

# Greek Corporate Tax and European Tax Integration

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## Abstract

The present study constitutes a thorough review of the current tax regime applicable in Greece, from a corporate income tax point of view, following the significant tax reform that has taken place in 2013, with a particular emphasis on the latest, important tax modifications that have been carried out recently, within 2018 and 2019. The study especially refers to the components of the tax base in Greece, the applicable tax rates and the taxation of business profits, mergers and demergers, dividends and capital gains, subsidiaries and permanent establishments and groups of companies. Moreover, special reference is made to the controlled foreign companies (CFC) regime as well as the exit taxation regime applicable in Greece. Last but not least, the study also covers issues of national legitimacy and European compatibility of reforms as well as issues of tax competition.

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## 1. Effects of the recent corporate tax national reform on tax rates and regimes

### 1.1. Different components of the tax base

The tax framework applicable to companies in Greece was introduced by the Greek new Income Tax Code (GITC) which came into effect as of 1 January 2014 (Law 4172/2013 as amended). Resident corporations are taxed in Greece on their worldwide income. Non-resident corporations are taxed in Greece on any Greek-source income they derive from the country (source taxation). A legal entity or other entity is considered as tax resident in Greece if one of the following conditions is met: a) it has been incorporated or established according to the Greek legislation, b) it has its registered seat in Greece and c) the place of effective management is located in Greece.<sup>1</sup> To be noted that the determination by the tax authorities that the effective management of a legal entity is exercised in Greece is made by taking into account mainly the place of exercising the day-to-day management, the place of making strategic decisions, the place where the annual general meeting of shareholders or partners is held, the place where the books and records are kept, the place where the meeting of the members of the Board of Directors (BoD) or other executive management board takes place, and the residence of the members of the BoD or other executive management board. The residence of

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1. Companies that are established and operate according to Law 27/1975 on the taxation of vessels are explicitly excluded from the application of these provisions on tax residence.

the majority of the shareholders or partners may also be taken into consideration. The applicable corporate income tax (CIT) rate of legal persons and entities, (excluding credit institutions for which the currently applicable rate is 29%), is depicted in the following table:

Financial year	Tax rate (%)
2019	28%
2020	27%
2021	26%
2022	25%

The gradual reduction of corporate income tax rate for the next four years<sup>2</sup> has been provided in a tax law published in 2018, when the applicable tax rate was 29% in order to reduce the tax burden and stimulate the economic activities in Greece.

Corporate income tax is imposed on a company's total annual profits before the distribution of dividends, fees paid to directors out of profits, etc. Business income includes the revenues from sale of assets as well as liquidation of proceeds. Taxable business profit is determined each tax year according to the Greek Accounting Standards or the International Accounting Standards, after adjustments for tax purposes.

The taxable business profit occurs after deduction from the entire business income of the business expenses, the depreciations and the provisions of bad debts. Business expenses are considered tax deductible, provided that a) they are incurred for the benefit of the company or in the ordinary course of the business, reflective real/actual transactions, the value of which is not deemed lower or higher than the market value, are recorded in the company's books at the respective fiscal year, in which they are incurred, and are supported by appropriate documentation, and b) they are not explicitly characterized as non-deductible by the respective tax provisions. The non-deductible expenses which are specifically defined include interest on loans received from third parties (other than bank loans) to the extent that the amount exceeds interest that would have been payable on revolving lines of credit provided to non-financial institutions, expenses related to a purchase of goods or services exceeding EUR 500 whose partial or total payment was not effected through bank payment instruments, unremitted social security contributions, fees for illegal activities, income tax/penalties, as well as VAT which apply to non-deductible expenses. Furthermore, amounts paid to individuals or non-EU legal entities that are tax resident in non-cooperative states<sup>3</sup> or in countries with a preferential tax regime<sup>4</sup> are non-deductible,<sup>5</sup> unless the taxpayer can prove that such

2. The reduction of the corporate income rate from 29% to 26% shall be applicable on the condition that there is no divergence from the Medium-Term Budgetary objectives set in the Economic Adjustment Program following an assessment of the International Monetary Fund and the European Commission in collaboration with the European Central Bank, the European Stability Mechanism and the Greek authorities.
3. The definition of "noncooperative states" is amended Law by law 4549/2018 voted on 14 June 2018 to include jurisdictions that have not signed the Council of Europe/OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters and are not committed to the automatic exchange of financial information starting in 2018.
4. K. Savvaidou, The effort to combat international tax avoidance through the provisions of tax bills 3842/2010 and 3943/2011: The enactment of limitations on payments to non-cooperative states or states with a privileged taxation regime, in triangular transactions and indirect allocation of profits to foreign countries (in Greek), Greek Bulletin of Tax Legislation, pp. 1107-1137 and pp. 1187-1228 (2011); K. Savvaidou, The effort to confront international tax avoidance by the provisions of tax bill 3842/2010 (in Greek), Accountancy Greece 2, pp. 52-58 (2010); K. Savvaidou, Tax consequences of transfer of domicile to non-cooperative states or states with preferential tax regimes: One more ambiguous effort of the Greek tax legislation to tackle tax avoidance pp. 369-445 (in Greek), tome in honour of professor Nikolaos Barbas, Public Finance and Law (Sakkoulas, Athens-Thessaloniki 2013); also published in Bulletin of Tax Legislation, pp. 979-1017 and pp. 1139-1163 (2013).
5. A. Malliou, Tax deduction of depreciation and expenses for the purchase of products and provision of services from offshore companies. The opposition of article 5 par. 7 of L. 3091/2002 with the constitutionally guaranteed general principle of equality (article 5 par. 5 of the Greek Constitution), Law of Enterprises and Companies (ΔΕΕ) 11, pp. 1177-1182 (2003).

payments relate to actual and ordinary transactions and they do not reflect the transfer of profits, income or capital gains for tax avoidance purposes etc.<sup>6</sup> Moreover, according to thin capitalization rules<sup>7</sup> the amount of deductible interest expenses, is limited up to thirty per cent (30%) of the earnings before interest, tax, depreciation and amortization (EBITDA) (article 49 of the GITC).

