social and public needs, investors have increased the share of institutionally held residential investments, including student accommodation and senior housing, as well as holdings in 'alternative' property sectors (e.g., hotels, healthcare, car parks and mixed-use property).

In addition, urban regeneration has become a key element in many decisions taken at EU level and seeking to boost city renovation, decarbonisation and the green transition.

For the industry as a whole, the environmental, social and governance (ESG) agenda becomes clearly more pressing as each year goes by, and it is increasingly being recognised as more of an opportunity than an obligation. With the majority of stock (residential and non-residential buildings) built pre-2010 and almost a quarter pre-1945, Europe cannot achieve its emissions targets without retrofitting existing buildings to bring their energy efficiency levels into line with net zero goals.

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1 EPRA *Real Estate in the Real Economy* report 2022: [https://www.epra.com/application/files/9516/6861/1334/EPRA-INREV-Real\\_Estate\\_Real\\_FINAL\\_Economy\\_2022\\_Report.pdf](https://www.epra.com/application/files/9516/6861/1334/EPRA-INREV-Real_Estate_Real_FINAL_Economy_2022_Report.pdf).

2 EPRA *Global Real Estate Total Markets Table* report: [https://prodapp.epra.com/media/EPRA\\_Total\\_Markets\\_Table\\_-\\_Q1-2022\\_1649681531420.pdf](https://prodapp.epra.com/media/EPRA_Total_Markets_Table_-_Q1-2022_1649681531420.pdf).

Listed property companies and non-listed funds are constantly evaluating and improving their sustainability record through their participation in real estate sustainability benchmarks, such as GRESB and MSCI, in addition to reporting under relevant ESG frameworks such as EPRA sBPR, INREV and GRI.

In this context, attracting investment from institutional investors in highly regulated sectors such as pension funds, insurance companies and sovereign wealth funds is crucial for the growth of the real estate sector. In particular, it is desirable that those investors are involved in both financing large development projects and investing in properties held for rent.

Based on market practice, investments from foreign institutional investors are mainly carried out indirectly rather than through direct acquisitions, and particularly through specialised vehicles such as non-listed real estate funds, listed property companies and real estate investment trusts (namely REITs)

The pandemic emergency brought by covid-19 has affected the real estate sector just as it has so many other sectors. After a deep recession in most of the European economies in 2020 due to the pandemic, 2021 was characterised by an economic recovery that was forecast to continue, in principle, on a more moderate path.

However, in December 2022, annual inflation in the eurozone reached a record level of 9.2 per cent because of heightened uncertainty and geopolitical risks, as well as skyrocketing energy and raw materials prices caused by the war in Ukraine. Despite this uncertainty – and because the sector is underpinned by strong fundamentals – these conditions have not brought investments to a complete standstill. Nevertheless, we have certainly seen a slowdown. However, the underlying narrative around real estate in 2023 is one of cautious optimism, with renewed investment activity anticipated later in the year to counter the destabilising impact of high inflation and rising interest rates seen over the past 12 months.

In this regard, national legislators are bracing for a new risk phase and this will have an impact on new provisions aiming at stimulating or attracting selected investments in their countries. Parts of the NextGenerationEU recovery fund are likely to be subject to review in light of new ‘what if’ scenarios, as will tax credits and allowances given increased construction costs. Any review of national legislation shall also take into account international sanctions against Russia.

We are convinced that the role of the real estate sector as an economic, employment and social catalyst needs to be supported by a legislative framework that increases transparency and competitiveness, and simplifies as well as standardises bureaucratic processes.

However, the covid-19 pandemic, the war between Russia and Ukraine and the consequent inflation have all had different impacts within the European Union, depending on the country. This will, of course, further exacerbate differences between the interventions made by legislators in the individual jurisdictions, with allowances, tax credits and other tax provisions introduced and applied very differently from one Member State to another. Generally, these disparities reflect the level of impact of those elements on particular jurisdictions, the economic policies followed by their respective governments and the level of resources available to achieve those policy aims.

Correlatively, national legislators will need to adapt any new provisions to those pre-existing types of specialised real estate investment vehicles currently benefiting from tax exemptions or other advantageous allowances, for both direct and indirect tax purposes.

Given all of the above, the aim of this volume is to provide a useful guide to those international and institutional investors willing to invest in real estate properties located in Europe and elsewhere, and to illustrate in a comparative manner the possible alternatives

for establishing investment platforms in Europe and investment vehicles at a local level. In particular, each country-specific chapter provides insights from leading experts on key tax considerations and investment opportunities based on the relevant national legislation. Furthermore, in this edition, we have sought to provide indications of any allowances and facilitations introduced temporarily in response to current economic crises and that may also present investors with investment opportunities in specific countries.

We would like to thank the authors of this volume for their extensive expertise and their efforts to ensure the successful outcome of this work. We hope that the reader finds this volume useful and we welcome any comments and suggestions for its improvement.

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# GREECE

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## I OVERVIEW

### i Investment vehicles in real estate

The investment vehicles most frequently used for investing in real estate in Greece are *sociétés anonymes* (SAs) and private capital companies (PCs), which are commercial companies that both ensure the liability of their shareholders or partners is limited to the amount of their contributions and may also be established by a single shareholder or member. Institutional real estate investors may also invest through a Greek real estate investment company, which is an entity operating under the supervision of the Hellenic Capital Market Commission (HCMC) (see Section III).

From a practical standpoint, an SA is the most commonly used entity, since, under Law 4548/2018 and Law 3156/2003, it is the only corporate vehicle eligible to issue bond loans, which usually do not incur stamp duty, and the cost of registration of their collaterals with the competent registries is subject to a standard fee. The SA is generally considered the appropriate corporate form in cases of complex real estate transactions and acquisitions with a debt burden.

In addition, foreign companies may also directly invest in Greek real estate by establishing a branch.

### ii Property taxes

Investing in Greek real estate triggers tax effects in three successive stages, following the change of ownership from one investor–taxpayer to another. Specifically, by virtue of the applicable Greek real estate tax framework, tax effects are triggered upon the property’s acquisition, during the holding period and upon the property’s disposal.

The ‘objective value of the property’ is the prevailing principle for the calculation of the majority of property taxes. This principle was established in legislation for the first time in 1982<sup>2</sup> to allow a system for attributing value to real estate to be set up, as a tool against tax evasion. This system provides a minimum value for real property according to objective criteria such as location, size, access to public facilities and age of a building. The objective

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1 Aspasia Malliou and Theologos Mintzas are partners, Maria Kilatou is a senior associate and Iliana Nikolaidi and Nikoleta Nikolaou are associates at PotamitisVekris. The authors also gratefully acknowledge the contribution of their colleague Elena Theocharakou, senior associate at PoatamitisVekris.

2 Article 41 of Law 1249/1982.

values might differ from the market values. Not all areas in Greece have been valued. In the event of a lack of objective values having been set in some areas, the tax authorities estimate the market value based on comparable sales or other available data.

