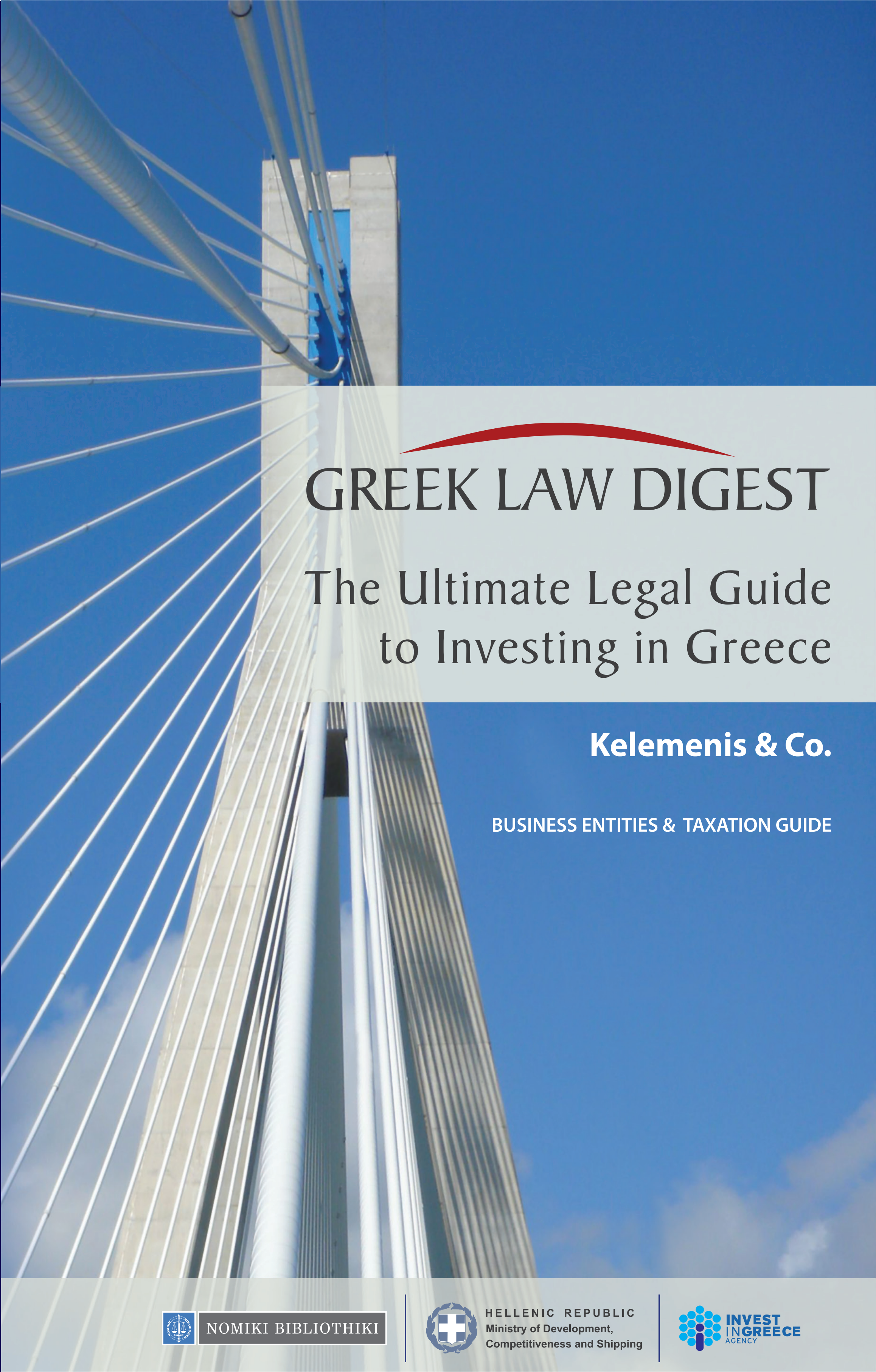

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GREEK LAW DIGEST

The Ultimate Legal Guide to Investing in Greece

Kelemenis & Co.