Furthermore, losses incurred in Greece may be carried forward to offset business profits for five years. Net operating losses can be carried forward up to five years to offset company benefits. The carryback of losses is not permitted. Also, losses incurred abroad from the activities of a Greek permanent establishment (PE), generally may not be offset against domestic-source profits. However, the losses may be offset if they arise from business activities of a PE, carried out in an EU/EEA member state that has concluded a tax treaty with Greece that does not contain a provision for a foreign branch income exemption. The new rules apply retroactively as from 1 January 2014 and confirm the content of administrative Circular POL 1088/2016, which provides that losses incurred abroad generally may not be offset against income taxed in Greece.<sup>8</sup> The relevant administrative circular POL 1200/2016 clarified that in order to prevent the double deduction, utilization possibilities for losses arising from a PE abroad first must be exhausted in the country of the PE, before determining whether any such losses could be potentially set off or utilized in Greece. If the taxpayer can show by any acceptable means that PE losses are permanent, e.g. due to the cessation of the branch operations, these losses can be used at the time they became permanent in calcu-

6. Specific rules were enacted to restrict transactions with non-cooperative states and states offering preferential tax treatment in articles 51A and 51B of L. 2238/1994, i.e. the previous Greek Income Tax Code. Non-cooperative states were defined as states that, on 1 January 2010, were not EU Member States and which, up to the aforementioned date, had not concluded agreements on administrative assistance in the tax sector with Greece or with, at least, 12 other states. According to the respective provisions, non-cooperative states were to be listed in a Ministerial Decision to be issued annually. Furthermore, an individual or a legal entity, irrespective of its legal form, was considered located in a state with a preferential tax regime, even if its registered office was located in an EU Member State, in situations in which it was not subject to taxation in this state or was de facto not subject to taxation, or was subject to tax on income or capital in an amount that was lower than 60% of the tax that would have been due, in accordance with Greek tax legislation, had such an entity been resident in or maintained a permanent establishment (PE) in Greece. Expenses concerning transactions between Greek companies and entities established in non-cooperative states or states with a preferential tax regime were deductible, provided that satisfactory evidence was provided that the transactions were real and usual and did not result in a transfer of profits, capital or income, for the purposes of tax evasion or tax avoidance. Following the introduction of L. 4172/2013, according to article 23 of the new GITC, expenses paid to a natural or legal person or legal entity that is tax resident in a non-cooperative state or a state with a preferential tax regime. (article 65 of the GITC) are not tax deductible, unless the taxpayer proves that such expenses relate to real and regular transactions and do not result in profit shifting or income or capital shifting aimed at tax avoidance or tax evasion. A corresponding exemption has been enacted, however, with regard to EU Member State/European Economic Area (EEA) tax residents, provided that there is a legal basis for the exchange of information between Greece and such state.
7. Thin cap rules were introduced for the first time in Greece pursuant to L. 3775/2009, which provided for a debt-to equity ratio under article 3 Pursuant to the said provision, which inserted the thin cap rules into the former Greek Income Tax Code (L. 2238/1994), accrued interest on loans paid to affiliated companies was deductible on condition that the debt-to-equity ratio was 3:1. This provision was amended by article 11(7) of L. 3842/2010, which extended the exceptions from the application of the respective anti-avoidance rules to banks, factoring companies and special purpose vehicle companies, as identified in L. 3156/2003 and L. 3601/2007 (an exception was already in force for leasing companies). Apart from the above, loans assumed by third parties, and in respect of which a guarantee had been issued by the affiliated companies mentioned, were to be added to the total amount of the loans assumed by the affiliated companies. Last, but not least, the corresponding provisions abolished a clause regarding non-application of thin cap rules to loans that were concluded prior to the publication of L. 3775/2009 (namely 21 July 2009) (the grandfathering clause). Thus, as of 2010, the debt-to-equity ratio also covered older loans. Pursuant to the provisions of the subsequent L. 3943/2011, the exemption from thin cap rules was extended to Investment Service Companies under L. 3606/2007. Under the new Greek thin cap rules, however, taxable profits before interest, tax and depreciation (EBITDA) are to be taken into account. More specifically, interest expenses are not deductible to the extent that the surplus of interest expenses over interest income exceeds 30% of EBITDA. The said limit does not apply to net interest expenses unless they exceed EUR 3 million. Moreover, an indefinite carry-forward of the excess amount of non-deductible interest expenses to future years is provided for. Such an excess amount will be deductible in future years to the extent that there is an amount of EBITDA that has not been covered. These rules, however, are not applicable in respect of credit institutions, leasing companies and factoring companies, licensed by the Bank of Greece or the respective regulatory authorities of other Member States.
8. See Deductibility of foreign-source losses revised, Greece | Tax | January 23, 2017, available in: [https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr\\_tax\\_alert\\_tax\\_losses\\_POL\\_1200-17\\_en\\_noexp.pdf](https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_tax_alert_tax_losses_POL_1200-17_en_noexp.pdf).

lating the company's Greek taxable profits. The main rule that foreign losses arising from a PE abroad should be monitored separately per country (for EU/EEA countries) still applies. Of course, companies may offset any foreign-source losses from business activities not related to a foreign PE (e.g. losses arising on the sale of shares or bonds issued by a foreign company may be deducted from the company's business profits in Greece).

