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**Cross Border Investments in Real Estate and its  
Financing  
–Tax Aspects –**

**WS (01) National Report of Greece**

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## 1. GENERAL OUTLINE OF REAL ESTATE TAXATION IN GREECE

The main provisions governing income taxation will be presented below. Emphasis will be given on the provisions regarding, either directly or indirectly, real estate.

### 1.1 Overview of national income and capital gains taxation in Greece

According to the constitutional principle of legality that is valid in Greece, no tax can be imposed without a law providing the basic characteristics for it<sup>1</sup>. The taxation of income from real property<sup>2</sup> is provided for in art. 20-23 of the Greek Income Tax Code, which is the principal statute regulating the taxation of income both for individuals and corporations (*“Kodikas Forologias Eisodimatos”*, Law 2238/1994, as amended; hereinafter: *ITC*).

Capital gains are not subject of a particular capital gains tax. They are taxed as normal income, namely as business income, according to the general rules laid down in the *ITC*.

#### 1.1.1 Income from real property

##### a. Individuals

Income from real property, according to art. 20§1 of the *ITC*, is the income derived, either directly or indirectly, from the exploitation of real property<sup>3</sup>. The term “real property” comprises both buildings and land. The income is attributed to the owner or the lawful possessor or the usurper of the real property. Income arising directly is the income from the leasing or the requisition of real property. Income arising indirectly is the notional income attributed to the owner from the self-use or self-inhabitation of the real property or from the free concession to another person of the right to use the real property.

An exemption is provided for the industrial real property: buildings or land used for the purposes of the industrial enterprise that owns them, i.e. for manufacturing or storing the products, are nor deemed to generate any income from real property for the owner-

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<sup>1</sup> Art. 78§1 of the Greek Constitution (1974/1986/2001). More analytical on the principle of legality see Anastopoulos/Fortsakis, *Tax Law* (in Greek), 2003, N<sup>os</sup> 74 et seq.

<sup>2</sup> Real property is one of the six income sources that are provided for in the *ITC*. The other five income sources are: investment in securities (art. 24-27 of the *ITC*), commercial enterprises (art. 28-40 of the *ITC*), agricultural enterprises (art. 40-44 of the *ITC*), wages, salaries, pensions and other forms of remuneration (art. 45-47 of the *ITC*) and professional services and any other category of income that cannot be classified under one of the previous sources (art. 48-51 of the *ITC*). The aggregate income earned from all six sources is subject to tax, after the allowed deductions are effected.

<sup>3</sup> Art. 21 of the *ITC* provides for a number of cases where the income acquired is also deemed to be income from real property. Such income is for example the income from pieces of land for various uses (such as warehouses or factories or parking lots or for outdoor spectacles or cafes and gyms), the income the lessee acquires from the sublease of the real property, any amounts paid for the right to put advertisements on buildings etc.

enterprise<sup>4</sup>. The same treatment is provided for buildings that are located inside or outside farms and used for the purposes of the farming enterprise<sup>5</sup>.

In order to determine the net income that is subject to tax a number of deductions from the gross income from real property are provided for in the law. Those deductions are<sup>6</sup>:

1. An amount of 10% on the gross income as depreciation for buildings that are used as residences, schools, boarding schools, theaters, cinemas, hotels, hospitals or clinics.
2. An amount of up to 15% of the gross income against selected expenses, such as: insurance premiums against fire or other kind of insurance coverage, expenses for repairs and maintenance and expenses for the lawyer's fees for litigation cases regarding the return of the leased property or the determination of the rent. This amount of 15% is doubled (becomes 30%) when the building has been characterized as "preservable building" according to the relevant applicable legislation.

The percentages of 10% and 15% mentioned above are limited to 5% and 5% respectively, when the income is derived from real property that is used in any way other than the purposes described above. The deductible expenses are further limited to 5% in total when the income from real property is falling under some special categories provided for in the law<sup>7</sup>. The technical issues regarding the application of these provisions are regulated by ministerial decisions<sup>8</sup>. A few other less important deductions are also provided for in the ITC. However it is never possible to have a negative result in this category: real property losses are not recognized for tax purposes. The rules that apply to individuals for the determination of the income from real property apply also to foreign companies without a PE in Greece<sup>9</sup>.

The ownership of a residence of over 200 m<sup>2</sup> or 150 m<sup>2</sup>, depending on whether it's a primary or a secondary residence, respectively, creates a notional income that is taxable in the name of the owner of the residence<sup>10</sup>, whether resident or non-resident. Furthermore, both resident and non-resident individuals who buy, build or lease any real property in Greece are required to prove that their income is at least as high as to cover the amount paid for the acquisition of the real property<sup>11</sup>. If they fail to prove that, then they are deemed to have earned an amount of income equal to what they spent and they will be taxed for this notional amount of income.

When an individual is carrying out a business, then the above mentioned restrictions do not apply and his income is calculated according to the rules for business income. The deductions permitted are provided for in art. 31 of the ITC. Different depreciation rates

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<sup>4</sup> Art. 21§2a' of the ITC.

<sup>5</sup> Art. 21§2b' of the ITC.

<sup>6</sup> Art. 23§1a' of the ITC.

<sup>7</sup> Art. 21§1 letters α', β' and θ'. See footnote 3.

<sup>8</sup> One such decision has been issued: the Decision of the Ministry of Finance N° 1102762/1992.

<sup>9</sup> Art. 105§9 of the ITC.

<sup>10</sup> Art. 16§1a of the ITC. The notional income is calculated according to art. 22 of the ITC.

<sup>11</sup> Art. 17 γ of the ITC.

apply, according to special provisions<sup>12</sup>. The same treatment is provided for partnerships. Partnerships are subject to the individual's income tax. They are treated as separate entities, having separate legal personality. For income tax purposes a portion of their profits is taxed at the level of the members of the partnership, as business income, and the rest is taxed at the level of the partnership. Losses incurred by commercial, industrial, farming, mining, hotel and handicraft businesses can be carried forward for five years.