BUSINESS ENTITIES & TAXATION GUIDE

NOMIKI BIBLIOTHIKI

HELLENIC REPUBLIC
Ministry of Development, Competitiveness and Shipping

INVEST IN GREECE AGENCY

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BUSINESS ENTITIES & TAXATION GUIDE

Tom Kyriakopoulos, *M.Sc., MBA*
Partner at **Kelemenis & Co.**

What are the main taxable legal entities used in Greece for business purposes?

The following entities, which are subject to Greek income tax, are mainly used in Greece:

- Société Anonymes (AEs);
- Limited Liability Companies (EPEs);
- General Partnerships (OEs);
- Limited Partnerships (EEs);
- Greek branches of foreign companies.

What income tax rates are the above legal entities subject to in Greece?

Greek AEs and EPEs as well as Greek branches of foreign companies are subject to Greek corporate income tax at the rate of 20%. The payment of this corporate income tax does not extinguish the tax liability in Greece of the shareholders/partners in the event of distribution or of the head office in the event of repatriation of profits, given that the dividends or profits distributed or repatriated by AEs, EPEs or branches may be subject to Greek withholding tax (see below).

General and Limited Partnerships (OE and EE) are subject to Greek income tax at the rate of 25%. The payment of this income tax extinguishes the tax liability for all partners in Greece, Greek or foreign. The sole exception to this rule is when an OE or an EE have individual general partners that are at the same time administrators of the partnerships (for up to a maximum of three general partners with the highest percentages). In this case, ½ of the partnerships' profits corresponding to these partners (if such exist) is subject to Greek income tax at the rate of 20% at the level of the partnership. The payment of this income tax extinguishes the tax liability of the general partners for the income they received related to these profits. The remaining profits that have not been subject to Greek income tax at the partnership level are distributed to the general partners (who are at the same time administrators) free of tax to be taxed separately at their individual tax bracket.

Are profits / dividends distributed by AEs, EPEs and Greek branches subject to Greek withholding tax?

Dividends or profits distributed by AEs and EPEs are subject to Greek withholding tax at the rate of 25%. There may be two exceptions to this rule:

- An exemption may be granted when dividends are paid to a foreign parent company situated in another EU Member State, provided the conditions of article 11 of Law 2578/1998 apply (i.e. "Parent-Subsidiary" Directive 90/435/EEC), i.e. the

EU parent company has a participation of at least 10% in the AE or the EPE for at least two consecutive years.

- In addition to the above, shareholders and partners of AEs and EPEs who are tax residents of countries with whom Greece has signed double tax treaties should consult the provisions of such treaties to see if the treaties provide protection against Greek withholding income tax on the payment of dividends and profits.

Profits remitted by Greek branches of foreign companies to their head offices (including crediting of such profits) are subject to 25% withholding tax. It should be noted that Greek income tax law does not provide for similar provisions, as those set out above for the Parent-Subsidiary Directive, explicitly exempting Greek branches from Greek withholding tax in the event of remittance or crediting of profits.

How do foreign companies acquire a Permanent Establishment (PE) in Greece?

According to the Greek income tax code a foreign company is considered to have a PE in Greece, if it is engaged in the following activities: (a) operating a shop, agency, branch, office, warehouse, factory or workshop, or an installation for the purpose of exploiting natural resources; (b) processing raw materials or agricultural products; (c) carrying out business or rendering services through an agent authorized to negotiate and conclude contracts in its name (dependent agent); (d) maintaining a stock of merchandise out of which orders are executed for its account; and (e) participating in a Greek partnership or EPE.

Notwithstanding the above, if the foreign company is a tax resident of a country with whom Greece has signed a double tax treaty, the foreign company should consult the relevant provisions of the respective treaty regarding PEs. All recent Greek tax treaties follow the OECD Model Convention, with necessary modifications to reflect special interests or situations. It should be noted that according to all double tax treaties, participation in resident partnerships and EPEs does not create a PE. Moreover, the use of Greek independent agents acting in the ordinary course of their business does not give rise to a PE in Greece.

What constitutes taxable income in Greece?

Taxable income is the net profit (before tax) generated in Greece and abroad, as set out in the company's P&L Account. The financial information recorded in the P&L Account is extracted from the company's accounting books and records, which are maintained according to the Greek Code of Books and Records (GCBR) or according to the International Accounting Standards (IAS) or the International Financial Reporting Standards (IFRS) if such have been adopted.