Moreover, tax losses carried forward by a legal entity are forfeited when there is a change in ownership of more than 33% within a fiscal year. Law 4549/2018 on 14 June 2018 introduced an additional condition for forfeiture of tax losses. More specifically, losses will not be forfeited unless the entity also changes its business activity within the same and/or the following fiscal year, and the new business activity represents more than 50% of the annual turnover compared to the fiscal year before the change in ownership took place.<sup>9</sup> The explanatory report of law 4549/2018 notes that the new provision on the transfer of losses constitutes a "lex specialis" enumerating the conditions, under which the right to carry forward losses is forfeited and applies also in case where the change in ownership results from a corporate transformation. Consequently, general anti-avoidance rules applicable to corporate transformations (e.g. mergers, de-mergers etc.) does not apply with respect to the right to carry forward tax losses, which is to be governed by the newly introduced rule analyzed above.<sup>10</sup>

## 1.2. Mergers and demergers

Law 4172/2013 (GITC) incorporated the provisions of the EU Merger Directive 2009/113, which provides a common system for the taxation of company reorganizations. According to the new provisions, as well as administrative circular POL. 1198/2016, issued by the Director of Independent Authority of Public Revenues (former General Secretariat of Public Revenues), specific incentives are granted in respect of reorganizations effected within the framework of the GITC. Greek tax authorities, however, can impose additional conditions for the application of the provisions on an exchange of shares (article 53) and mergers and demergers (article 54), as prescribed by L. 4172/2013, to combat tax avoidance.<sup>11</sup> It can be argued that the said anti-avoidance rule constitutes a targeted anti-avoidance rule (TAAR), aimed at eliminating tax avoidance in respect of business transformations. Nevertheless, the provision grants wide discretion to the tax authorities to limit cases that fall within the scope of the tax benefits, thus creating tax uncertainty regarding the exact arrangements that can be regarded as tax avoidance arrangements.

Moreover, for cross-border M&As, Greece enacted Law 2578/1998 (amended by Law 3517/2006) to implement the European Union (EU) Merger Tax Directive (Directive 90/434/EU as amended by Directive 2005/19). However, due to the lack of a company law framework for cross-border mergers until the end of July 2009, the relevant provisions of Law 2578/1998 were not practically applicable, except for those relating to the exchange of shares, transfer of assets and cross-border merger for the formation of a European company.<sup>12</sup> On 28 July 2009, Law 3777/2009 on cross-border mergers of companies was enacted, implementing the provisions of EU Directive 2005/56 of 26 October 2005 in relation to cross-border mergers of companies of different member states, with the purpose of expanding the scope for EU enterprises to restructure within the EU market.<sup>13</sup>

9. These changes will have retroactive effect as from 1 January 2014.

10. See Structural tax reforms approved after new law ratified by the Greek Parliament, Greece Tax News July 11, 2018, [https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr\\_tax\\_alert\\_new\\_tax\\_law\\_en\\_noexp.pdf](https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_tax_alert_new_tax_law_en_noexp.pdf).

11. Regarding the new framework of Law.4601/2019, see D. Avgitidis, The new framework of companies reorganizations (in Greek), ΔΕΕ (Greek magazine), Vol.2/2019, February 2019, p.162. See also K. Savvaidou, speech given The new framework of companies reorganization and the interaction with tax legislation, organized by the Hellenic Company of Jurists of North Greece and the Macedonian Union of Company Law at 5 and 6 April 2019 (in Greek).

12. See <https://home.kpmg/xx/en/home/insights/2018/04/greece-taxation-of-cross-border-mergers-and-acquisitions.html>

13. See <https://home.kpmg/xx/en/home/insights/2018/04/greece-taxation-of-cross-border-mergers-and-acquisitions.html>

Law 4601/2019 (Government Gazette A' 44/09.03.2019, hereinafter "the Law") constitutes a significant development when it comes to companies' transformations, since an organized regulatory framework is introduced for the first time from a corporate law perspective.<sup>14</sup> The unification of the respective provisions in order to address fragmentation and multi-regulation as well as the simplification of the respective procedure by reducing the relevant obligations, is expected to be beneficial for businesses for achieving economic growth and development. The Law aims at the reformation and systematization of the respective provisions as well as the modernization of the applicable legal framework in a way compatible with EU law, and the resolution of possible conflicts between tax and corporate law. For purposes of clarity, Art. 4 of the Law clarifies that the provisions of PD 1297/1972 regarding the "provision of tax incentives for the merger or conversion of enterprises for the creation of large economic units", L 2166/1993 regarding "incentives for business development, arrangements for indirect and direct taxation and other provisions" and L 4172/2013, as well as tax or incentive laws, remain in force with regard to the tax aspects and the advantages or incentives relating to the transformations within the scope of the Law.<sup>15</sup> Furthermore, the relevant provisions of Art. 66 – 89 of CL 2190/1920 on transformations, which had remained in force, are abolished by Art. 147.<sup>16</sup>

Furthermore, decision of the tax administration (E.2048/21-3-2019) provides guidance for the implication of such law in the tax legislation. According to the decision, in order for the tax advantages provided in the different investment (legislative decree 1297/1972<sup>17</sup>, law 2166/1993<sup>18</sup> etc.) or tax laws (law 4172/2013<sup>19</sup>) to be applicable, the special requirements provided to them should be met, such as minimum capital, legal form of the reorganized companies etc. The Independent Authority of Public Revenues announced, also, the publication in the imminent future of a new decision regarding the interpretation of the new company's legislation and the further guidance.

Furthermore, pursuant to article 51 of the GITC, a business restructuring between affiliated enterprises, including a reorganization of functions, assets, risks or business opportunities, constitutes a transfer of functions, in respect of which fair and arm's length consideration must be given, to the extent that significant intangible assets are transferred.<sup>20</sup>

By virtue of article 51 of the GITC, the regulatory ambit of the arm's length principle, therefore, also covers business reorganizations and restructurings, implying that a transfer of operations, functions, tangible or even intangible assets, risks, anticipated profits or future business opportunities is involved, which necessitates the imposition of arm's length remuneration, as if such a restructuring is taking place between unrelated entities. In this respect, the granting of a right to use intangible assets (marketing intangibles, know-how, goodwill, etc.) within the context of a

14. Regarding the new framework of Law.4601/2019, see D. Avgitidis, The new framework of companies reorganizations (in Greek), ΔΕΕ (Greek magazine), Vol.2/2019, February 2019, p.162. See also K. Savvaidou, speech given The new framework of companies reorganization and the interaction with tax legislation, organized by the Hellenic Company of Jurists of North Greece and the Macedonian Union of Company Law at 5 and 6 April 2019 (in Greek).