#### b. Companies

Companies are subject to corporate income tax. Companies that are incorporated in Greece are treated as residents and there are taxed on their worldwide profits. The taxable income is calculated based on the results of the accounting books of the company and according to the rules for the determination of business income. Deductible expenses are, among others, depreciations, wages, car expenses, head office administrative expenses, interest of loans, taxes and duties etc. Losses incurred by commercial, industrial, farming, mining, hotel and handicraft businesses can be carried forward for five years.

### 1.1.2 Capital gains taxation

There is no particular capital gains tax in Greece. Any capital gains acquired are taxed as income, according to the general rules since capital gains are considered to be business income, according to art. 28§§2-3 of the ITC<sup>13</sup>. The transfer of real estate by an individual or company carrying out business is considered to be business activity and the gains derived there from are added to the income derived from the normal business activity.

Certain types of capital gains are subject to a 20% advance tax, which is credited against the final corporate income tax liability. According to art. 13§1 of the ITC a 20% tax is levied on the income derived from the transfer of: an enterprise as a whole, with all its intangible assets or of a branch of an enterprise; parts of a limited liability company or percentages of participation in a civil law association; every right which is relevant to the carry out of the business or the profession, such as the right to leasing or subleasing or the right to a patent etc. Any amount exceeding the rent that is paid by the lessee to the lessor for the leasing of a real property with or without any equipment or other installations that may be attached to it is also subject to a 20% advance tax.

Capital gains from the sale of shares are also taxed. According to art.13§2 of the ITC the real price of the sale of shares of companies not listed in the Athens Stock Exchange or in a foreign stock exchange or in any other internationally recognized market that are transferred from an individual or a corporation, residents or non-residents, is subject to a 5% tax<sup>14</sup>.

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<sup>12</sup> The amount of depreciation permitted each year is calculated following either a high rate of or a low rate, according to art. 3 of the Presidential Decree 299/2003.

<sup>13</sup> Alienation of real property is generating capital gain. This capital gain is not taxed when the real property is transferred to a leasing company and is going to be leased back by the transferor; art. 6 of l. 3220/2004 that amended art.28§3 of the ITC.

<sup>14</sup> The minimum real price is determined following an objective values system. The parameters to be taken into account for the determination of the minimum transfer value are set by ministerial decisions. Those ministerial decisions have been declared unconstitutional by the Conseil d' Etat (*Symvoulio tis Epikrateias-Supreme Administrative Court*). See for example StE 63/2001, *Business and Company Law* 2003, p. 1373; StE 230/2002, *Business and Company Law* 2003,

The tax is final when the transferor is a person subject to the individual income tax: an individual or a partnership or a civil law association. In the case where the transferor is a person that is subject to the corporate income tax, this tax is not final. The income from the transfer of any of the items of capital described in the law is taxed according to the general rules and the advance tax (20% or 5%) is credited against the final corporate tax liability of the seller. Especially capital gains from the sale of shares listed on a stock exchange are tax exempted if they are used to form a special reserve<sup>15</sup>. This reserve can be used to offset losses from the sale of listed shares.

### 1.1.3 Applicable Tax Rates

The net income of resident individuals is taxed according to the following progressive tax rates scale<sup>16</sup>:

| Income bracket (€) | Tax rate (%) | Bracket Tax (€) | Total Income (€) | Total tax (€) |
|--------------------|--------------|-----------------|------------------|---------------|
| 8.400              | 0            | 0               | 8.400            | 0             |
| Next 5.000         | 15           | 750             | 13.400           | 750           |
| Next 10.000        | 30           | 3.000           | 23.400           | 3.750         |
| Excess             | 40           |                 |                  |               |

Partnerships and civil law associations are treated as separate taxable persons, they are subject to the individual income tax and they are liable to a flat rate tax of 25% on a portion of their aggregate net income<sup>17</sup>, the rest being taxed at the name of the partners, according to the individuals' scale. When the taxpayer is a person that is subject to the corporate income tax (i.e. corporation, limited liability company, branch of foreign company) then the applicable tax rate is a flat rate of 35% on their aggregate net income<sup>18</sup>.

Non-residents that derive income from a source situated in Greece are subject to tax according to a slightly different tax rate scale. Namely, an additional tax is imposed which is added to the tax that corresponds to the first bracket. This surtax is calculated at a flat rate of 5% on the amount of income of the first bracket<sup>19</sup>. Since the tax rate for the first income

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p. 479; Athens Administrative Court of First Instance 9709/2003, *Business and Company Law* 2003, p. 1375; Athens Administrative Court of First Instance 11654/2002, *Business and Company Law* 2003, p. 1116.

<sup>15</sup> Art. 38 (regarding the individual income tax) and art. 105§11 (regarding the corporate income tax) of the ITC. A special tax on stock exchange transactions was entered into force in 1998. After several amendments and according to the relevant provisions (art. 37§5-6 L. 2874/2000) a tax of a flat rate of 0,3% is imposed on the proceeds of the sale of shares that are listed on the Athens Stock Exchange (art. 9§2 L. 2579/1998) or on foreign stock exchanges (art. 27§2 L. 2703/1999).

<sup>16</sup> This scale is applicable to non-salary professionals. For pensioners and wage-earners the scale is a little different: the first bracket of 0% tax rate is 1.600 € higher (instead of 8.400 € it amounts to 10.000 €) and the second bracket of 5.000 € is reduced by 1.600 € (therefore amounts to 3.400 €). The non-taxable income bracket is increased when the taxpayer has dependent children. The amount of increase depends on the number of dependent children (for example, the non-taxable income comes up to 20.000 € for a wage-earner with three dependent children).

<sup>17</sup> Art. 10§1 of the ITC.

<sup>18</sup> Art. 109 §1 of the ITC.