The objective value system has been challenged before the Supreme Court, which has consistently ruled that it is compliant with the Constitution,<sup>3</sup> on condition that the Ministry of Finance regulates the special criteria adequately from time to time, and the taxpayers' right to dispute the objective value in court is preserved. Furthermore, the Supreme Court has defined the objective value as the fair market value of a property that well informed, diligent and unrelated parties would accept while participating in transactions of this kind. From 1 January 2022, new objective values apply to real estate and these affect the purchase and ownership of real estate in Greece.

Finally, the electronic Register of Real Estate Transfer Values, which reports data on real estate transactions was introduced in 2017 and is accessible to the public.<sup>4</sup>

## II ASSET DEALS VERSUS SHARE DEALS

Investments in real estate can be structured either as asset deals or share deals, depending on the interest of the potential buyer, or the seller's intention, as well as tax structuring issues (see below). Timing usually depends on the completion of the due diligence exercise and the receipt of any required regulatory approvals.

Generally, for both share deals and asset deals, a distinction is made under Greek law between the act by which the obligation is created (sale) and the act of disposition (transfer).

In making the sale, the seller sells and agrees to transfer the asset to the purchaser, while the purchaser purchases and agrees to acquire the asset from the seller (contractual transaction).

In making the transfer, the seller delivers ownership and possession of the asset to the purchaser, while the purchaser acquires ownership and possession of the asset (*in rem* transaction).

The majority of real estate investment structures consist of a Greek entity, usually structured as an SA or PC, acquiring and holding the real estate, being held by a foreign parent company, tax resident in an EU jurisdiction qualifying under the EU Parent–Subsidiary Directive<sup>5</sup> and the Interest and Royalties Directive<sup>6</sup> or in any other third country with which Greece has signed a preferential double tax treaty (DTT). The choice of using the share deal vehicle for real estate investment in Greece is mainly tax driven since the shares' transaction are exempt from indirect taxes, real estate transfer taxes and share transfer taxes (with the exception of 0.2 per cent, applicable to listed shares). In addition, an asset deal is implemented by way of a notarial deed, whereas the share deal does not have to be implemented through a notarial deed. In any case, the choice of asset deal or share deal constitutes a strategic

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3 Greek Supreme Administrative Court judgments Nos. 4003/2014, 3833/2014, 2563/2015 and 1357/2018.

4 <https://www1.gsis.gr/dsae2/trxregistry/faces/pages/mainmenu/edit.xhtml>.

5 Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast).

6 Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.



decision that depends on a number of coefficients, including tax incentives or disincentives, as well as additional determinants related to legal restrictions and the short-term or long-term business purpose of the investment, following a cost–benefit analysis.

## **i Legal framework**

### ***Acquisition of real estate entities***

In a share deal, where the property is both owned by a company and the asset being offered by the seller, the transfer is completed by executing a private share purchase agreement (SPA) between the seller and the buyer for the transfer of the entity's shares. In the case of listed companies, HCMC rules apply in the procedure for the share transfer.

Borderland area permits and restrictions (see below) apply equally in cases of share deals.

The SPA needs to contain the identity of the parties and a description of the object of the sale (i.e., the shares) and to set out the purchase price or its method of calculation.

A typical Greek SPA contains both the sale and the transfer of ownership and possession of the shares to the buyer and the payment, or repayment, of the purchase price by the buyer to the seller, in which case closing occurs simultaneously; however, either the sale or the transfer may be subject to certain closing conditions, such as the condition precedent of payment, or repayment, of the purchase price, or the granting of the necessary regulatory approvals, where needed. For example, in cases in which antitrust filing requirements apply, the sale or the transfer is subject to antitrust clearance from the HCMC or the European Commission, as applicable. In the latter case, closing of the share deal occurs once the conditions are satisfied and closing of the share deal consists of mutual acknowledgements regarding satisfaction of the conditions.

Furthermore, under the applicable law, for the transfer to be effected, it must be registered in the shareholders or partners registry of the applicable Greek entity (SA or PC), with the registration dated and signed by the seller and the buyer, as the case may be. In addition, for registration to take place for PCs, a notification of the transfer signed by both the seller and the buyer must be served to the PC. As regards share certificates, where these have been issued, they must be annotated by the SA to the buyer or new share certificates issued. As share certificate issuances are not provided for in law for PCs, the annotation requirement does not apply.

### ***Acquisition of real estate assets***

Under the applicable legal regime, unless a special permit is required (see Section II.i 'Borderland areas special permits and restrictions'), in broad terms the standard procedure for the acquisition of a real estate asset consists of: (1) collection of all documents requested by the notary for the finalisation of the sale and transfer notarial deed, certificates proving the seller's compliance with obligations regarding social security, and unified real estate property tax certificates, and also technical documentation issued by the seller's engineer; (2) filing of the real estate tax return for the payment of the corresponding real estate transfer tax; (3) the signing of the sale and transfer notarial deed before a notary public by the parties and the payment or repayment of the purchase price to the seller by the buyer; and (4) the registration of the sale and transfer deed with the competent land registry or cadastral office (as the case may be).

Although registration of the deed with the competent land registry or cadastral office is legally required for the transfer to be effected, the parties typically conclude the transfer with the signing of the sale and transfer deed.

A reasonable buyer will arrange for tax, technical and legal due diligence exercises before deciding on an acquisition. Depending on the type of activity in which the target is engaged, environmental due diligence checks may also be advisable.

More specifically, in the context of the tax due diligence, the financial status of the legal entity owning the real estate property and its compliance with applicable tax legislation are thoroughly examined. Relatedly, potential investors may also conduct commercial due diligence on the asset to be transferred to determine the business and commercial viability of the planned investment.

Technical due diligence should also be extended to address and distinguish between the capital expenditure required and the building and planning review. During the capital expenditure review, the potential investor examines the quality of the erected building and its compliance with quality and safety standards, whereas during the building and planning review the actual building status and the use of the property in relation to the building permits and the relevant applicable planning framework is examined. Key to the aforementioned review is the location of the real estate property, as several restrictions apply to different planning zones, depending on whether the property is located within or outside an urban planning zone given that areas outside the urban planning zone are subject to several building restrictions. In general, building regulations determine the minimum total surface of the plot, the percentage of coverage of the plot, the minimum distances between buildings, the maximum building coefficient, the maximum height, etc.

Depending on the use of the real estate property, investors (and especially foreign investors) often choose to conduct a special environmental due diligence exercise to confirm that the property to be transferred and its use, both current and intended, are not harmful to the natural environment.

Finally, an important part of the due diligence for the asset is the legal due diligence. Within the context of a legal due diligence exercise, the potential buyer, with the assistance of a lawyer, will confirm the good standing of the property's ownership titles, the non-existence of encumbrances and third parties' claims. Also, during the legal due diligence process, a series of regulatory issues will be examined, such as the distance of the asset from the beach, permits and restrictions for borderland areas, island and forest areas, and archaeological restrictions. These are discussed in more detail below.