The taxable income is adjusted for Greek income tax purposes, taking into account the following: (i) tax-free income, such as dividends/profits received from Greek companies, (ii) income subject to special tax rules, (iii) expenses incurred for such income, (iv) non-deductible expenses (see below) and (v) differences in treatment between the GCBR and the IAS/IFRS if the company applies the latter.

What are the general principles for tax deductibility in Greece?

Expenses may be deductible for Greek income tax purposes provided the following general principles are satisfied. In particular, the expense must:

- be productive (i.e. it must have been paid for the purpose of earning income);
- be due, regardless if it has actually been paid;
- be properly recorded in the company's accounting books;
- be properly supported by adequate documentation;
- be recorded in the period to which it relates;
- represent a contractual obligation arising from a genuine and valid agreement.

Does Greece have special tax provisions regarding transactions with companies abroad?

Payments made to suppliers for the purchase of goods or services, as well as interest, royalty and lease payments and all other expenses paid to individuals or entities situated or tax residents in countries considered by Greece to be "non-cooperating" or having "preferential tax regime" are not deductible for Greek income tax purposes, unless the Greek taxpayer can prove that the respective expenses relate to actual and ordinary transactions which do not result in the transfer of revenue, income or capital outside Greece for the purpose of tax evasion or tax avoidance. The burden of proof rests with the taxpayer.

- "Non-cooperating countries" are considered those which on and after 1 January 2010 are not members of the European Union and have had not concluded with Greece and at least 12 other countries agreements regarding mutual administrative assistance. It should be noted that non-cooperative countries are determined by virtue of a decision issued by the Greek Minister of Finance, after having examined the fulfilment of the above conditions.
- Individuals or entities (i.e. foreign, including EU) are considered to enjoy "preferential tax treatment" when (i) they are not subject to income tax in their country of residence, (ii) although they are subject to tax, they are not actually taxed, or (iii) they are subject to tax at a rate which is less than 60% of the respective Greek tax rate which would be applicable in the case they were residents or had their registered address or their PE in Greece.

Does Greece have special tax provisions regarding triangular transactions using intermediaries residing in foreign countries?

If a Greek company sells goods to a foreign intermediary situated or a tax resident in a country considered by Greece "non-cooperating" or having "preferential tax regime" (see above), without such goods being physically transported outside Greece and the same goods are resold by the intermediary to another company in Greece at a price higher than that by which the intermediary sold the goods, the difference between the purchase and sales price of the intermediary is added to the gross profits of the original Greek company.

Similarly, when a Greek company sells goods to a foreign intermediary in a country considered by Greece to be "non-cooperating" or having "preferential tax regime" at a price lower than that which the Greek company sells the same products to Greek or foreign companies, the difference in price is added to the gross profits of the Greek company.

Does Greece have thin cap rules?

Accrued interest arising from loans paid or credited to affiliated companies are deductible for Greek income tax purposes under the condition that the total amount of loans granted by the affiliated companies does not exceed on average and during the accounting period three (3) times the company's net equity. Accrued interest corresponding to the amount that exceeds the above ratio is not tax deductible against the company's revenue.

Does Greece have special transfer pricing rules?

Greek law has introduced specific rules regarding transfer pricing and transfer pricing documentation in order for Greek companies and branches to justify that the prices set between associated companies have been set at arm's length. Specifically, all Greek companies and branches of foreign companies are obliged to justify the prices set for their intra-group transactions with full standardized documentation files. As concerns Greek transfer pricing rules, there are two different and autonomous processes according to which Greek companies have to comply with transfer pricing rules.

Ministry of Finance:

The Greek income tax code has new provisions regarding transfer pricing documentation. The new provisions apply to transactions effected during accounting periods with respect to which the income tax return should have been filed from 1.1.2011 onwards. According to the Greek Income Tax Code, transfer pricing documentation must be prepared for all intra-group transactions between the same entities exceeding €100,000. The information included in the transfer pricing documentation must always be updated on an annual basis. Such transfer pricing documentation must be made available to the competent tax authority in case of an audit, within thirty (30) days upon notification of the tax authority. Failure to maintain the necessary data or to submit them to the tax authority incurs a fine of 20% of the value of the intra-group transactions, for which the documentation obligation was not observed.