<sup>19</sup> Art. 9§10 of the ITC.

bracket is 0% this provision practically means that no tax free amount is recognized for non-residents and the otherwise tax free income bracket is taxed at a flat rate of 5%. This provision is not applicable to residents of EU Member States that earn in Greece more than 90% of their worldwide income.

#### **1.1.4 Supplementary tax on income from real property**

When income from real property is earned, besides the tax levied to the aggregate net income, a supplementary tax on income from real property is levied<sup>20</sup>. In the case where the taxpayer is an individual, the supplementary tax is calculated at a flat rate of 1,5% on the gross income from real property. The amount of this supplementary tax on the income from real property cannot be higher than the tax that corresponds to the net income from real property and is calculated according to the scale of art. 9§1 of the ITC. The rate of the supplementary tax on real property is 3% when the gross income on which it is imposed is derived from real property that is used as residence and its surface (or, in case there are more than one, the surface of each one of them) is larger than 300 m<sup>2</sup>. Individuals are exempted from the supplementary tax on income from real property for the notional income that is attributed to them because of the use they make of their own property for their own needs (self-inhabitation).

Partnerships and civil law associations are also subject to the supplementary tax on income from real property. The gross income from real property is taxed at a 3% flat rate and the amount of supplementary tax cannot exceed the amount of principal tax that corresponds to the income from real property, as this tax is calculated according to art. 10§1 of the ITC<sup>21</sup>.

In the case where the taxpayer is subject to corporate tax, the supplementary tax on income from real property is calculated at a flat rate of 3% on the gross income from real property and cannot exceed the amount of principal tax that corresponds to that income, as it is calculated according to art. 109§1 of the ITC<sup>22</sup>. Persons exempted from the corporate income tax<sup>23</sup> are also exempted from the supplementary tax on income from real property.

#### **1.1.5 Tax Treatment of Real Estate Investment Companies and Real Estate Mutual Funds**

Real Estate Investment Companies (hereinafter: *REICs*) and Real Estate Mutual Funds (hereinafter: *REMFs*) were first established by Law 2778/1999<sup>24</sup>.

Real Estate Investment Companies can only have the form of a company limited by shares (*Anonymos Etaireia-AE*). Its only purpose, as described by the law, is to manage a portfolio consisting strictly of real property and movable property (investments)<sup>25</sup>. The minimum share capital required is about 3 million € and the shares must be nominal. Real Estate

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<sup>20</sup> Art. 9§5 of the ITC. According to an opinion delivered by the State Legal Council (*Nomiko Symvoulío tou Kratous-NSK*), income derived by leasing companies from the financial leasing of real property is not subject to supplementary tax on income from real property; NSK 234/2002, *Business and Company Law* 2004, pp. 96 et seq. (in Greek).

<sup>21</sup> Art. 10§2 of the ITC.

<sup>22</sup> Art. 109§3 of the ITC.

<sup>23</sup> Exemptions from corporate income tax are provided for in art. 103 of the ITC.

<sup>24</sup> Law 2778/1999, published in the Official Journal A' 295/30-12-1999.

<sup>25</sup> For the purposes of the law "movable properties" are the following (direct application of art. 1§1 of L. 1969/1991): shares, debentures, bonds, mutual funds' units, certificates of deposits of art. 9 of L. 148/1967 (OJ 173 A'), interest bearing bonds issued by the Greek Government and any other items listed on a Stock Exchange.

Mutual Funds are defined as a whole of estate that consists of real property, movable property (investments) and cash and whose estate belongs undividedly to more than one persons. Real Estate Mutual Funds have no legal personality and the minimum assets value required is about 29.500.000, 00 € (initial value of each share cannot be less than about 15.000, 00 €).

Real Estate Investment Companies and Real Estate Mutual Funds are exempted from corporate income tax. Instead of the corporate income tax, REICs/REMFs are only liable to a special annual flat rate tax of 0,3%. The tax is calculated on the total value of the assets of the REIC/REMF. In the case of REMF the tax is calculated on the half-yearly average value of the net asset of the REMF, as it is computed according to art. 6§7 of the law 2778/1999 and it is paid once a year. In the case of the REIC the tax is calculated on the average investment value, as it is shown on the half-yearly investment lists of art. 25§1 of the law 2778/1999 and it is paid twice a year. The payment of this special tax by the REIC/REMF releases both the REIC/REMF and the investors from any other tax liability<sup>26</sup> for their income from the leasing of the real property owned by the REIC/REMF and from the capital gains in case the real property is sold.

Apart from the special provisions of L. 2778/1999, the ITC also contains a general tax exemption for mutual funds and portfolio investment companies. According to art. 103§1 letter *α*' mutual funds and portfolio investment companies are exempted from the corporate income tax provided for in the ITC.

Following the above mentioned provisions the REICs/REMFs are exempted: from corporate income tax for the income from the rents that are collected in the case of leasing the real property<sup>27</sup>; from the supplementary 3% tax on income from real property<sup>28</sup>; from the income tax on the surplus value (capital gain) in the case of sale of the real property<sup>29</sup>.

Real Estate Investment Companies and Real Estate Mutual Funds can also have income from interest. When the REICs/REMFs receive interest, then the art. 12 and 24 of the ITC apply and the interest is taxed accordingly. Depending on the origin of the interest (i.e. bank accounts, bonds, repos etc.) the tax rate can be 7%, 7,5%, 15% or 20%. This tax is being withheld by the payer when the interest is paid. Taxation is final and the payee, the REIC/REMF in this case, has no other tax liability for this income from interest.

As far as the investors are concerned, according to art. 20§2 and 31§3 of L. 2778/1999, the income from dividends that they earn and the income that they realize when their share is bought out at a higher price (surplus value) are both exempted from income tax. It has to be noted however that in the case where the investor is a person that is subject to corporate income tax (i.e. a corporation or a limited liability company or a branch of a foreign company) then this income can and will be taxed when profit distribution takes place<sup>30</sup>.