#### *Title deed investigations*

According to customary practice, the check on the ownership titles of the seller and its predecessors should go back at least 20 years (which is the statutory bar for civil claims), to confirm that the seller has lawfully acquired ownership over the property and that the property is not burdened with any encumbrances, such as mortgages, pre-notations of mortgage, easements or foreclosures, as well as any claims of third parties.

The title deed investigation is conducted in the following public registries of the area where the real estate property is located: the Land Registry; and, for those regions where the Greek Cadastre regime has been fully implemented, the competent cadastral office.

### *Distance from the beach*

In the case of a beachfront real estate property, it must be confirmed that it is not located on the beach or within the seashore zone and that no constructions exist within these zones, and that there is a relevant permit for the use of the seashore, and compliance with its terms and conditions (if such use is required for the operation of the property concerned).

### *Borderland area special permits and restrictions*

Law 1892/1990, as amended and in force, sets out the legal framework for the lease or acquisition of real estate properties in borderland areas, in accordance with the specific determination of such areas in law.

Law 1892/1990 prohibits all legal transactions *inter vivos* (except for parental benefit contracts and successions) involving acquisition of *in rem* or contractual rights in real estate assets located in borderland areas of Greece by individual or legal persons with, respectively, citizenship or registered seat in countries that are not members of the European Union (EU) or the European Free Trade Association.

This prohibition extends to the transfer of shares, and to changes of shareholders, in any company owning property in the specified borderland areas.

The prohibition is established for reasons of public interest and national security, to ensure the security and territorial integrity of Greece through legal restrictions on the acquisition or use and exploitation of real estate assets located in borderland areas by undesirable foreign persons.

This prohibition may be lifted only by a decision of a special commission in the competent decentralised administration (and will mainly depend on national security concerns). Approval requires a positive vote by the majority of the commission's members and a positive vote by the member representing the Ministry of Defence.

### *Private island permits and restrictions*

The acquisition of *in rem* or contractual rights over private islands or real estate properties located on private islands, regardless of the island's geographical location, requires a special permit issued by the Minister of Defence.

This requirement applies even for persons with Greek citizenship, and non-compliance invalidates the relevant legal transaction.

### *Industrial Area restrictions*

Industrial Areas are organised areas of industrial and craft businesses and are governed by a special legal framework that sets out, *inter alia*, the Industrial Area's urban planning, uses, and other construction matters. The operation of each Industrial Area is governed by a special regime and management of the Industrial Areas is overseen by the Hellenic Fund for Sustainable Development (ETVA).

Generally, if a property to be transferred falls within an Industrial Area, approval from ETVA is required for (1) the transfer or grant of any *in rem* or contractual right on the property, and (2) the operation of any business in a property located in the Industrial Area. The application requires the submission of certain economic and technical information and is filed by all transacting parties.

### *Environmental restrictions*

Particular attention is required to ensure that applicable environmental licensing requirements are met.

The operation of projects and activities that may have a negative impact on the environment are classified into the following two categories:

- a* Category A, including projects and activities that may significantly affect the environment and for which an environmental impact study is required: the implementation of Category A projects and activities requires the issuance of a decision approving the environmental terms and conditions.
- b* Category B, including projects and activities with no significant impact on the environment and for which the preparation of the environmental impact study is not required: Category B projects and activities are subject to standard environmental commitments, which form an integral part of the applicable permitting process.

### *Forestry restrictions and forest maps*

Another issue to be examined is whether part or the entirety of the asset to be acquired is located within a forest area, as special provisions apply for those areas, and special certificates must be obtained and appended to the notarial transfer deed.

Applicable legislation does not allow alteration of the forested nature of forest lands and thus the construction of buildings is prohibited unless exceptionally permitted under specific rules.

Note that there is an ongoing process for the registration of all forests in Greece. Certain further implications may arise in the context of this process. According to the data published by the Ministry of Environment as at the end of 2022, forest maps have been posted for 95 per cent of the territory (excluding areas within city plans and settlements) and the ratification rate exceeds 90 per cent of the posted forest maps.<sup>7</sup>

### *Archaeological restrictions*

Greek law has established a protective regime for ancient and modern monuments and sites, the basis for which is founded in the Constitution.

Restrictions may apply in respect of the construction and exploitation of real estate properties located within archaeological areas or areas close to ancient monuments and sites. In this context, the location of a property within an archaeological area in a region outside the city plan may broadly result in the prohibition of any construction (if within a protective Zone A) or in several construction restrictions (if within a protective Zone B). The construction of any building near an ancient monument is permitted only with the approval of the Ministry of Culture, following an opinion of the Central Archaeological Committee.

Further, the law provides for the state to declare properties as listed and thus restrict their demolition and alteration, depending on their cultural, historical or architectural value.

### ***Execution of the notarial transfer deed***

According to Greek law, the deed regarding the establishment, transfer, amendment or abolition of any *in rem* right on a real property shall be written and be vested in the form of a notarial deed. Submission of a real estate transfer tax declaration and payment by the

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<sup>7</sup> <https://ypen.gov.gr/kostas-skrekas-gia-proti-fora-i-ellada-apokta-axiopistous-dasikous-chartes/>.

buyer of the applicable real estate transfer tax is a prerequisite for the execution of the transfer deed before a notary public. Moreover, a series of technical documents, such as topographic diagrams, electronic building identification and other certificates, such as the Uniform Real Estate Property Tax (ENFIA) certificate, and the energy performance certificate, are required for the notarial deed.

Greek notaries are entrusted by the state to ensure that all documents required from the parties by law have been collected and appended to the contract, and thus to ensure the proper compliance of the real estate transaction with all manner of regulatory requirements concerning real property, such as taxes, zoning, planning, forestry, coastline requirements, energy efficiency and building regulations.

Note also that a typical notarial transfer deed includes seller's representations and warranties to the buyer for the full and indisputable title over the asset and the non-existence of any actual or legal defects over the property such as, inter alia, liens or encumbrances or any third-party claims; the asset's compliance with town-planning, environmental, forestry or archaeological restrictions; and tax clearance certificates.

### ***Registration of the notarial sale and transfer deed***

As noted, the transfer of a real estate property is concluded with the registration of the notarial sale and transfer deed with the competent land registry or cadastral office<sup>8</sup> (as the case may be) in the district of the immovable asset pursuant to the provisions of the Greek Civil Code.

Provided that the relevant registration fee is paid, registration is effected by submitting to the competent land registry or cadastral office: (1) an application for registration of the deed, (2) a registration summary containing the main details of the legal title, and (3) a certified copy of the deed. Registration follows the chronological order of submission.

## **ii Corporate forms and corporate tax framework**

### ***Corporate forms***

Corporate structures commonly used for real estate investments are SAs and PCs. Another investment vehicle is the REIC (not yet that common in Greece), a regulated entity operating under a special framework (see Section IV). Moreover, foreign companies may also invest directly in Greek real estate by establishing a branch, although this option seems to be less attractive from the tax standpoint.

