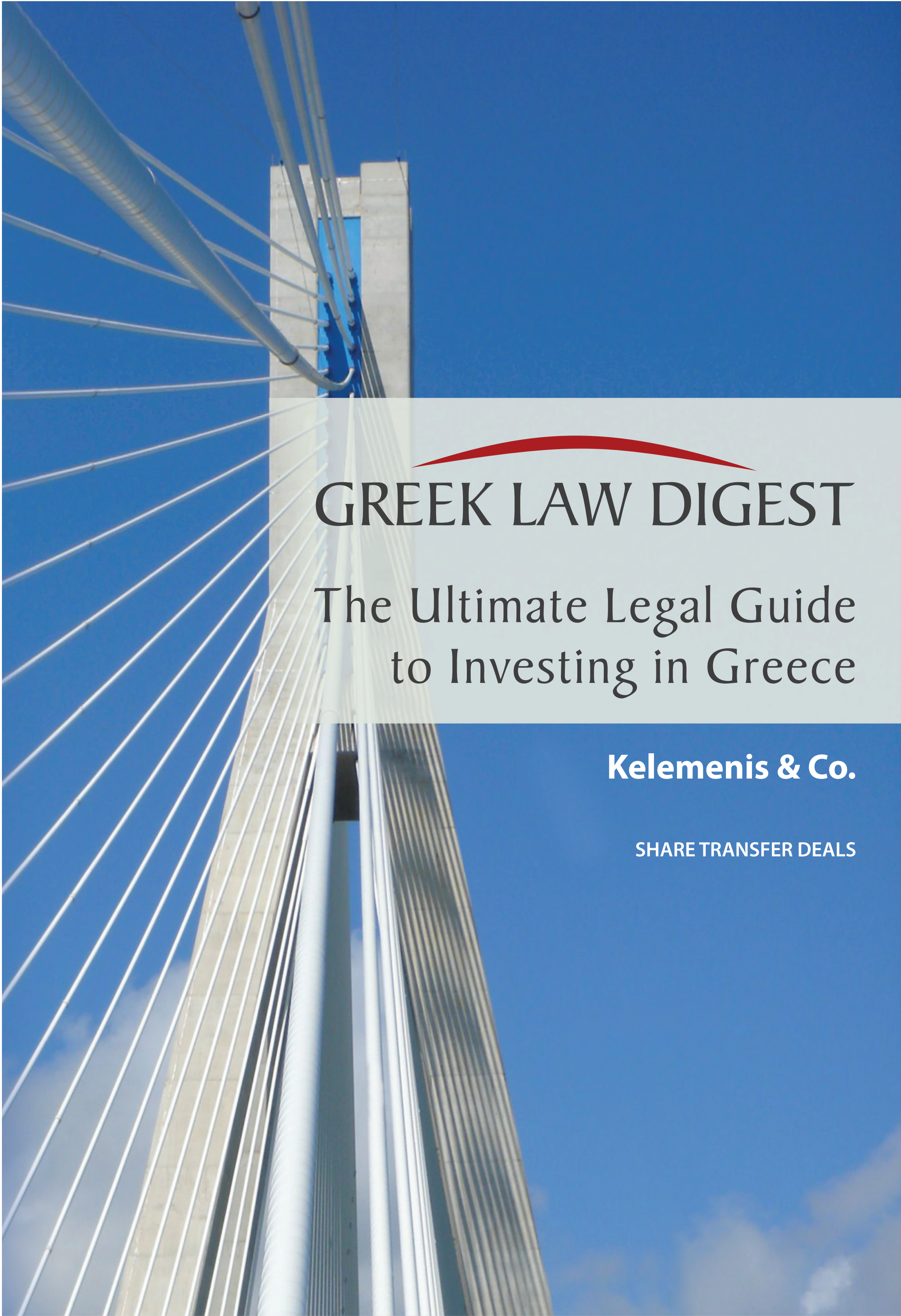

GREEK LAW DIGEST

The Ultimate Legal Guide to Investing in Greece

OFFPRINT

Kelemenis & Co.

SHARE TRANSFER DEALS

NOMIKI BIBLIOTHIKI

HELLENIC REPUBLIC
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AGENCY

SHARE TRANSFER DEALS

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Associate at **Kelemenis & Co.**

What types of non-listed shares do Greek société anonymes have?

Greek codified company statute 2190/1920 provides for two basic forms of non-listed shares in Greek société anonymes: (i) bearer shares and (ii) registered shares. When purchasing non-listed shares, the buyer should request a copy of the company's Articles of Association (AoA), which stipulate the type, number and nominal value of the shares that have been issued by the company. Registered shares are issued in the name of a particular shareholder. In this case, the transfer of the particular shares requires that the name of the shareholder be prescribed on the share certificate itself. In the case of bearer shares, the name of the owner of the shares is by definition not stipulated on the share certificate itself.

Are companies obligated to issue share certificates verifying ownership of shares?