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<sup>26</sup> Art. 31§3 of L. 2778/1999 for the REICs; art. 20§2 of L. 2778/1999 and art. 48§3 of L. 1969/1999 for the REMFs.

<sup>27</sup> Art. 22§1 of the ITC. The provisions about notional income from the self-use of real property (art. 22§2 of the ITC) do not apply here, since if the corporation that manages the REIC or the REMF uses any real property owned by the REIC or REMF, this corporation must always pay rent for the leasing.

<sup>28</sup> The supplementary tax is provided for in art. 109§3 of the ITC. The exemption is granted both under the last fragment of art. 109§3 of the ITC and the last fragment of art. 20§2 L. 2778/1999.

<sup>29</sup> Normally this is taxed as business income, under art. 28§3 letter *ζ*' of the ITC.

<sup>30</sup> Art. 106§§2-3 of the ITC.



## 1.2 Overview of other taxes in Greece

Apart from income tax real property is also subject to various other taxes. The most important of them will be briefly outlined below.

### 1.2.1 Stamp duties

Stamp duties are governed by a Legislative Decree of 28-7-1931. Stamp duties are imposed on specific transactions and documents and can be either flat amounts or calculated as a percentage of the value of the transaction. After the enactment of the VAT legislation most of the stamp duties were abolished. However there are still a few provisions valid. Among them the most important is the stamp duty on the rentals of leased real property: property rentals are subject to a 3,6% stamp duty<sup>31</sup>.

Stamp duty is also payable on the taxable profits of partnerships, limited liability companies and joint ventures at the rate of 1,2%<sup>32</sup>.

### 1.2.2 Real Estate Transfer Tax

Real Estate Transfer Tax is levied upon the transfer of any real right on property<sup>33</sup>. The buyer is the person who is liable to the real estate transfer tax. The taxable basis is the price of sale, which is normally the contractual value. This price, for the application of the real estate transfer tax, cannot be less than the objective value of the transferred real property; if the contractual value is less than that then the tax is calculated on the objective value.

The objective value is determined according to the objective value system<sup>34</sup> as opposed to the market value system. This objective value system consists of pre-determined factors and values per square meter of surface and it applies to the vast majority of urban and rural areas. The values and the value-increasing or decreasing factors are laid down by ministerial decisions that are supposed to be issued (updated) every two years<sup>35</sup>. Since the last amendments took place in 2001 and there was no update in 2003, the next update is expected to take place in 2004. In the few cases where the objective value system is not yet applicable the value is determined by the tax authorities, using available comparable data.

The tax rates are normally 7% for the first 15.000, 00 € of the total value and 9% for the excess (the portion of the value above the 15.000, 00 €)<sup>36</sup>. The rates are increased to 9% and 11% respectively when the real property is located in an area where a fire station exists<sup>37</sup>. In special cases the rates can be reduced to ¼ or ½ of the initial rate. A municipal tax of 3% is levied on the amount of tax that is calculated according the above mentioned tax rates.

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<sup>31</sup> The stamp duty rate is 3% and it is increased by 20% (thus becoming 3,6%) with a compulsory contribution in favor of the Farmers Social Insurance Scheme (*Organismos Georgikon Asfaliseon - OGA*).

<sup>32</sup> The stamp duty rate is 1% and it is increased by 20% (thus becoming 1,2%) with a compulsory contribution in favor of the Farmers Social Insurance Scheme.

<sup>33</sup> Real Estate Transfer tax is governed by L. 1521/1950 as it was validated by L. 1587/1950. Upon transfer of real property, land registry fees, public notary's fees and lawyer's fees are also due.

<sup>34</sup> This system was introduced by the art. 41 of L.1249/1982. See also Chapter 1.2.4.

<sup>35</sup> Art. 10B §§1-2 of the Inheritance and Gift Tax Code; see Chapter 1.2.4.

<sup>36</sup> Art. 4§1 Γ' of L. 1521/1950 as amended by art. 13§3 of L. 2948/2001.

<sup>37</sup> Art. 1§1 of Legislative Decree 3563/1956 as amended by art. 2§12 of L. 2892/2001.

Various exemptions from the tax are granted under certain conditions. According to the provisions of L. 1078/1980<sup>38</sup> and subject to the relevant conditions specified in the law, the acquisition of primary residence is exempted. The exemption can in principle only be granted once. Further exemptions regard the transfer of real property to the State or a subdivision thereof and the transfer of farmland to young farmers<sup>39</sup> etc.

According to special provisions<sup>40</sup> any transfer of real property to a REIC/REMF is totally exempted from the real estate transfer tax and from any other tax or duty levied in favor of the State, of legal persons of public law and of any third party<sup>41</sup>. On the contrary real property transfers from a REIC/REMF are subject to real estate transfer tax. However an exemption from the tax is granted when the real property transfer is taking place because two or more REICs are involved in an M&A<sup>42</sup>.

More generally, in the case of an M&A between eligible companies taking place according to special incentive laws<sup>43</sup> the transfer of real property is exempted from the real estate transfer tax, under certain conditions. Under special legislative provision<sup>44</sup> in mergers of real estate companies the transfer of real property is not subject to real estate transfer tax, provided that the absorbing real estate company already owns the 100% of the shares of the absorbed company.

### 1.2.3 Value Added Tax

According to art. 6§§1 and 2a' of the VAT Code<sup>45</sup> the transfer of real property (buildings) and the transfer of real rights on buildings is subject to VAT at a rate of 18%. However the imposition of VAT on the transfer of real property has never been implemented in Greece; on the contrary its imposition has been postponed several times since the introduction of VAT legislation in 1986<sup>46</sup>. The main argument is that real estate transfer tax rates, although high<sup>47</sup>, they are still substantially lower than the VAT rate<sup>48</sup>.

Article 6§4 of the VAT Code was recently amended<sup>49</sup> and a new deadline was set: the provisions of art. 6§§1 and 2a' will apply on buildings for which the construction licenses

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<sup>38</sup> The relevant provisions were amended by art. 35§10 of L. 3220/2004 and now separated persons also enjoy the exemption, under conditions.