15. Regarding the new legislation of companies reorganizations and his relation with the tax legislation, see K. Savvaidou, Clarifications of tax nature regarding the companies' reorganizations (in Greek language), Monthly Newsletter of SEV "Regulatory environment and companies, Volume 27, April 2019, p.7; G. Dalianis, Tax treatment of of companies reorganizations (in Greek), Capital.gr, 4 April 2019; K. Niforopoulos, "The new legislation (law 4601/2019) of companies reorganizations, (in Greek), available at: taxheaven, 26-3-2019; A. Kefala, The reform of the law of companies reorganizations and the systematic integration of the relevant provisions in one single texte (in Greek), ΔΦΝ (Greek magazine), 2019, p.69-71. See also SEV, Companies reorganizations, Special Report, Economy and Companies, Volume.36, 11 December 2018, available at: [http://www.sev.org.gr/Uploads/Documents/51741/etairikoi\\_metaximatismoi.pdf](http://www.sev.org.gr/Uploads/Documents/51741/etairikoi_metaximatismoi.pdf).

16. See EY, Companies' Transformations (L.4601/2019), <https://www.ey.com/gr/en/services/tax/country-tax-advisory/law-alert-law-companies-transformations>.

17. <https://www.taxheaven.gr/laws/law/index/law/334>

18. <https://www.taxheaven.gr/laws/law/index/law/86>

19. <https://www.taxheaven.gr/laws/law/index/law/528>

20. K. Savvaidou, V. Athanasaki, Greece — Specific Anti-Avoidance Measures in Greece in the Post-BEPS and Post-ATAD Era, Vol.59: 4 (2019), European Taxation IBFD, March 2019 pgs. 169-176.

business restructuring, should be given in exchange for fair consideration, in compliance with the arm's length principle. For this reason, the total value of the transfer package deal should be taken into account. Article 51 of the GITC significantly broadens the scope of transfer pricing rules in Greece<sup>21</sup> and clarifies that business restructurings are also subject to the arm's length principle, a conclusion that is also in line with Chapter IX of the OECD Transfer Pricing Guidelines.<sup>22</sup>

### 1.3. Dividends and capital gains

Dividends received from subsidiaries (either domestic or EU-resident) qualifying for the participation exemption regime (i.e. in case a 10% minimum participation is held for an uninterrupted period of at least 24 months, etc.) corporate income tax exempt (under the conditions of the Directive 2011/96/EE of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States). Moreover, dividends received from non-qualifying participations are subject to tax as normal business income at the applicable corporate income tax rate. Certain credits are being provided for taxes already paid.<sup>23</sup> In case of further distribution of the reserve formed by tax-exempt dividends received from Greek or foreign subsidiaries established in an EU member state, said amount shall not be included in the taxable income of the legal entity proceeding to said distribution, but may be subject to dividend withholding tax (WHT).<sup>24</sup>

Based on the general anti-abuse rule introduced, the tax exemption in the case of collection and payment of dividends is alleviated in case it is considered that a 'non-genuine arrangement' exists (i.e. an arrangement that has not been put into place for valid commercial reasons reflecting the economic reality).<sup>25</sup>

Should the aforementioned tax exemption of intra-group dividends not apply, any underlying CIT and dividend WHT that may have been paid by a Greek or foreign subsidiary established in an EU member state are credited against the Greek CIT payable (up to the amount of tax that would arise in Greece). In such a case, the tax corresponding, and not the tax paid, on such dividends can be deducted from the Greek tax due.<sup>26</sup>

Capital gains derived by corporations are taxed as ordinary business profits at the corporate income tax rate. The income derived from the goodwill arising upon the transfer of Greek government bonds or Greek treasury bills that are acquired by legal entities that do not qualify as Greek tax residents and do not maintain a PE in Greece is tax exempt. Moreover, capital gains derived from the sale of listed and non-listed shares are considered business income taxable at the standard CIT rate. Capital gains derived from the sale of listed and non-listed shares by foreign legal entities

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21. See M. Tsirikos & P. Zafeiropoulos, *Transfer Pricing Issues in Greek and International Tax Law*, *Law of Enterprises and Companies (ΔΕΕ)* 2, pp. 178-192 (2004) (in Greek); K. Savvaidou & A. Malliou, *The practice of determining transfer pricing as a method of restricting tax avoidance and/or evasion, with regard to intangible assets in Greek tax law* (in Greek), *Bulletin of Tax Legislation*, pp. 1221-1243 (2007); K. Savvaidou & A. Malliou, *Greece*, in *Transfer Pricing and Intangibles* pp. 295-317 (IFA Cahiers vol. 92A, IBFD 2007), *Online Books IBFD*; V. Doumoulakis, *Comparison of the scope of article 39 ITC (overpricing and underpricing) and article 26 of L. 3728/2008 (transfer pricing rules)* (in Greek), *Bulletin of International Taxation*, p. 613 et seq. (2009); and S. Kostas, *Transfer Pricing Documentation* (in Greek), *Naftemporiki*, p. 38 (11 Feb. 2009).

22. K. Savvaidou, V. Athanasaki, *Greece — Specific Anti-Avoidance Measures in Greece in the Post-BEPS and Post-ATAD Era*, Vol.59: 4 (2019), *European Taxation IBFD*, March 2019 pgs. 169-176.