Ministry of Development:

From 2008 and onwards, it has become obligatory for Greek companies and branches of foreign companies to compile transfer pricing documentation in order to justify the arm's length intra-group pricing. Furthermore, there is an obligation to submit a List of intra-group transactions with the competent authority of the Ministry of Development within four (4) months and fifteen (15) days from the end of every fiscal year for intra-group transactions that took place during the fiscal year. Failure to comply with these obligations incurs a fine of 10% of the value of the related intra-group transactions.

When are income tax returns filed?

AE, EPE and branches of foreign entities are obliged to file their tax returns by the 10th day of the fifth month following the end of their accounting year.

General and limited partnerships are required to file their tax returns by 1 April of each year, unless they maintain double entry accounting books, in which case the tax returns must be filed within three and a half months following the end of their accounting year.

If a company files its tax return without making the appropriate tax payment, it is considered not to have filed the tax return and, therefore, it is subject to all the consequences pertaining to non-filing.

Are any tax related certificates filed with the tax returns?

According to new tax rules, Greek companies which meet the requirements for an audit by certified auditors must file, together with their income tax return, a certificate (issued by their certified auditor) verifying the tax status of the company. In the event the certificate contains qualifications, the said company will qualify for a tax audit; otherwise, it may be subject to a tax audit if it meets the criteria determined by law.

Does Greek income tax law provide for advance taxes?

In addition to their annual income taxes, companies, branches of foreign companies and partnerships are also required to pay an amount equal to 80% (in the case of companies and branches) and 55% (in the case of partnerships) of the current year's income tax as an advance tax against next year's tax liability. Credit is given for the advance tax paid in the previous year and in the event of tax losses in the following year, the entity is entitled to apply for an income tax refund. The above mentioned advance tax rates are decreased by 50% for the first three accounting years.

When are income taxes paid?

Income tax and the advance tax are paid in 8 equal monthly installments. The first one is paid with the filing of the tax return and the remaining 7 are paid on the last working day of the following 7 months.

Are Greek companies allowed credit for taxes paid abroad?

Greek companies are allowed to deduct, for Greek income tax purposes, taxes paid abroad for foreign source income which is taxable in Greece.
Moreover, in the case of dividends received by a Greek parent company from a foreign subsidiary abroad, the Greek parent company is allowed to receive a tax credit in Greece against its overall annual Greek income tax liability equal to (i) the taxes paid abroad at the subsidiary level and (ii) the taxes withheld, if any, upon the distribution of profits that are attributable to the Greek company's income. The aforementioned tax credit is available for all corporate taxes and withholding taxes paid abroad by the subsidiary and all the subsidiary's subsidiaries at all levels. In order for the Greek parent company to be able to receive the aforementioned tax credit, it must have a participation of at least 10% in the foreign subsidiary for at least two consecutive years.

Can Greek companies carry forward their tax losses?

Greek companies, partnership and branches of foreign companies have the right to carry forward and offset tax losses against taxable income of the five years following the accounting year in which they were incurred. Tax losses cannot be carried back.
Greek companies that have branches abroad may offset losses incurred by their foreign branches only against profits arising from such foreign business interests; they may not offset such losses against profits arising from their business activities in Greece.

Does Greek tax law provide for group tax relief?

Greek income tax law does not provide for Group tax losses. Losses cannot be transferred within the group.

What taxation rules apply during the liquidation process?

For Greek tax purposes, liquidation is deemed to commence when a company is dissolved in accordance with Greek company law. Upon liquidation, the company is subject to income tax for the amount received by its shareholders in excess of the actually contributed capital and profits already taxed. The "actually contributed share capital" is the paid-in share capital of the company. Proceeds from the liquidation are not subject to tax if they represent return of capital or taxed reserves.

Are there special rules applicable to specific sectors?

There are special tax regimes applicable to specific sectors of business in Greece, as follows:

Tonnage tax: Profits derived by Greek companies from the operation of their own ships registered under the Greek flag are subject to a special tonnage tax which satisfies the income tax obligation of the ship owner and shareholder with respect to such income.

Branches of Foreign Shipping Companies: Foreign shipping companies may establish a branch or an office in Greece under law 27/1975, whereby foreign shipping companies enjoy substantial tax benefits, including exemption from Greek income taxation.

Offshore engineering and civil construction companies: Offshore engineering and civil construction companies carrying out projects outside Greece benefit, under certain conditions, from a complete tax exemption.

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