<sup>39</sup> Further exemptions for farmers were introduced with art. 8 of L. 3220/2004.

<sup>40</sup> Art. 20§1 and 31§1 of L. 2778/1999 as they were amended by the art. 3§§15 and 23 respectively of L. 2992/2002.

<sup>41</sup> However it is expressly stated in the above mentioned provisions that no exemption is provided for the income tax on the capital gain realized by the seller because of the sale of the real property.

<sup>42</sup> Art. 31§4 of L. 2778/1999.

<sup>43</sup> Legislative Decree 1297/1972 and L. 2166/1993. However art. 4 of L. 3220/2004 (amending art. 12 of the legislative decree 1297/1972) provides that no exemption is granted when both the absorbing and the absorbed company are real estate companies.

<sup>44</sup> Art. 11§2 of L. 3091/2002.

<sup>45</sup> L. 2859/2000, published in the OJ 248A'/7-11-2000.

<sup>46</sup> However, pursuant to art. 8§2 of the VAT Code, certain types of rental income are subject to a 18% VAT, under conditions, such as the rents of hotels, camping sites, furnished room with certain added services and equipped industrial premises.

<sup>47</sup> See Chapter 1.2.2.

<sup>48</sup> According to art. 6§3 of the VAT Code when VAT is imposed on the transfer of real property then the real estate transfer tax is not imposed (the two taxes, aiming at the same object, are mutually exclusive of each other).

<sup>49</sup> The provision was amended by art. 9§1 of L.2954/2001 and then again by art. 25§5a of L. 3091/2002. The amended provision entered into force on 24-12-2002.

will be issued after January 1<sup>st</sup> 2005. The same applies for preliminary construction contracts under the exchange system which were drafted after August 21<sup>st</sup> 1986 (when VAT legislation was first entered into force in Greece) and the construction license of which will be issued after January 1<sup>st</sup> 2005.

#### 1.2.4 Inheritance and gift taxes

Inheritance and gift taxes are governed by L. 2961/2001 (Inheritance and Gift Tax Code)<sup>50</sup>. Both individuals and legal entities are subject to the tax for the value of the property they receive from inheritance or gift.

##### a. Inheritance Tax

Inheritance tax is imposed on the value of any kind of property that is located in Greece, irrespective of whether it belongs to a resident or non-resident<sup>51</sup>. Moreover, any tangible or intangible movable property that is located in a country other than Greece is also subject to the tax, if it belongs to a Greek national irrespective of his place of residence or to a non-Greek national that has his residence in Greece.

When real property or any real right on it is inherited, the value of the real property is estimated according to art. 10 of the Inheritance and Gift Tax Code<sup>52</sup>. In the said article three methods are provided for the estimation of the value of the real property:

Market value system<sup>53</sup>: according to this system the value is estimated using data regarding to comparable real property.

Objective values system<sup>54</sup>: the objective values system is applicable to the vast majority of rural and urban areas. According to this system the value is calculated using the base values per square meter and the increasing or decreasing factors that are provided for in the relevant ministerial decisions.

Where the pre-determined objective value is believed to be higher than the market value, an appeal to the court is possible. In this case the court will determine the value of the real property, using any appropriate method.

Mixed system<sup>55</sup>: the mixed system is applicable to the few cases where the objective values system is not currently applicable. According to this system the value of the buildings is calculated according to the objective values system and the value of the land is calculated according to the market value system. When there is a disagreement on the value that is calculated according to this system, an appeal to the court is possible. The court will then determine the value.

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<sup>50</sup> The law was published in the OJ 266A'22-11-2001. This law codified the previously valid provisions of the Legislative Decree 118/1973 and of a number of other laws that were regulating inheritance and gift taxation matters.

<sup>51</sup> Art. 3 of the Inheritance and Gift Tax Code.

<sup>52</sup> Special provisions for the calculation of the value of the usufruct are contained in art. 15 of the Inheritance and Gift Tax Code.

<sup>53</sup> Art. 10A of the Inheritance and Gift Tax Code.

<sup>54</sup> Art. 10B of the Inheritance and Gift Tax Code. For the objective values system see also Chapter 1.2.2.

<sup>55</sup> Art. 10Γ of the Inheritance and Gift Tax Code.

Certain debts and expenses are eligible for deduction<sup>56</sup> from the aggregate value of the inheritance while certain exemptions from the tax are also provided for in the law<sup>57</sup>. The most important exemptions regarding real property are: the exemption of the acquisition of primary residence<sup>58</sup> and the exemption of farmland<sup>59</sup>. A number of additional exemptions are provided for especially for farmers<sup>60</sup>.

The value of the inheritance that remains after the deductions and the exemptions is subject to tax according to a scale. According to the law<sup>61</sup> the heirs can be categorized to three groups of persons. A different tax scale is applicable to each one of the three groups. In the first group (Group A) belong the spouse, the children and the parents of the deceased. In the second group (Group B) belong the brothers, nephews and nieces, grandchildren, grandparents, brothers in law, parents in law etc. In the third group (Group C) belong all other persons that have a blood or in law relation with the deceased other than the ones that belong in the first two groups as well as any person who is not a relative (blood or in law) of the deceased. The relevant tax scales are as following<sup>62</sup>:

For group A:

| <b>Brackets (€)</b> | <b>Tax rate (%)</b> | <b>Bracket Tax (€)</b> | <b>Taxable property (€)</b> | <b>Total Tax (€)</b> |
|---------------------|---------------------|------------------------|-----------------------------|----------------------|
| First 20.000, 00    | -                   | -                      | 20.000, 00                  | -                    |
| Next 40.000, 00     | 5                   | 2.000, 00              | 60.000, 00                  | 2.000, 00            |
| Next 160.000, 00    | 10                  | 16.000, 00             | 220.000, 00                 | 18.000, 00           |
| Excess              | 20                  |                        |                             |                      |

For group B:

<sup>56</sup> Art. 21-24 of the Inheritance and Gift Tax Code.