#### *SA*

The SA is a private company limited by shares, governed mainly by Law 4548/2018, as amended and in force. An SA may be established by one or more shareholders, which can be legal entities or natural persons. In the event of there being only a single shareholder, the phrase 'single member' must be included in the corporate name. The company is liable for its debts and obligations with its own assets, whereas the liability of its shareholders is, in principle, limited to the amount of their capital contribution.

The main administrative body of an SA is the board of directors, consisting of at least three but not more than 15 directors. Law 4548/2018 for the first time provided for the possibility of the appointment of a single manager-director, in the case of micro and small SAs.

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8 For the islands of Rhodes, Kos and Leros, registrations are lodged with the Special Dodecanese Cadastre.

The minimum amount of share capital required by Law 4548/2018 for both the incorporation and the operation of an SA is set at €25,000. The share capital may be formed either in cash or by contributions in kind. Contributions in kind are subject to valuation.

Under the current legal regime, bearer shares are not allowed and only registered shares can be issued. The nominal value of each share can be set at an amount between €0.04 and €100. The issue of shares below par value is prohibited.

An SA can be incorporated by virtue of a notarial deed including the articles of association. Alternatively, the SA can be set up by the interested party by means of a simple private document through the one-stop shop online platform of the General Electronic Commercial Registry (GEMI), in which case the content of the model articles of association provided by Law 4441/2016 should be adopted and no deviation is allowed at the stage of incorporation. Actual incorporation of the SA is not possible through the GEMI one-stop shop if a notarial form is required by law (for instance if certain types of assets are contributed, including real estate) and, in this case, mandatorily a notary public must be engaged.

If a notary public is engaged, incorporation takes approximately three to five business days from the date of full submission of all documentation required to the notary public, whereas in the case of incorporation through the GEMI one-stop shop digital platform, the overall process requires a single business day.

### *PC*

A PC is a simpler and more flexible corporate form, introduced by Law 4072/2012.

A PC is a private capital company that has capital, and the liability of its members for the company debts is limited, except for those with guaranteed contributions.

A PC may be incorporated by several persons or by a single person (if the latter, the wording 'single member' must be included in the corporate name). The members may be legal entities or natural persons. Participation in a private capital company requires the acquisition of one or more company shares. The company shares are not represented by share certificates; instead, the company issues a company share document, which does not have the features of a security.

According to law, management of the PC is exercised by all partners acting collectively. Nevertheless, one or more directors can be appointed by the partners, if so stipulated in the articles of association.

In contrast to the SA, no minimum capital is prescribed by law for the incorporation of the PC, and its founding partners may freely determine the amount of capital to be contributed. Law 4072/2012 provides for three kinds of contributions: (1) capital (in money or in kind, excluding employment or provision of services); (2) non-capital (employment or provision of services); and (3) guarantees (a guarantee for the company's debts up to a specific amount as stipulated in the articles of association).

No notarisation is required and the incorporation process is conducted electronically through the GEMI online platform, unless the engagement of a notary public is specifically required by law.

### *Branch*

Under Greek law, a branch has no separate legal personality. All activities and operations of a branch are carried out in the name and on behalf of the foreign company.

However, for tax purposes, a branch is required to acquire a tax registration number in Greece, keep separate accounting books and record and prepare separate financial statements.

To establish a branch, it must be registered with GEMI, which will publish an announcement regarding the branch's registered seat, objective, name and legal representative.

### ***Tax framework***

#### *Corporate income tax rate and tax base*

All forms of corporations, namely the SA, the limited liability company or the PC, as well as permanent establishments (PEs) of foreign legal persons or entities in Greece, are treated in the same way for income tax purposes and are subject to Greek corporate income tax, as provided under the Greek Income Tax Code (ITC).<sup>9</sup>

Corporate income tax is defined as the sum of the total income from business activities after the deduction of business expenses, depreciations and bad debt provisions. Total corporate global income (domestic and foreign) is subject to Greek corporate tax unless a foreign PE exists, in which case the income is taxed at the place of the PE's tax residence (unless the applicable DTT provides otherwise).

The annual gross corporate income is determined on the basis of profit-and-loss accounts prepared in accordance with the applicable accounting principles (either Greek Accounting Standards<sup>10</sup> or International Financial Reporting Standards) and readjusted according to the tax rules of the ITC. No tax consolidation rules apply in Greece.

The statutory corporate income tax is set at a rate of 22 per cent. Corporate taxpayers are also required to pay an amount equal to 80 per cent of the current year's income tax as an advance against the following year's tax liability. Credit is given for the advance tax paid in the previous year. In the case of newly established corporations, the advance tax payment is reduced by 50 per cent for the first three years starting from the entity's registration with the tax authorities.

All expenses that meet certain criteria are tax-deductible (except for certain expenses specified as being non-deductible).

Non-deductible expenses may include the following:

- a* interest on loans (other than bank loans) to the extent that they exceed the interest that would arise if the interest rate was equal to the interest rate of loans on open deposit or withdrawal accounts provided to non-financial enterprises and as indicated in a statistical bulletin of the country's central bank, the Bank of Greece, for the most recent period prior to the date the loan was undertaken;
- b* expenses exceeding €500 whose partial or total payment was not effected through banks;
- c* unremitted social security contributions;
- d* fees for illegal activities;
- e* income tax or penalties (including entrepreneurship duty and special solidarity contributions); and
- f* amounts paid to individuals or non-EU legal entities that are tax resident in non-cooperative countries or in countries with a preferential tax regime.

In addition, tax depreciation is classified as a tax-deductible expense. Depreciation rates vary from 4 per cent to 40 per cent depending on the asset. Newly established companies are eligible to postpone the depreciation for the first three years of the life of the asset.

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<sup>9</sup> Law 4172/2013 (published in Government Gazette No. 167 23.7.2013).

<sup>10</sup> Law 4308/2014 (published in Government Gazette No. 251/24.11.2014).

### *Tax losses*

Tax losses are also carried forward and offset against business profits for five consecutive tax years. Exceptionally, tax losses carried forward may be forfeited where there is a change in ownership of more than 33 per cent and the entity also changes its business activity within the same or the following fiscal year and the new business activity represents more than 50 per cent of the annual turnover compared with the fiscal year before the change in ownership took place.

### *Interest limitation rules*

Interest expenses are tax-deductible under specific restrictions. Specifically, annual exceeding borrowing costs up to the threshold of €3 million per year are fully tax-deductible. If annual borrowing costs exceed the €3 million threshold, the higher of €3 million and 30 per cent of earnings before interest, taxes, depreciation and amortisation (i.e., EBITDA) is tax-deductible. Excess borrowing costs means the amount of deductible borrowing costs exceeding taxable interest income and other financially equivalent taxable income received, with borrowing costs including interest expense for any form of debt, other expenses financially equivalent to interest, and expenses arising from the raising of financing, including any interest that is capitalised and the cost of loans.