Companies are obligated to issue share certificates for bearer non-listed shares. If the company has registered non-listed shares, the AoA may preclude or limit its obligations to issue share certificates. In this case, the AoA determine the manner in which the shareholder's capacity is proven in order for the rights deriving from the shares to be exercised. In the case the AoA do not contain a relevant provision, as well as in any other case in which share certificates are not issued, the proof of the shareholder's capacity takes place on the basis of the data contained in the shareholder's book or any temporary certificates issued and, if necessary, the documents in the possession of the shareholder.

The above share certificates may embody one or more non-listed shares. In the latter case, the certificates become less marketable. Shareholders are allowed to ask that existing share certificates be replaced by others embodying fewer shares if this is permitted in the AoA. Instead of share certificates, temporary share certificates may be used for a predefined period of time until the share certificates are issued. If this is the case, the transfer of shares is effected by virtue of the transfer of these temporary share certificates.

How are bearer non-listed shares transferred?

Transfer of bearer non-listed shares is effected by virtue of an agreement concluded between the seller and the buyer regarding the transfer of the seller's shares and the delivery of the share certificates or the temporary share certificates from the seller to the buyer that embody the said shares. Possession of the share certificates is sufficient evidence for the holder to prove that he/she is the owner of the shares, such evidence being able to be brought forth both before the company as well as before third parties. As concerns the company, the holder of the share certificates is entitled to exercise the shareholders' rights attached to the certificates. The exercise of these rights does not require registration in the books of shares or notification to the company. The burden of proof that the holder of the share certificates is not the owner lies with the company. As concerns third parties, the presumption of possession means that it is possible for a bona fide third party to validly acquire ownership from a person not legally possessing the shares, if the third party did not have the knowledge of the fact that the seller did not have ownership of the share certificates.

How are registered non-listed shares transferred?

The sale of registered non-listed shares is finalised vis á vis the company when the agreement between the buyer and the seller for the transfer of shares is recorded in the shareholders' book and the book is signed by both the seller and the buyer. Ordinarily and unless the AoA provide otherwise (i.e. the AoA may preclude or limit the company's obligations to issue share certificates), following the registration of the sale in the shareholders' book, a new share certificate is issued in the name of the buyer or a notation is prescribed on the seller's existing share certificate(s). The notation must include the buyer's name, his/her/its registered address or residence, and the occupation and nationality of both the buyer and the seller. The same data is registered in the shareholders' book.

The delivery of the share certificates from the seller to the buyer is sufficient for the sale of shares to be effected between them. However, such sale is valid vis á vis the company only when the transfer of the said shares is recorded in the shareholders' book, at which time the buyer has the right to exercise his/her/its shareholder's rights.

Does the transfer of non-listed shares require a written agreement?

According to Greek civil and company law, the sale and transfer of bearer and registered non-listed does not require the conclusion and execution of a formal agreement. Notwithstanding the above, Greek tax laws require that for a transfer of bearer or registered non-listed shares to be valid, it must be concluded and executed exclusively by virtue of a notary deed or a private document certified by the relevant tax authorities. Acquisition of such shares in contravention of the above renders the sale null and void and the buyer does not acquire any legal rights such as the right to dividend, participation in general meetings, transfer of shares, etc. Further details regarding the procedure before the Greek tax authorities are set out below.

Is the sale of Greek non-listed shares subject to Greek income tax?

According to the Greek Income Tax Code, the sale of non-listed shares is subject to 5% Greek income tax payable before the execution of the share purchase agreement (in the form of a notary deed or a private agreement). The income tax is calculated on the higher amount between the contractual transfer price and the "minimum deemed selling price", as computed on the basis of a specific formula provided in Article 13 par. 2 of the Greek Income Tax Code. If the sale price mentioned in the sales agreement is higher than the result produced by the above method, then the tax is calculated on the price cited in the sales agreement.

Is the sale of Greek non-listed shares subject to other Greek income taxes?

The transfer of shares is exempt from stamp duty and Value Added Tax (VAT). In addition, no excise, transfer or other indirect taxes apply.

How is the "minimum deemed selling price" calculated for Greek income tax purposes?

The "minimum deemed transfer price" for the sale of shares is calculated on the basis of the company's net equity on the previous day of the sale increased by the "return on the company's net equity" during the last 5 years prior to the transfer. The return on equity is the ratio calculated between:

- the company's average total net income (before taxes) in the last 5 years (i.e. before the transfer), as set out in the relevant balance sheets; and
- the company's average net equity recorded during the same period. If the company has drawn up less than five (5) balance sheets, the company takes into account the balance sheets that have been drawn up.

When calculating the net equity of a company for Greek income tax purposes, the Greek Income Tax Code takes into consideration the rate of return of the company's net equity according to the return the last 5 years when it is positive (by adjusting the net equity upwards accordingly) but it does not take it into consideration when it is negative.

In addition to the above, one must also take into account that, according to decision no. POL1077/31.5.2010 issued by the Greek Ministry of Finance, if a company maintains its financial statements according to the International Accounting Standards (IAS), the company's aforementioned financial information is calculated according to Greece's tax rules and not the rules set out by the IAS.

The company's above net equity is increased by any difference between the objective value of the company's real estate (if such exists) and the net book value. The resulting amount is divided by the number of shares existing at the time of the transfer.