<sup>57</sup> Art. 25-26 of the Inheritance and Gift Tax Code.

<sup>58</sup> According to art. 26A §1 the value of the inherited primary residence up to 65.000,00 € for a single person is exempted from inheritance tax; the exemption was extended by art. 35§11 of L. 3220/2004 to cover also separated persons. This amount rises up to 100.000, 00 € for a married or divorced or widow or unmarried parent with dependent children. The tax-exempt amount is increased by 20.000, 00 € for each of the first two dependent children and by 30.000, 00 € for each additional dependent child. When land is inherited the exemption amounts to 30.000, 00 for a single person. This amount rises up to 55.000, 00 € for a married or divorced or widow or unmarried parent with dependent children and is increased by 8.000, 00 for each of the first two dependent children and by 10.000, 00 € for each additional dependent child. Further conditions for the granting of the exemption are provided for in the law. The above mentioned provisions are valid from the 1<sup>st</sup> of January 2003, according to art. 10§1 of L. 3091/2002.

<sup>59</sup> Art. 26B of the Inheritance and Gift Tax Code. The exemption depends upon the fulfillment of various conditions laid down in the relevant provisions.

<sup>60</sup> Art. 26Γ and Δ of the Inheritance and Gift Tax Code. For young farmers enjoying the exemptions of this law certain particular obligations are provided for in art. 26E. Further exemptions for farmers were introduced with art. 9 of L. 3220/2004.

<sup>61</sup> Art. 29§1 of the Inheritance and Gift Tax Code. The relevant provisions apply as from 1-1-2003, according to art. 12§5 of L. 3091/2002.

<sup>62</sup> According to art. 29§1 of the Inheritance and Gift Tax Code. In the amount of tax that is calculated according to the relevant tax scale it is included a local tax of 3% and a tax of 7% that is imposed in favor of the prefecture national road construction funds.

| <b>Brackets (€)</b> | <b>Tax rate (%)</b> | <b>Bracket Tax (€)</b> | <b>Taxable property (€)</b> | <b>Total Tax (€)</b> |
|---------------------|---------------------|------------------------|-----------------------------|----------------------|
| First 15.000, 00    | -                   | -                      | 15.000, 00                  | -                    |
| Next 45.000, 00     | 10                  | 4.500, 00              | 60.000, 00                  | 4.500, 00            |
| Next 160.000, 00    | 20                  | 32.000, 00             | 220.000, 00                 | 36.500, 00           |
| Excess              | 30                  |                        |                             |                      |

For group C:

| <b>Brackets (€)</b> | <b>Tax rate (%)</b> | <b>Bracket Tax (€)</b> | <b>Taxable property (€)</b> | <b>Total Tax (€)</b> |
|---------------------|---------------------|------------------------|-----------------------------|----------------------|
| First 5.000, 00     | -                   | -                      | 5.000, 00                   | -                    |
| Next 55.000, 00     | 20                  | 11.000, 00             | 60.000, 00                  | 11.000, 00           |
| Next 160.000, 00    | 30                  | 48.000, 00             | 220.000, 00                 | 59.000, 00           |
| Excess              | 40                  |                        |                             |                      |

Special provisions apply for the taxation of inheritance of stocks or businesses, when the heirs belong to the Group A or Group B<sup>63</sup>. The tax rates amount to only 0,6% for heirs of Group A and to 1,2% for Group B, for stocks and securities listed on the stock exchange<sup>64</sup>. For stocks not listed and for shares of limited liability companies, partnerships and civil law societies the tax rates are 1,2% and 2,4 % respectively. The taxation of the stocks and shares according to the special provisions is provisional for the heirs, who can opt for the tax to be calculated according to the general provisions and the above mentioned tax scales.

#### b. Gift Tax

Gift taxation is similar to inheritance taxation<sup>65</sup>. What has been mentioned above regarding inheritance tax is also applicable *mutatis mutandis* to gift taxation. Special provisions apply granting tax exemptions<sup>66</sup> and deductions<sup>67</sup>.

### 1.2.5 Annual wealth / net worth taxes

There is no net worth tax or net wealth tax in Greece.

<sup>63</sup> This special regime was introduced by art. 11§1 of L. 3091/2002 that added a §7 to art. 29 of the Inheritance and Gift Tax Code. The relevant provisions apply as from 1-1-2003.

<sup>64</sup> The method of calculation of the taxable value of listed shares changed with art. 35§3 of L. 3220/2004.

<sup>65</sup> Gift tax is provided for in art. 34-45 of the Inheritance and Gift Tax Code. Those articles often contain direct references to the respective inheritance tax articles while art. 45 contains a general rule establishing the analogous application of the inheritance tax provisions.

<sup>66</sup> Art. 43Γ of the Inheritance and Gift Tax Code.

<sup>67</sup> Art. 44 of the Inheritance and Gift Tax Code.

### 1.2.6 Real Estate Tax

Real Estate Tax in Greece is levied on large real property<sup>68</sup>. Both individuals and legal entities are subject to the tax for their real property that is located in Greece on the 1<sup>st</sup> of January of each year, irrespective of their nationality or place of residence. Spouses are subject to the tax for their aggregate real property. Both ownership and other real rights on property are subject to tax<sup>69</sup>.

An exemption is provided for the buildings used by the owner for particular business operations, including farming, mining, industrial, educational operations as well as quarries and hotels. However the exemption does not cover the real property that is owned by enterprises whose business operation is the exploitation of the real property<sup>70</sup>. Buildings under construction are exempted for a period of seven years after the issue of the construction license, under the condition that they will not be leased or in other way used during this seven-year period<sup>71</sup>. Under a special provision REICs are exempted for the real estate assets<sup>72</sup>.