23. 2019 Deloitte Highlights, <https://dits.deloitte.com/#TaxGuides>

24. PwC Worldwide Tax Summaries 2018/2019, <http://taxsummaries.pwc.com/ID/Greece-Corporate-Income-determination>

25. PwC Worldwide Tax Summaries 2018/2019, <http://taxsummaries.pwc.com/ID/Greece-Corporate-Income-determination>

26. PwC Worldwide Tax Summaries 2018/2019, <http://taxsummaries.pwc.com/ID/Greece-Corporate-Income-determination>

that are tax resident abroad shall be taxable in Greece only if they maintain a PE in Greece. The sale of listed shares is also subject to a transaction duty at a rate of 0.2%.<sup>27</sup>

#### 1.4. Subsidiaries and permanent establishments

The definition of a PE of foreign legal entities in Greece is similar to the one included in the OECD Model Convention on the Double Tax Treaties for the Avoidance of Double Taxation; however, where a Double Tax Treaty (DTT) applies, its provision will override the domestic definition. The term ‘permanent establishment’ includes especially: a place of management, a branch, an office, a factory, workshop and mine, an oil or gas well, a quarry, or any other place of extraction of natural resources. In order for a construction site in Greece to constitute a PE, a time period of at least three months is required, instead of the time period of 12 months provided in the OECD Model Convention.

Profits of branches of foreign companies are subject to CIT.

#### 1.5. Groups of companies

Greece’s adaptation of arm’s length pricing explicitly refers, in article 50 of the GITC, to the OECD’s Transfer Pricing Guidelines.<sup>28</sup> As of 1 January 2014, i.e. following the Greek tax reform, the applicable transfer pricing legislation in Greece regarding the arm’s length principle/transfer pricing principle is found in both L. 4172/2013 (the GITC) and L. 4174/2013 (the GCTP). According to article 50 of the GITC, cross-border, as well as domestic inter-company transactions, are required to be in line with the arm’s length principle. More specifically, by virtue of article 50<sup>29</sup> of L. 4172/2013:<sup>30</sup>

when transactions are entered into between domestic enterprises or between a foreign and a domestic enterprise with financial terms that differ from those that would have been agreed between unrelated parties (“arm’s length principle”), the profits that would have been obtained and were not because of these terms are considered profits of that company without affecting the validity of its accounting books and records.<sup>31</sup>

Article 50(1) of the GITC defines the arm’s length principle, which is the internationally recognized standard for the allocation of profits between associated entities. Article 50(2) of the GITC states that, “[t]he provisions of the previous paragraph are interpreted and apply in accordance with the OECD Transfer Pricing Guidelines”.

Article 21 of the GCTP outlines transfer pricing documentation requirements. The provisions of article 21 prescribe that a “Summarized Table of Transfer Pricing Information” or “Summary Information Table”, hereinafter referred to as “SIT” should be electronically submitted to the Ministry of Finance on an annual basis, including specific data about controlled transactions between affiliated entities.<sup>32</sup> Furthermore, entities falling within the scope of the said provision should, annu-

27. PwC Worldwide Tax Summaries 2018/2019,

<http://taxsummaries.pwc.com/ID/Greece-Corporate-Income-determination>

28. V. Athanasi, *Critical Transfer Pricing Issues in the post-BEPS era*, presentation given at the 2017 ADIT Seminar on Transfer Pricing – Altium Training European Center of Professional Studies – Feb. 2017 (in Greek); V. Athanasi, *Transfer Pricing Issues following the OECD BEPS Action Plan*, presentation given at the 3rd Symposium of E-themis (Association of Greek Lawyers) on Current Issues of Tax Law, Divani Caravel Hotel, 16-17 Dec. 2016 (in Greek).

29. V. Athanasi, *The definition of associated parties according to the provisions of the Greek Income Tax Code and the concepts of “economic dependence” and “decisive influence”*, Epixeirisi 124 (2016) (in Greek).

30. According to art. 50 of the GITC, in the event of non-compliance with the arm’s length principle, the competent tax authorities may unilaterally make an upward adjustment of profits, given that it is explicitly stated that “(...) the profits that would have been achieved and were not because of these terms are considered profit of that company without affecting the validity of its accounting books and records”.

31. K. Savvaidou, V. Athanasi, Greece — Specific Anti-Avoidance Measures in Greece in the Post-BEPS and Post-ATAD Era, Vol.59: 4 (2019), European Taxation IBFD, March 2019 pgs. 169-176.

32. The SIT is submitted electronically to the tax administration on an annual basis.

ally, complete a transfer pricing documentation file (a master file and a local file, subject to certain requirements),<sup>33</sup> covering intra-group transactions with Greek and foreign affiliated entities.<sup>34</sup> It should be pointed out that foreign legal persons earning income from real estate in Greece are also required to adhere to the aforementioned transfer pricing requirements.<sup>35</sup>

## 1.6. Controlled Foreign Companies (CFC) and exit tax

The recently enacted L.4172/2013 (GITC) introduces CFC rules for the first time in the Greek tax framework and Ministerial Circular POL. 1076/2014, as modified by POL. 1211/2014, provides guidance for the application of such CFC rules.<sup>36</sup>

The CFC rules provide, broadly, that the undistributed passive income from affiliates of a foreign subsidiary satisfying certain conditions will be attributed to and taxed in the hands of the Greek resident controlling shareholder (i.e. direct or indirect ownership exceeding 50%). The application of the CFC rules results in the taxation of the “deemed” income as business profits.