Related-party financing and its corresponding interest is subject to transfer pricing rules and interest on third-party loans (other than interest on loans by banks, interbank loans and corporate bond loans that exceed specific statistical thresholds set by the Bank of Greece) is not tax-deductible. Loan interest for the financing of share acquisitions is not tax-deductible.

## **iii Direct investment in real estate**

### ***Taxes upon purchase***

#### *Real estate transfer tax*

The sale of real estate is subject to real estate transfer tax (RETT). RETT is levied at a rate of 3 per cent on the higher of the objective value and the agreed-upon transfer value, and it is borne by the buyer. Additionally, a municipality surcharge equivalent to 3 per cent of the RETT amount also applies, thus leading to an effective transfer tax rate of 3.09 per cent. As noted, RETT is borne by the buyer and should be paid as a lump sum amount before signing the transfer deed. Also, aggregated notary and land registry fees amount to approximately 1.1 per cent of the price agreed in the notarial deed (i.e., the consideration) or the objective value (i.e., tax value) of the property for RETT purposes, whichever is greater.

#### *VAT*

Under the Greek VAT Code,<sup>11</sup> the acquisition of the real estate property is subject to VAT at a standard rate of 24 per cent if the following conditions are all met:

- a The applicable building licence has been issued or revised (insofar as the construction has not commenced up to the date that the licence was revised) since 1 January 2006.
- b The sale is performed by a person subject to VAT.

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11 Law 2859/2000, Article 6.



- c The building has not been occupied or used prior to its disposal, and to this end occupation comprises the possible uses of the real estate in any way (e.g., self use or lease of the property).

In the event that VAT is levied on real estate transactions, RETT tax does not apply.

*Taxes during holding period*

*ENFIA*

An annual uniform tax on the ownership of real estate (ENFIA)<sup>12</sup> is applicable in Greece, in the form of a principal tax on each real estate property and a supplementary tax on the total value of the real estate.

The principal tax, borne by individuals and corporate taxpayers, is determined by several factors.

The principal tax on buildings is calculated by multiplying the square metre area of the building by the principal tax, which ranges from €2 to €16.20 per square metre, and other coefficients affecting the value of the property (e.g., location, use, floor of the property).

The principal tax on land is calculated by multiplying the square metre area of the land by the principal tax, which ranges from €0.0037 to €9.25 per square metre, and other coefficients affecting the value of the property (e.g., location, façade, use of the property).

The supplementary tax, borne by corporate taxpayers, is imposed at a rate of 0.55 per cent on the total tax value of the subject property rights. This rate is reduced to 0.1 per cent for properties that are self-used by the entity for commercial or business activity subject to ENFIA.

ENFIA is tax-deductible for corporate income tax purposes.

*Special Real Estate Tax*

The Special Real Estate Tax (SRET)<sup>13</sup> is a special anti-avoidance mechanism applicable to legal persons and entities that have full or bare ownership or the usufruct right on real estate, situated in Greece as at 1 January of each year. SRET is imposed annually at a rate of 15 per cent on the total objective value of the property held.

The SRET regime<sup>14</sup> provides for a wide range of exemptions, which are first assessed at the level of the legal person that owns the real estate.

Qualifying conditions for SRET exemption (as stipulated under the SRET regime) should be met precisely on 1 January of each tax year, as the SRET obligation is generated on this date.

For exemption from SRET, entities are required to maintain on an annual basis the relevant documentation as defined in the applicable tax ruling, namely Decision A. 1206/2020, as in force from 1 January 2020, issued by the Director of the tax authority, the Independent Authority for Public Revenue (IAPR).

Key exemption categories include the following:

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12 Law 4223/2013 (published in Government Gazette No. 287/31.12.2013).

13 Law 3091/2002 (published in Government Gazette No. 330/24.12.2002).

14 Article 15 of Law 3091/2002.

- a* companies (SAs, limited liability companies, PCs) with registered shares up to the level of the ultimate beneficial owner, provided that these have been registered for tax purposes in Greece (i.e., they possess a Greek tax identification number);
- b* companies listed on an organised stock exchange market or on a multilateral trading mechanism, supervised by an International Organization of Securities Commissions member authority and a certificate from the competent national authority is required;
- c* companies engaged in commercial, manufacturing or industrial, activity in Greece, provided that for the relevant tax year the gross revenue from this activity is higher than the gross revenue from the real estate they own, as evidenced by annual tax returns;
- d* companies structured as SAs, limited liability companies and PCs with registered shares and portions and registered seat in Greece or the EU and their shares or portions is held or managed by the following:
  - credit institutions;
  - pension funds;
  - insurance companies;
  - close or open-ended mutual funds of investment in real estate property and their managers;
  - mutual funds of investment in real estate property regulated by Law 2778/1999 and their mutual fund management;
  - European long-term investment funds regulated by EU Regulation 2015/760 along with their managers;
  - AIFMs regulated by Law 4209/2013 or Directive 2011/61/EU;
  - AIFs managed by AIFMs regulated by Law 4209/2013 or Directive 2011/61/EU;
  - UCITS, regulated by Law 4099/2012 and Directive 2009/65/EC;
  - European venture capital funds and their managers regulated by Regulation (EU) No. 345/2013; and
  - European social entrepreneurship funds and their managers regulated by Regulation (EU) No. 346/2013.

#### *Municipal taxes*

Real estate is subject to the following municipal taxes and fees: cleaning and lighting fees, payable by the owners or users of buildings for the collection of waste and the lighting of streets; fees for use of streets, squares and pavements; a general duty (the municipal real estate duty), payable by the owners or users of buildings or spaces supplied with electricity, ranging from €0.02 to €0.07 per square metre.

A minor municipal property tax is imposed at a rate ranging from 0.025 to 0.035 per cent of the market value of immovable property located within a municipality's boundaries and it is collected by the municipalities through the property electricity bill.

#### *Stamp duty and VAT*

Stamp duty applies to lease agreements, calculated on the annual rent, as agreed and provided under the lease agreement. Stamp duty is set at a fixed rate of 3.6 per cent and is payable by the lessor to the Greek state. Stamp tax is classified as tax-deductible expense for the purposes of corporate income taxation. Residential leases are exempt from stamp duty.

There is also an option for commercial leases to be subject to 24 per cent VAT (effective as of 1 June 2016).

*Income taxation*

Income derived by individual taxpayers from leasing (rental) or self-use (presumptive income) of real estate property is classified as capital income, subject to income tax in accordance with the following progressive tax scale.

**Taxation rates for real estate capital income**

Income	Tax rate
Up to €12,000	15%
€12,001 to €35,000	35%
€35,001 and above	45%

Income derived by corporate taxpayers from leasing (rental) of real estate property is classified as business income, subject to corporate income tax rate (see Section II).

Despite real estate-sourced income being taxed in Greece, foreign tax residents from a country that has a DTT with Greece would have to review the tax treatment applicable under the DTT.