Further exemptions are provided for the State and its subdivisions as well as for foreign States under the condition of reciprocity. Not-for-profit legal entities and athletic unions and football clubs are also exempted under certain conditions<sup>73</sup>.

The tax is levied on the objective value<sup>74</sup> of the real property on the 1<sup>st</sup> of January of the year of taxation. Debts arising from certain loans secured by mortgage are fully deductible under conditions<sup>75</sup> from the total value of the real property. After the deductions an amount of 243.600 € remains tax-free both for individuals and for legal entities. The tax-free amount increases to 487.200 € for married couples and it is further increased by 61.650 € for each one of the first two children of the family and by 73.400 € for the third child and every additional one<sup>76</sup>. Especially for the not-for-profit legal entities<sup>77</sup> the tax-free amount is set to 607.490 €<sup>78</sup>.

If the total value of the real property does not exceed the tax-free amounts, then the owner has no obligation to file a tax return<sup>79</sup>.

If the total value of real property exceeds the above-mentioned tax-free amounts, then the excess is subject to tax according to the following rates<sup>80</sup>:

- a. for individuals the tax is computed according to the following tax scale:

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<sup>68</sup> Law 2459/1997 on “Real Estate Tax on Large Property”.

<sup>69</sup> Art. 21-22 of L. 2459/1997.

<sup>70</sup> Art. 23 of L. 2459/1997.

<sup>71</sup> Art. 23 of L. 2459/1997.

<sup>72</sup> Art. 31§6 of L. 2778/1999.

<sup>73</sup> Not-for-profit legal entities and athletic unions and football clubs are exempted under the condition that they use the real property and the exemption is granted only for that property that they use.

<sup>74</sup> For the objective value system see Chapter 1.2.4.

<sup>75</sup> However the interest paid for the loan is not deducted (art. 25§1 of L. 2459/1997).

<sup>76</sup> Art. 25§2 of L. 2459/1997; that means that for a family with two children the tax-free amount is 610.500 € and for a family with three children it is 683.900 €.

<sup>77</sup> For foreign not-for-profit legal entities the condition of reciprocity applies.

<sup>78</sup> Art. 25§2 of L. 2459/1997 as amended by art. 14§1 of L. 2948/2001.

<sup>79</sup> Art. 26§5 of L. 2459/1997. Legal entities must file once an (initial) return; then the rule applies.

<sup>80</sup> Art. 25 of L. 2459/1997.

| Value bracket (€) | Tax rate (%) | Bracket tax (€) | Total taxable value (€) | Total tax (€) |
|-------------------|--------------|-----------------|-------------------------|---------------|
| (tax free)        | 0            | -               | -                       | -             |
| First 146.750, 00 | 0,3          | 440, 25         | 146.750, 00             | 440, 25       |
| Next 146.750, 00  | 0,4          | 587, 00         | 293.500, 00             | 1.027, 25     |
| Next 146.750, 00  | 0,5          | 733, 75         | 440.250, 00             | 1.761, 00     |
| Next 293.500, 00  | 0,6          | 1.761, 00       | 733.750, 00             | 3.522, 00     |
| Next 293.500, 00  | 0,7          | 2.054, 50       | 1.027.250, 00           | 5.576, 00     |
| Excess            | 0,8          |                 |                         |               |

- b. for legal entities the tax rate is 0,7%; for not-for-profit legal entities, both domestic and foreign (the latter under the condition of reciprocity), and for domestic charitable foundations the tax rate is 0,35%.

### 1.2.7 Special Tax on Real Estate

Following the long-standing practice of France and Spain, Greece recently introduced a special annual tax on real estate<sup>81</sup>, effective since January 1<sup>st</sup>, 2003, aiming mainly to combat tax avoidance and tax evasion. The tax is calculated at a flat rate of 3% on the objective value<sup>82</sup> of real estate situated in Greece on the 1<sup>st</sup> of January of each year. It is imposed on companies who own or usufruct real estate in Greece. Individuals are not subject to the tax<sup>83</sup>.

Several exemptions are provided. The following companies are exempted irrespective of their state of registration:

- Companies whose shares are listed in an organized stock market
- Companies that have gross revenue in Greece from other sources in Greece than real property and the revenue from those other sources is higher than the revenue from real property situated in Greece
- Companies that own buildings that are still under construction<sup>84</sup>
- Companies that are registered under Law 89/1967 (mainly shipping companies), under further conditions<sup>85</sup>

<sup>81</sup> The tax was introduced by art. 15-18 of L. 3091/2002, published in the OJ 330A’/24-12-2002. Those provisions were amended by art. 15 et seq. of L. 3193/2003 and art. 35§1 of L. 3220/2004.

<sup>82</sup> For the determination of the value of the real estate for the purposes of the special tax on real estate the provisions of art. 10 of the Inheritance and Gift tax Code (see Chapter 1.2.4.) are directly applicable, according to art. 17§2 of L. 3091/2002.

<sup>83</sup> Individuals are only liable to tax when they act as “intermediary persons”; art. 16 of L. 3091/2002.

<sup>84</sup> This exemption was introduced by art. 15§1 of L. 3193/2003 (OJ 266A’/20-11-2003). The exemption is granted for seven years following the year in which the construction licence for the buildings was issued.

- Companies owned by the Greek State or a subdivision of the state or a public law legal entity

Companies having their seat in Greece or in an EU Member State are exempted from the special tax on real estate under the condition that:

- They conform to specific disclosure requirements regarding their individual owners. This obligation is not required when the owners are listed companies, pension funds, insurance companies, mutual funds, portfolio investment companies, real estate investment companies or real estate investment funds and institutional investors operating in an EU Member State<sup>86</sup>.
- They are fully owned by a Greek or foreign foundation that was formed by virtue of a will and that pursues public profit aims in Greece.