In particular, pursuant to paragraph 1, article 66 of said law, the undistributed profit/income of legal persons/entities which are tax residents of another country are included in the taxable income of a taxpayer if certain criteria are cumulatively satisfied. One of such criteria is that the taxpayer holds alone or along with related persons, directly or indirectly, more than 50% of the shares/parts, voting rights or participation in the capital of said foreign legal person/entity or is entitled to more than 50% of the latter’s profits;

According to the GITC, other conditions that should be cumulatively met, in order for a foreign legal person/entity to be considered as a CFC are the following:

- Said foreign legal person/entity is established in a non-cooperative state or a state with a preferential tax regime, i.e. a special tax regime providing for a significantly lower level of taxation than the general regime;
- Said foreign legal person/entity’s shares are not listed in an organized Stock Exchange;
- More than 30% of the net earnings before taxes of the foreign legal person/entity consists inter alia in passive income, i.e. interests or other income arising from financial assets, royalties, dividends, income from transfer of shares, income from movable assets, income from insurance or banking activities etc. and more than 50% of the relevant category/source of income derives from transactions effected between said foreign legal person/entity and the taxpayer or the latter’s related persons.<sup>37</sup>

33. Pursuant to the recently issued Law 4410/2016, which introduced amendments into the GCTP on, among other things, the Transfer Pricing Documentation Rules (art. 21 Law 4174/2013), the deadline for the compilation of the TP Documentation File and the submission of the SIT has been modified. Whereas the previous deadline was four months following the fiscal year end, the TP Documentation File, consisting of the Basic TP File and the Greek TP File, should now be compiled before the expiration of the deadline to submit the annual corporate income tax return. The TP Documentation File is accompanied by the SIT, which should also be submitted electronically by the same deadline. This means, in practical terms, that the deadline is six months following the fiscal year end (for example, for companies with a 31 Dec. 2017 fiscal year end the relevant deadline is 30 June 2018, instead of 30 April 2018). This provision is applicable to TP Documentation Files prepared for intragroup transactions regarding fiscal years commencing on or after 1 Jan. 2015.

34. Nevertheless, transactions between related parties that do not exceed EUR 100,000 annually are exempt from the documentation requirements provided that gross revenues do not exceed EUR 5 million. If gross revenues do exceed EUR 5 million, the transfer pricing documentation threshold increases to EUR 200,000.

35. K. Savvaidou, V. Athanasaki, Greece — Specific Anti-Avoidance Measures in Greece in the Post-BEPS and Post-ATAD Era, Vol.59: 4 (2019), European Taxation IBFD, March 2019 pgs. 169-176.

36. i K. Savvaidou, «CFC rules and tax avoidance» Conference of the Franco-Hellenic Chamber of Commerce and Industry in cooperation with the Tax Committee of the Chamber, under the main subject “Key issues in business taxation”, Athens, May 2014 (in Greek language).

37. K. Savvaidou, V. Athanasaki, Country note: General and specific anti tax-avoidance measures under recent tax reform in Greece, Intertax (Kluwer Law) – Volume 47/2019 Issue 4, March 2019.

Furthermore, recently Law 4607/2019 transposed the Directive laying down rules against tax avoidance practices (ATAD) in Greek law. The new law extended the scope of CFC rules. Foreign permanent establishments, whose profit is not taxed or is tax exempted in Greece, are also regarded as CFCs. The new provisions abolished the exclusion of listed companies. In contrary, the new provisions will not apply to E.U./E.E.A. located legal persons, legal entities and permanent establishments that carry on a substantive economic activity, i.e. supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances.

It is also explicitly noted that for the determination of the taxpayer's participation percentage together with other related parties, the latter are first identified and then their percentages are added together. Regarding the categories of income forming the non-distributed income of CFCs, the thirty per cent (30%) condition is retained. However, both income from financial leasing and income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value, are included. On the contrary, rental income from both movable and immovable property ceases to be taken into consideration. To be noted that until recently only CFCs based in a country with preferential or non-cooperative regime were subject to tax. However, with the new provisions, the sole criterion is the actual tax paid abroad — regardless of the country of establishment — to be less than half of the tax that would be payable in Greece based on the I.T.C. provisions. The new law expressly state that, in case the legal person or legal entity or permanent establishment incurs losses in a fiscal year, these are not included in the taxpayer's taxable base, however may be set off against future profits, under the conditions set in par.4 of article 27 of the GITC.

Decision of the Independent Authority of Public Revenues provides guidance for the application of such new CFC rules, after their modification with the provisions of Law 4607/2019.

### **1.7. Exit taxation:**

No exit taxation rules exist in Greece. However, according to Article 51 of GITC, any business restructuring between associated enterprises, which includes reorganization of functions, assets, risks or business opportunities, constitutes a transfer of functions between related parties which has to be charged according to the arm's length principle, since it is concluded that a significant intangible asset is being transferred as a result of the transfer of the said functions. It could be argued that these provisions could be regarded as a substitute of exit taxation in Greece, for which no relevant tax provisions exist so far.

## **2. The national legitimacy of reforms.**

The tax reform that took place in Greece in 2013, in order for the country not only to overcome the severe economic crisis dated back in 2010 onwards but also to adjust its tax legislation with the international OECD as well as EU standards and modernize it as necessary, has in general being characterized as successful. Indeed, in reality, the new ITC and the subsequent Code of Tax Procedures have introduced a new tax regime governed by a different philosophy. This implies namely the establishment of general principles without extensive indicative examples and the direction towards a substance over form approach (instead of a form-over-substance and rather formalistic approach that had been followed in Greece for years). These general principles are based on novel, for the Greek legal order, terms. The definition of tax residence is also introduced for legal entities, encompassing cases of legal entities that are effectively managed in Greece.

Furthermore, all business expenses are deductible under the new ITC, subject to some general conditions, with the exception of some explicitly enumerated expenses. It is noted that particularly strict conditions apply for the deductibility of loan interest expenses (interest capping rules of 25% on EBITDA replacing a 3:1 debt to equity ratio provided by the previous ITC).

A new general method of taxing capital gains (regarding shares, equities, bonds, derivatives) is introduced.