Is the 5% Greek income tax final?

If the seller is a Greek société anonyme, a limited liability company or a branch of a foreign company, the tax paid does not extinguish the company's tax liability if a gain is realized on the sale of the shares. In this event, the 5% tax is considered an advance tax which can be offset against the company's annual corporate income tax liability. If, however, no gain is realized from the sale of the shares, the Greek tax authorities are likely to disallow the offsetting of the 5% tax against the annual corporate income tax liability. In particular, if the Greek company or a branch of a foreign company selling the shares records a loss from the sale of the shares, the 5% tax paid cannot be credited against its annual corporate income tax liability and it cannot be used as a tax deductible expense.

If the seller is a Greek individual or partnership, the 5% income tax extinguishes the seller's tax liability in Greece for the income generated from the sale of the shares.

What is the tax treatment for foreign residents?

Without prejudice to the replies given in Question 13, foreign individuals or companies are also subject to the 5% income tax, which extinguishes the seller's tax liability in Greece for the income generated from the sale of the shares. In this case, the foreign person will be required to register in Greece for tax purposes, obtain a Greek tax identification number, pay the tax and then deregister for tax purposes, if required.

Can a foreign resident receive a tax exemption from the 5% income tax?

The following should be taken into consideration when a foreign company or individual sells shares in Greece:

If a foreign company sells shares in Greece, according to circular POL 1156/12.5.2000 issued by the Ministry of Finance, the foreign company can apply to be exempt altogether from the 5% income tax imposed on the sale of shares. In particular, the said circular stipulates that the sale of non-listed shares in Greek société anonymes is not subject to 5% income tax when the company selling such shares is a tax resident of a country with whom Greece has signed a bilateral treaty for the avoidance of double taxation and the seller does not have a permanent establishment (PE) in Greece; or it has a PE, but the income from the sale of shares is not attributed to such PE (this does not apply to USA companies). According to bilateral treaties for the avoidance of double taxation, the fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a PE or otherwise), shall not of itself make for either company a permanent establishment of the other.

If a foreign individual sells shares in Greece, the foreign individual can also apply to be exempt altogether from the 5% income tax imposed on the sale of shares, when the individual selling such shares is a tax resident of a country with whom Greece has signed a bilateral treaty for the avoidance of double taxation and the relevant treaty contains a provision relating to "Other Income", as this is set out in Article 21 of the model tax treaty. According to the model tax treaty, income of a resident of a Contracting State, wherever arising, not dealt with in the other Articles of the treaty, is taxable only in that State (i.e. in the state where the individual is a tax resident). Nonetheless, not all tax treaties signed by Greece contain such a provision.

What is the procedure before the Greek tax authorities for finalizing the sale of shares when the seller is entitled to be exempt from the 5% income tax?

As concerns the tax side of the sale, the following procedure must be followed:

(a) The seller must calculate the minimum deemed transfer price (as per the specific formula stipulated in article 13 par. 2 of the Greek Income Tax Code).

(b) The seller must file the relevant income tax return. Together with the income tax return, the seller must also file the following documents:

- Copies of the balance sheets of the company for the last five years.
- Copies of the company's trial balance of first-degree accounts of the day prior to the day of the transfer or, if not feasible, of the month prior to the transfer of the shares.
- Information regarding the net assets of the company the day before the tax return for the transfer of shares is filed.
- Information on whether an increase or decrease of the company's share capital has taken place between the year end and the day before the tax return for the transfer of shares is filed.
- The latest real estate tax return filed with the tax authorities or if there were no obligation to file such a return the objective values of any real estate property owned by the company. In the case the company does not own any real estate property, a statutory declaration pursuant to Law 1599/1986 signed by the company should be completed, stating that it does not own any real estate.
- Draft share purchase agreement.

(c) Based on the above information, the seller must pay the income tax (payable prior to the signing of the share purchase agreement and the transfer of the shares) at his/her/its tax authority.

(d) When the income tax is paid, the share purchase agreement can be executed and then filed and authenticated with the company's competent tax office. The amount of income tax paid and the receipt issued by the Greek tax authorities must be explicitly recorded in the share purchase agreement.

What is the procedure before the Greek tax authorities for finalizing the sale of shares when the foreign seller is not entitled to be exempt from the 5% income tax?

If the seller is entitled to be exempt from the 5% income tax, the above procedure does not apply. In this case, the following procedure must be followed with the tax authority where the company whose shares are being sold has its registered address:

- The foreign seller must file a tax residence certificate, certified from his/her/its tax authorities in the country of residence (with whom Greece has signed a bilateral treaty for the avoidance of double taxation) requesting that the Greek tax authorities grant the seller tax exemption.
- Three copies of the signed share purchase agreement in Greek or officially translated into Greek (if the share purchase agreement is concluded in any other language) must be filed.
- Once the tax exemption is issued, the signed share purchase agreement is authenticated with the company's competent tax office.

How are listed shares transferred in the Athens Stock Exchange and taxed?

The transfer of shares listed on the Athens Stock Exchange is effected according to the rules of the ASE. All sales of listed shares are taxed at a flat rate of 0.2% on the price of sale.

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