*Taxes upon disposal**Real estate transfer tax – VAT*

RETT or VAT applies on disposals of real estate (see Section II.iii)

*Income taxation*

Capital gains realised by individual taxpayers on the disposal of real estate is exempt from tax until 31 December 2024.

Capital gains realised by corporate taxpayers upon the disposal of real estate are classified as business income subject to corporate income tax (see Section II). Capital gains are calculated as the sale price minus the value of the asset as recorded in the accounting books (i.e., the historical acquisition cost, increased by any revaluation and decreased by depreciations).

*PE issues*

The term ‘permanent establishment’ has been incorporated into the ITC in line with the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital. Under the ITC, income from immovable property and other rights linked to immovable property situated in Greece are qualified as Greek source income. Furthermore, income generated by legal entities from immovable property is classified as business income, whereas any source of income generated by foreign legal persons or entities is taxable in Greece if they hold a PE in Greece to which the income can be attributable.

The IAPR has provided further clarification on the tax treatment of income from immovable property under Ministerial Decision No. 1069/2015, according to which foreign legal persons or entities that are tax resident in a country with a DTT with Greece will be subject to Greek tax on the income from immovable property located in Greece, regardless of whether the foreign tax resident has a PE in Greece. Foreign legal persons or entities that are tax resident in a country that does not have a DTT with Greece will be considered to have a PE in Greece if they maintain immovable property in Greece from which income is generated.

#### **iv Acquisition of shares in a real estate company**

##### ***Taxes upon acquisition***

No direct or indirect taxes are levied upon the acquisition of shares in Greek real estate companies with the exception of a 0.2 per cent sales tax imposed on the sale of shares listed on the Athens Stock Exchange.

##### ***Taxes on dividends***

Generally, Greek withholding tax of 5 per cent applies upon dividend distributions by a Greek corporate taxpayer, legal person or entity, to any individual or corporate recipient.

In cases of intragroup dividend payments, zero withholding tax applies if all the conditions of the EU Parent–Subsidiary Directive are met:

- a* the receiving legal entity should own shares, parts or a participation in the share capital of at least 10 per cent, on the basis of the value or number, right to profits or voting rights of the distributing taxpayer;
- b* the minimum holding percentage of shares or parts or participations should be held for at least 24 months;
- c* the receiving legal entity is incorporated under the one of the legal forms provided in the Appendix of the Parent–Subsidiary Directive;
- d* the receiving legal entity is tax resident in an EU Member State and is not considered tax resident in a third state, on the basis of double taxation agreements with that third state; and
- e* the two companies are subject to corporation tax without being exempted and both adopt the form of a limited liability company.

If the two-year holding period condition is not met at the time of the dividend payments, an exemption from the Greek withholding tax could be granted provided that the Greek subsidiary submits to the tax authorities a Greek bank guarantee equal to the amount that would have been paid if the exemption were not available.

Unless the Parent–Subsidiary Directive applies, dividend payments made to individuals or foreign legal persons or entities tax resident in states with which Greece has concluded a DTT are subject to the preferential withholding tax provided under the DTT (i.e., lower than the domestic withholding tax of 5 per cent).

Once the tax is withheld, individuals and foreign legal persons or entities without a PE in Greece are not liable for any further income tax. In the case of Greek corporate taxpayers, legal persons or entities, or foreign PEs in Greece, the dividend income is added to the total business income to be taxed as ordinary corporate income (see Section II), and taking into account the offset withheld tax.

##### ***Taxes upon exit – capital gains***

Any capital gains realised on the transfer of shares is subject to tax at a rate of 15 per cent. The capital gains are defined as the difference between the purchase (i.e., acquisition) price and the transfer (i.e., sale) price. Any capital gains derived from the transfer of shares by individuals could be exempted from capital gains tax if the individuals are tax residents of another state with which a DTT has been signed, and provided that all the necessary documentary evidence of tax residence is submitted to the relevant tax administration authority. Capital

gains from the transfer of shares of real estate-rich companies (i.e., companies deriving more than 50 per cent of their value from real estate) is treated similarly to capital gains from the transfer of real estate and is exempt from tax until 31 December 2024.

Capital gains from share disposals by corporate taxpayers are generally classified and taxed as corporate income, along with total business income (see Section II). However, foreign legal entities are not subject to Greek tax on capital gains from the disposal of Greek shares if they do not maintain a PE in Greece to which the income could be attributed. In all other cases, foreign legal entities must assess the applicable DTT with Greece.

As of 1 January 2020, by way of intragroup exemption, capital gains from share disposals by Greek corporate taxpayers (including foreign PEs in Greece) are exempt from tax provided that:

- a* the company whose shares are transferred is established under one of the legal forms listed in the Appendix of the Parent–Subsidiary Directive and is tax resident in an EU Member State, subject to one of the taxes listed in the Appendix without eligibility for option or exemption; and
- b* the company transferring the shares retains for at least 24 months at least 10 per cent of the share capital, right to profits or voting rights of the distributing taxpayer, on the basis of the value or number, in the company whose shares are transferred.

Business expenses associated with these participations are not deductible for corporate income tax purposes.

#### *Tax incentives – non-domiciled tax regime for individuals investing in Greece*

Pursuant to the ITC, as amended by Law No. 4646/2019, high net worth individuals now have incentives for transferring their tax residency to Greece. Under the clarifications provided by Decision 1036/2020 of the Greek Ministry of Finance and the IAPR on the newly presented non-domiciled (non-dom) regime, investors will pay a fixed tax of €100,000 per tax year for income earned abroad (irrespective of the source or amount of the income) and be taxed based on domestic income tax rules for Greek-sourced income (under the same rates as any Greek tax resident). The specific non-dom regime applies for a maximum of 15 fiscal years. High net worth individuals who choose to transfer their tax residence to Greece will enjoy the privileges of this special tax treatment provided that the following conditions are met:

- a* the taxpayer has not been a tax resident of Greece for the past seven of the eight years prior to the transfer of his or her tax residence to Greece; and
- b* the taxpayer can prove that he or she or a relative has invested at least €500,000 in real estate or business of transferable securities or shares in legal entities established in Greece (the investment may have been made through a legal entity in which the taxpayer holds the majority of the shares).

Moreover, the individual has the right to request an extension of the non-dom regime to a relative. In that case, an additional tax of €20,000 per relative shall be levied and provisions on gifts, parental gifts and inheritance do not apply.

Following the payment of the fixed amount of tax, the individual is liable for no further tax on income earned abroad and he or she is exempt from inheritance or gift tax on assets located abroad.

### III REGULATED REAL ESTATE INVESTMENT VEHICLES

#### i Regulatory framework

Greek law provides for two types of regulated real estate investment vehicles: (1) the real estate mutual fund; and (2) the real estate investment company (REIC). Both are regulated by Law 2778/1999 and delegated decisions of the HCMC and are licensed and supervised by the HCMC. Under the current legal framework, REICs must concurrently be licensed by the HCMC as alternative investment managers, under Law 4209/2013 (transposing into Greek law Directive 2011/61/EU,<sup>15</sup> as they qualify as internally managed alternative investment funds.