The exemption on dividends received by parent companies from their subsidiaries established in Greece and abroad is significantly broadened — the same applies to dividend withholding tax.

Moreover, new provisions on business restructurings, according to the standards of the respective European Directive (Merger Directive) are introduced.

Finally, various rules on the combating of tax avoidance are introduced, such as for example the provision on non-deductibility of sums paid to individuals or non-EU legal entities that are tax resident in non-cooperative countries or in countries with a preferential tax regime, on Controlled Foreign Companies (CFC).

### 3. European compatibility of reforms.

The recent outburst of the severe economic crisis that hit Greece in 2010 necessitated a tax reform, which resulted in the former Greek Income Tax Code (L. 2238/1994) being replaced by the New Greek Income Tax Code (L. 4172/2013 or “GITC”) and the enactment of a new Greek Code of Tax Procedures (L. 4174/2013 or “GCTP”). Moreover, the crisis that hit Greece made combating tax avoidance imperative. This imperative need resulted in the introduction of a number of different specific anti-avoidance rules (SAARs). These provisions mainly target abusive practices, artificial arrangements and tax avoidance schemes. Apart from SAARs, however, a general anti-avoidance rule (GAAR) was also introduced for the first time in Greece and was incorporated into the GCTP in line with the EU GAAR proposed by the 2012 EU Commission Recommendation on Aggressive Tax Planning. The SAARs introduced into Greek legislation relate to, inter alia, thin capitalization rules<sup>38</sup> and interest deduction limitations in general, transfer pricing rules, CFC rules, anti-avoidance rules related to the participation exemption regime and business restructurings, disallowed expenses for tax purposes in respect of transactions with non-cooperative states and states with preferential tax regimes etc.<sup>39</sup>

Furthermore, as already noted, recently Law 4607/2019 transposed the Directive laying down rules against tax avoidance practices (ATAD) in Greek law. Regarding GAAR,<sup>40</sup> it is provided that Tax

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38. As already noted, recently Law 4607/2019 transposed the Directive against tax avoidance practices (ATAD) in Greek law. Even though the pre-existing thin capitalization rules have been considered by the European Commission as equally effective to Article 4 of the ATAD and, thus, could remain unaltered until 31/12/2023, the provisions of article 49 of the ITC are restated, so as to transpose in full the relevant ATAD provisions into national legislation, with effect from 01/01/2019. So article 49 of ITC has been amended. Nevertheless, there is no change to the limitation of maximum exceeding borrowing costs up to thirty per cent (30%) of EBITDA and the full interest deductibility limit remained at three million euro (3,000,000). EBITDA is still calculated based on the taxable profits before taxes, interest, depreciation and amortization. It is also explicitly clarified that tax exempt revenues should not be taken into account. Furthermore, the definition of ‘borrowing costs’ is expanded, including, apart from interest on loans, inter alia, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance (e.g. payments under profit participating loans, imputed interest on convertible bonds and zero coupon bonds) as well as the finance cost element of finance lease payments and the capitalized interest included in the balance sheet value of a related asset. The possibility to carry forward without time limitation the exceeding borrowing costs, which cannot be deducted in the current tax period, has been retained. The exception of financial undertakings is now also expanded to other companies of the financial sector, apart from credit institutions (e.g. insurance and reinsurance undertakings, pension institutions, etc.). The exclusion of the exceeding borrowing costs incurred on loans used to fund long-term infrastructure projects (as part of a concession contract or a Private Public Partnership), where the project operator, borrowing costs, assets and income are all in the EU is provided.

39. K. Savvaidou, V. Athanasaki, Greece — Specific Anti-Avoidance Measures in Greece in the Post-BEPS and Post-ATAD Era, Vol.59: 4 (2019), European Taxation IBFD, March 2019 pgs. 169-176.

40. For further details regarding the Greek GAAR, see V. Athanasaki, GAARs in European and International Taxation (Nomiki Vivliothiki 2018) (forthcoming); B. Georgaki, Antitax avoidance in direct taxation p. 257 (Nomiki Vivliothiki 2017); K. Savvaidou, The introduction in the Greek tax law of a general provision against the abuse of the tax legislation in order to combat tax avoidance in light of the European and international developments (in Greek), Bulletin of Tax Legislation, pp. 259-296 and pp. 323-354 (2017).

Authorities shall ignore any arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or the purpose of the applicable tax law, are not genuine, having regard to all relevant facts and circumstances. According to the explanatory memorandum, the burden of proof as to whether a non-genuine arrangement exists, lies with the tax authorities. More generally, for the interpretation of the provision, the relevant case-law of the European Court of Justice and the Commission Recommendation 2012/772/EU will be supplementary taken into account. It is also noted that the application of the GAAR does not affect the application of specific anti-abuse rules, such as the provisions regarding CFCs, the anti-abuse rule of the Parent – Subsidiary Directive etc. Furthermore, the explanatory memorandum also clarifies that, in case a DTT contains a specific rule against tax avoidance, such as the Principal Purpose Test, then, to the extent that the artificial arrangement was put into place for obtaining an advantage provided by the DTT, these provisions supersede the GAAR and apply exclusively. In any other case, the GAAR applies and a DTT's benefits are not granted if it is found that an arrangement or a series of arrangements have been put into place for the main purpose or one of the main purposes of obtaining a tax advantage. In addition, it should also be highlighted that L. 4378/2016, which transposes the amended EU Parent-Subsidiary Directive (2015/121) into Greek law (applicable 1 January 2016), provides for an anti-avoidance rule, according to which the benefits granted by the EU Parent-Subsidiary Directive (i.e. income tax and withholding tax exemptions) will not be provided in respect of intra-group dividends, provided that the main purpose or one of the main purposes, of the arrangement put in place is to obtain a tax advantage and avoid taxation, and there is no justifiable commercial reason for the arrangement.

In general, Greece adheres to the BEPS Action Plan, since a lot of measures that have already been adopted are in line with the BEPS guidelines, including CFC rules, CbC Report, transfer pricing, thin capitalization rules etc.

However, pursuant to the ATAD, Greece should comply also with article 5 and transpose into its tax legislation exit tax rules in line with the respective EU provisions.

Furthermore, Greece has incorporated provisions with regard to country-by-country (CbC) reporting into L. 4484/2017, which was published in the Official Gazette on 1 August 2017 and is effective from 5 June 2017.<sup>41</sup> They cover, among other issues, automatic exchange of CbC reports. In fact, Greece has transposed Council Directive (EU) 2016/881<sup>42</sup> as regards the exchange of CbC reports into its domestic tax legislation. It should be noted that CbC reporting constitutes a new reporting requirement, provided for in Action 13 of the BEPS Action Plan. The Law specifically defines the scope and conditions of mandatory automatic exchange of information of CbC reports, the respective procedure, as well as penalties for non-compliance. Such penalties amount to EUR 20,000 in respect of non-submission and EUR 10,000 in respect of late submissions or inaccurate reports.

More specifically, the obligation for annual filing of the CbC report arises for multinational enterprise (MNE) groups for fiscal years beginning from 1 January 2016 onwards, provided the group's total consolidated revenues exceeded EUR 750 million in the fiscal year preceding the reporting fiscal year. The CbC report must be submitted within 12 months from the last day of the reporting fiscal year. The entity required to file the CbC report is the ultimate parent entity of an MNE group that has tax residence in Greece (or any other surrogate entity in Greece). Greece, as a competent authority receiving CbC reports, undertakes the obligation to share those reports via the mechanism of automatic exchange of information within 15 months from the last day of the reporting fiscal year, with any jurisdiction in which one or more constituent entities of each group are incorporated (according to the information provided in the CbC report). Especially for the first

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41. It should also be noted that the Director of the IPRA signed, on 27 Jan. 2016, the Multilateral Competent Authority Agreement on the Exchange of Country by Country Reports.

42. Council Directive 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 146 (3 June 2016), EU Law IBFD.

year of application (the fiscal year beginning from 1 January 2016) the exchange of information will be completed within 18 months from the last day of the reporting year.

The CbC report must include the following information, which will be provided and exchanged using standard tables: 1) Aggregated data relating to revenue, profit (loss) before income tax, income tax paid, income tax due, share capital, accumulated profits, number of employees, and tangible assets other than cash or cash equivalents for each jurisdiction the group operates in, 2) Identification documents for the jurisdiction where each constituent entity has its tax residence, and in case the latter differs from the jurisdiction of tax residence, the jurisdiction under which this constituent entity is organized and the nature of its primary business or businesses.

The source of information for the CbC report (financial statements, statutory financial statements, and internal management accounts) should be used in a consistent way, the same data sources year on year. There is no requirement that differences in accounting standards from jurisdiction to jurisdiction must be adjusted. It is also not necessary to reconcile differences in revenue, profits, and taxes between the CbC report and the consolidated financial statements. Any constituent entity that is a tax resident of Greece and does not submit the CbC report is obligated to notify the Greek tax authorities of the identity and tax residence of the reporting entity no later than the last day of the reporting fiscal year. For the first year of application, the deadline is extended to the last day of submission of the CbC report.

The information contained in the CbC report will be shared between jurisdictions through the mechanism of automatic exchange of information, and it will be used by the authorities to evaluate possible areas of concern in relation to the pricing of intragroup transactions and other risks associated with erosion of the tax base and profit shifting. The law explicitly provides that price adjustments of intragroup transactions will not be based on information provided by the CbC report.

Finally, the law states that the information in the CbC report may be used as the basis for further scrutiny regarding the group's pricing arrangements or other tax issues in the context of a tax audit. In these case appropriate adjustments of a constituent entity's taxable income may occur.

#### **4. Tax competition of reforms.**

It could be argued that Greece has been inspired by other EU member states as regards the introduction of a GAAR into its national tax legislation as well as other SAARs, included in the anti-tax avoidance legislation. Not fail to mention that, especially with regard to GAARs, the Greek GAAR has exclusively been based upon the GAAR proposed by the 2012 EU Commission Recommendation, which has been proposed, taking into account the anti-tax abuse legislation of the EU member states as well as the CJEU case law in general.

As per the goal of reducing corporate taxation, in order to attract investments and reach economic growth and development, in Greece such a goal is vital importance, since the country had to adhere to a very strict fiscal adjustment program, as a consequence of the economic crisis that hit the country and, therefore, taxation (including corporate taxation) has rapidly and sharply increased. Recently, by virtue of Law 4579/2018, published on 3 December 2018, any business income realized by legal persons/legal entities, with the exemption of credit institutions will be taxed at a gradually reduced rate starting from 29% during FY 2018 and resulting in 25% during FY 2022 (reduction at a rate of 1% per year until 2022). Moreover, by virtue of Law 4603/2019, dividends acquired within taxable periods commencing after 1 January 2019 shall be taxable at a rate of 10% (15% until 31 December 2018).

#### **5. Conclusion**

In the last years, an extended tax reform has taken place in Greece, both from a corporate income tax perspective and in general. A new Income Tax Code has been enacted, accompanied by a new

code of tax procedures, which both aimed to adhere to international and EU standards with a view of modernization of the national tax regime. Furthermore, specific and targeted anti-abuse provisions (including transfer pricing and CFC legislation) have become more elaborated, whereas a general anti-abuse rule has also been incorporated in the Greek tax law, taking into account the respective EU provisions as well as the CJEU jurisprudence. Given the numerous challenges of the Greek economy, the tax system should be flexible, efficient and effective. Taking this background into account, the critical factor is the safeguarding of the national tax base and the combatting of tax avoidance. The future will prove the overall contribution of the tax reform in this respect.

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