#### ii Overview of the different regulated investment vehicles

Since no real estate mutual fund has been licensed in Greece, in practice REICs are the only regulated real estate investment vehicle operating in Greece, with nine companies currently holding a REIC license. The main features of Greek REICs are described below.

##### *Licensing, supervision and listing*

REICs must be incorporated in the form of an SA, with registered shares and a minimum issued share capital of €25,000,000. To grant a REIC licence, the HCMC evaluates the company's investment plan, organisation, technical and financial assets, the reliability, suitability and relevant experience of its managers to be, and the existence of corporate governance rules.

REICs are subject to the corporate governance provisions applicable to companies with securities listed on a regulated market, and these provisions apply *mutatis mutandis* to REICs from the time of their incorporation. Among other requirements, the corporate governance provisions require the election of independent non-executive members to the board of directors, the operation of an internal audit system, the establishment of certain board committees, etc.

In addition, REICs are required to submit to the HCMC a detailed investment policy, describing the market elements that form the basis of their strategy and the means that will be used to pursue their objectives. REICs investments must be kept with a custodian bank that has an establishment and operation in Greece.

REICs must also fulfil the internal organisation and other governance requirements applicable to AIFMs under Law 4209/2013. Among other requirements, they must adopt remuneration policies and practices in conformity with the provisions of Law 4209/2013, which is applicable to staff whose employment may have an impact on the REIC's risk profile.

REICs are required to list their shares on the regulated market of the Athens Stock Exchange within two years of their incorporation (or licensing, in the case of an SA licensed as a REIC after its incorporation). The HCMC may grant an extension to this deadline of up to 36 months in cases of *force majeure* or if it deems that market conditions put the successful listing of the REIC's shares at risk. At the time of listing, at least 50 per cent of the share capital of the REIC must have been invested in real estate property.

REICs are supervised by the HCMC, whose prior approval is required for any amendment to the REIC's articles of association or increases in share capital. Until the REIC's

<sup>15</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

shares have been listed on the regulated market, the HCMC's prior approval is also required for the acquisition of a direct or indirect participation in the REIC's share capital or its voting rights greater than 10 per cent, 20 per cent, 33.3 per cent, 50 per cent and 66.6 per cent.

### ***Permitted investments***

Law 2778/1999 provides for specific investments that may be carried out by REICs. In particular, a REIC must invest at least 80 per cent of its total assets exclusively in the following rights and shares:

- a* full or bare ownership or the right of usufruct of real properties located in Greece or in an EU or European Economic Area (EEA) Member State, that can be used as (1) business premises for commercial or industrial purposes, or (2) residential premises;
- b* financial leases, surface rights, long-term leases (more than 20 years), concessions of use or commercial exploitation of real properties of the above permitted uses;
- c* at least 80 per cent of the share capital or units of: (1) capital companies dedicated to the exploitation of real properties; (2) holding companies investing solely in capital companies dedicated to the exploitation of real properties; (3) UCITS investing their funds exclusively or mainly in REICs or in real estate development and management companies; (4) REICs or real estate mutual funds in Greece or other EU countries; and (5) AIFs, provided that, with respect to entities covered by points (3) to (5) above, they are licensed by and supervised by a competent authority of an EU Member State and they invest solely or mainly in real estate, in accordance with the aforementioned permitted investments; and
- d* at least 10 per cent of the share capital or units of a company or organisation described above under items (1) to (5) at (c) above, provided that: (1) the purpose of the company or organisation is the acquisition, management and exploitation of real property and the provision of services associated with its use, operation and exploitation; (2) the purpose of the REIC's participation in the company or organisation is the implementation of a common business strategy for the development of one or more real properties of a minimum value of €10 million; and (3) the REIC appoints at least one member to the board of directors of the company or organisation (if it does not acquire control).

### ***Investment limits***

The following limits apply to REICs' investments:

- a* The value of investments in residential real properties shall not exceed 25 per cent of the REIC's total investments at the time of acquisition.
- b* The value of investments in real properties located in third countries outside the EEA shall not exceed 20 per cent of the REIC's total investments.
- c* The value of investments in plots shall not exceed 25 per cent of the REIC's total investments at the time of acquisition.
- d* The value of the real properties not fully owned by the REIC shall be lower than 20 per cent of the REIC's total investments, at the time of acquisition.
- e* The value of the REIC's rights in financial leases shall be lower than 25 per cent of the REIC's total investments at the time of acquisition.
- f* The value of each property acquired by the REIC or a subsidiary the holding in which is greater than 80 per cent shall be lower than 25 per cent of the REIC's total investments at the time of acquisition or completion of works.

- g* The value of the REIC's investment in shares or units of a holding company investing solely in capital companies with the exclusive purpose of the exploitation of real properties shall be lower than 25 per cent of the REIC's total investments.

### **iii Tax regime for the investment vehicle**

The Greek legal framework<sup>16</sup> for REICs provides a preferential tax regime as follows:

- a* REICs are not subject to corporate income taxation but, instead, to a tax imposed on their average net asset value. That tax rate is 10 per cent of the valid European Central Bank intervention interest rate (the interest reference rate) increased by 1 percentage point, plus any available funds, at their current value.
- b* No income taxation is imposed on transferable national or foreign sourced securities, except for nationally sourced dividends acquired by individuals or legal persons or entities not subject to withholding taxation.
- c* No tax duty is imposed on the issuance of REIC shares.
- d* No tax duty is imposed on the transfer of real estate to a REIC.
- e* Exemption from RETT is provided in respect of any property acquisitions.
- f* Transfer tax of 3.09 per cent applies on any property transferred by the REIC.
- g* Exemption from SRET is also provided.

Real estate mutual funds enjoy the same tax treatment as REICs.

### **iv Tax regime for investors**

According to the REIC regime, no withholding tax is levied on dividends distributed by Greek REICs and no income tax is levied on capital gains from transfers of non-listed shares.

Capital gains deriving from the sale of listed REIC shares are taxed as follows:

- a* Individuals, who participate in the share capital of the REIC at a percentage of at least 0.5 per cent, are subject to capital gains tax at a rate of 15 per cent.
- b* Greek tax resident legal persons or entities, or foreign legal persons or entities with a PE in Greece, are subject to a tax rate of 22 per cent.
- c* Foreign legal persons or entities with no PE in Greece are not subject to tax.

In addition, the sale of REIC listed shares is subject to the 0.2 per cent transaction tax.

## **IV REAL ESTATE INVESTMENT TRUSTS AND SIMILAR STRUCTURES**

As noted in Section III, there are no real estate mutual funds, nor real estate investment trusts, currently licensed in Greece. See Section III also for details of the functioning of REICs, which are, in practice, the only regulated real estate investment vehicles operating in the country.

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16 Law 2778/1999 (published in Government Gazette No. 330/24.12.2002).



## V INTERNATIONAL AND CROSS-BORDER TAX ASPECTS

### i Tax treaties

#### *Multilateral Instrument*

On 26 January 2021, Greece published Law 4768/2021 in the Official Government Gazette providing for the ratification of the Organisation for Economic Co-operation and Development (OECD) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument (MLI)).

The MLI implements the tax treaty-related measures against base erosion and profit shifting (BEPS) developed by the OECD/G20 BEPS project into the network of existing DTTs without the need for bilateral renegotiation. These measures aim to prevent treaty abuse, improve dispute resolution, prevent the artificial avoidance of PE status and neutralise the effects of hybrid mismatch arrangements.

#### *EU Anti-Tax Avoidance Directive*

On 23 April 2019, Greece published Law 4607/2019, to incorporate the first EU Anti-Tax Avoidance Directive<sup>17</sup> and modifying the domestic rules for controlled foreign companies (CFCs) and the general anti-avoidance rule.

According to the new CFC laws, the taxable income of a Greek tax resident includes the non-distributed income of legal or other entities or PEs tax resident in another state, provided that the following conditions are all met:

- a* the taxpayer, on his or her own or jointly with related persons, holds, directly or indirectly, shares, parts, participations, 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 legal or other entity;
- b* the corporate tax actually paid in respect of the profits of the above foreign legal person or legal entity or PE is less than the difference between the corporate tax that would be owed by the legal person or legal entity or the PE, according to the provisions of Greek law if this legal person, entity or PE was a Greek tax resident in accordance with Article 6 of the ITC and the corporate tax actually paid by the legal person or legal entity or PE in respect of their profits; and
- c* a percentage exceeding 30 per cent of the net income before taxes realised by the legal entity or other entity falls under 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 finance lease;
  - income derived from invoicing companies that generate revenue from (1) sales of goods and services, and (2) services purchased and sold to affiliated companies that do not add an economic value or add a minimum economic value; and
  - income derived from insurance, banking and other financial activities.

<sup>17</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (known as ATAD 1).

The above shall not apply to cases where the CFC is engaged in a substantial economic activity supported by personnel, equipment, assets and facilities, as evidenced by relevant facts and circumstances.

On 30 June 2022, Greece published Law 4949/2022, to incorporate the second EU Anti-Tax Avoidance Directive<sup>18</sup> and eliminate mismatches arising from the treatment of reverse hybrid instruments, and adding new Paragraphs 10 and 11 in Article 66B of the ITC. According to these new provisions, if one or more related foreign tax-resident companies maintain a total direct or indirect interest of 50 per cent or more of the voting rights, capital or profits of a hybrid Greek legal entity and they are established in jurisdictions treating the hybrid entity as a taxable person in Greece, the hybrid entity is considered to be tax resident in Greece and subject to income tax in the country, to the extent that such income is not otherwise taxed under Greek law or the legislation of any other jurisdiction. The provision of Paragraph 10 of Article 66B of the ITC on ‘reverse’ hybrid mismatches does not apply to ‘collective investment undertakings’. Such collective investment undertakings are investment undertakings or portfolio companies with a large number of participants that hold a diversified portfolio of securities and are governed in Greece by appropriate regulations for the protection of investors. On 17 January 2023, the European Parliament approved the European Commission’s draft third Anti-Tax Avoidance Directive (ATAD 3), as amended by the Committee on Economic and Monetary Affairs. The purpose of the proposed Directive, also known as the ‘Unshell Directive’, is to counter the misuse of shell companies as conduit vehicles to take advantage of withholding tax exemptions under the Parent–Subsidiary Directive and the Interest and Royalties Directive, and under double tax treaties. The aim is for EU Member States to implement ATAD 3 into their national legislation by 30 June 2023, with 1 January 2024 being the effective date. Greece has not yet transposed ATAD 3 into its domestic law.

## **ii Cross-border considerations**

Broadly speaking, direct and indirect investment in Greece is not subject to specific restrictions. Nevertheless, restrictions on foreign investment on public interest and national security grounds exist as regards land purchases in borderland areas and on certain islands (see Section II.i).

## **iii Locally domiciled vehicles investing abroad**

Currently, there are no specially designed tax advantages in seating an investment vehicle investing offshore in Greece. This is because Greece has no special tax regime for holding entities providing for a general dividends and capital gains participation exemption applicable to qualifying subsidiaries.

## **VI YEAR IN REVIEW**

During the past few years, important steps have been made towards the digitalisation of the Greek real estate sector.

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18 Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (known as ATAD 2).

The digitalisation of the Cadastre's operations, namely electronic filing of deeds with the cadastral records, legal due diligence conducted electronically through the platform [Ktimatologio.gov.gr](http://Ktimatologio.gov.gr), electronic issuance of certificates required for notarial deeds (previously particularly time consuming), the digital submission of real estate transfer tax returns through the myProperty electronic platform, together with the digitalisation of the procedure for the issuance of building permits through the e-adeies electronic platform are all examples of the progress being made in digitalising procedures. Moreover, as of November 2023, the Electronic Property File platform, which is currently functioning on a pilot basis, will enter into full operation. This new digital tool can automatically collect from the relevant public authorities the documents necessary for the transfer of a property.

Furthermore, progress has been made regarding the completion of the cadastral survey of the Greek territory. According to the plan of the Hellenic Cadastre, the cadastral registration of the entire country is expected to be completed at the end of 2025, (i.e., 30 years since the creation of the Hellenic Cadastre in 1995).

Also, the framework for strategic investments has been reformed. The new categories introduced by Law 4864/2021 are focused on technological development and innovation in general (agrifood, research and innovation, biotechnology, cultural and creative industries, robotics, artificial intelligence, medical tourism, waste management, space industry, digital transformation and cloud computing). The Law provides for tax incentives for investments characterised as strategic, including: (1) stabilisation of the income tax rate on the date of classification of projects for a 12-year period following completion of the investment; (2) the possibility of tax exemption from income tax on pre-tax profits realised, subject to the tax legislation, from all the activities of the company, minus the tax of the legal entity or legal person attributable to the profits distributed or taken over; and (3) the possibility of accelerated tax depreciation of fixed assets included in the approved investment plan by a 100 per cent increase of the rates set out in the table referred to in Paragraph 4 of Article 24 of Law 4172/2013.

## VII OUTLOOK

Investments in commercial real estate in the Greek market reached a record €1.65 billion in 2022, marking a 40 per cent increase compared with investments in 2021.

Developments in the real estate sector are focusing on sustainable development and environmental, social and governance criteria, which are influencing investors and conditioning their interest in both new and existing properties.

Interest in logistics and data centres will also continue to be strong, from both domestic and international investors, with this trend expected to continue in 2023 because of sustained high demand and low supply. The lack of product will continue to drive investors into the land market.

Finally, 'big-box stores', or retail parks, are also predicted to be projects of great interest to investors.