Companies having their seat in a third country are exempted from the tax under the following conditions:

- They have registered shares
- Their shares belong to individuals and those individuals are disclosed to the Greek tax authorities
- There is a Convention providing for mutual administrative assistance for the combat of tax fraud and tax evasion with the country of their seat<sup>87</sup>.

### **1.2.8 Municipal tax on real estate and municipal duties**

A local annual tax on real estate in favor of the municipalities is provided for in art. 24 of L. 2130/1993, at a rate ranging between 0,025% to 0,035% of the real estate's objective value<sup>88</sup>. The exact rate is determined by the competent municipality. Tax liability is determined on January 1<sup>st</sup> of each year.

Several exemptions are provided. The most important one is the exemption of lands or buildings owned by a not-for-profit legal entity, irrespective of its nationality. An exemption is also provided for buildings that are under construction. Those buildings are exempted for the first seven years since the construction licence was issued, under the condition that the buildings will not be used during that seven-year period<sup>89</sup>.

The local annual tax on real estate is collected through the periodic Public Electric Company (*ΔΕΗ*) bills.

A number of other minor municipal duties are also imposed by special provisions. Such duties are for example those for lighting and cleaning services.

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<sup>85</sup> This exemption was extended by art. 15§2 of L. 3193/2003 to cover special cases of shipping companies registered in Greece.

<sup>86</sup> Art. 15§3 of L. 3091/2002 as amended by art. 15§4 of L. 3193/2003.

<sup>87</sup> Art. 15§4 of L. 3091/2002. This provision is currently latent, since Greece has signed no such Convention with a third country and DTTs are not applicable since the special tax on real estate is not an income tax.

<sup>88</sup> For the objective value system see above in 1.2.2 Real Estate Transfer Tax.

<sup>89</sup> Art. 24§7 of L. 2130/1993.



## **2. INTERNATIONAL TAX ASPECTS OF INVESTMENT IN REAL ESTATE IN GREECE**

International tax aspects of investment in real estate are mainly governed by the Double Tax Treaties (hereinafter: *DTTs*) network. Before the presentation of the relevant provisions of the *DTTs* (in 2.2) the few restrictions that still apply to international investments along with the administrative and tax authorities requirements for international investors will be dealt with (in 2.1).

### **2.1 Acquisition and holding of real estate in Greece by non-residents**

The various restrictions and obligations imposed upon owners of real estate in Greece will be dealt with in the following sections, after a short overview of the rules governing the movement of capital.

#### **2.1.1 Movement of Capital**

Capital flows from and to Greece have been liberalized and there are no limits on the importation or exportation of foreign currency. Both residents and non-residents can open and maintain foreign currency accounts and can freely transfer abroad the funds and interest of those accounts.

Profits or commissions or other benefits in foreign currency earned by Greek residents for the provisions of services in Greece or rents from the leasing of immovable property in Greece or the proceeds from the alienation of such immovable property to non-residents may be deposited in foreign currency accounts. The repatriation of capital arising from the liquidation of an investment and the exportation of profits, dividends, interest etc by persons residing outside of Greece is regulated by the presidential decrees 96/1993 and 104/1994.

#### **2.1.2 Restrictions in investments in Greece**

Ownership of real estate situated in border areas is subject to certain restrictions. According to the provisions of art. 25 of L. 1892/1990 any contract transferring any real right on a real property situated in border areas to an individual or a legal entity is totally forbidden. The same restriction applies to any transfer of shares or interest in a company of any form that owns real property in border areas<sup>90</sup>. An exemption is provided for the transfer of shares listed on a Greek stock exchange. The restriction applies, in principle, to both Greek and non-Greek nationals. However Greeks and EU nationals can ask for the removal of the restriction, stating the reason for which they wish to acquire the real property<sup>91</sup>. For nationals of third countries a stricter procedure exists: for certain border areas it is not at all possible to invest in real estate while in other it is required a permission from the Minister of Defense.

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<sup>90</sup> Border areas are defined in art. 24 of L. 1892/1990 and in the presidential decree 22/6/1927.

<sup>91</sup> The procedure according to which the restriction is removed and permission is obtained is laid down in art. 26 of L. 1892/1990.

In general, for other types of investment no prior permission is needed for non-residents wishing to invest in Greece and only few restrictions of foreign investment participation exist<sup>92</sup>.

### 2.1.3 Administrative obligations arising from the tax legislation

Tax legislation sets a number of obligations to persons wishing to acquire or owning real property in Greece. First of all, anyone wishing to buy real property needs to have been registered with the tax authorities prior to the acquisition. Upon registration he is given a unique tax registration number (*Arithmos Forologikou Mitroou-AFM*), which is used as identification number with the tax authorities. Foreign companies deriving income from building rentals are taxed in Greece. Foreign entities owning real property in Greece are required to file an income tax return, irrespective of whether income is derived from the real property or not. Foreign legal entities acquiring immovable property in Greece have all the registration obligations arising from the VAT legislation, regardless of whether they are subject to the VAT or not.

As of January 1<sup>st</sup> 2003, all foreign entities owning real property or other real right or constructing buildings in Greece are deemed to be entrepreneurs for tax law purposes and they are subject to the Books and Records Keeping Code<sup>93</sup> obligations.

## 2.2 Real Estate in Double tax Treaties

Greece has a rather narrow network of double taxation treaties, which is however under continuous expansion<sup>94</sup>. Apart from the income tax treaties network there exists a smaller network of inheritance and gift tax treaties<sup>95</sup>. Double tax treaties, as international treaties, need ratification before their entry into force in the domestic legal order. Once they are ratified they do not lose their quality as international law. As a result, DTTs are in a higher ranking than domestic laws; in case of conflict the provisions contained in a DTT will always override any domestic law (prior or posterior to the DTT) while the opposite (treaty override by a domestic law) is not possible under the Greek Constitution.

Greece follows the OECD Model Tax Convention in Income and on Capital (OECD Model) in negotiating DTTs and therefore all treaties signed by Greece have a large uniformity.

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<sup>92</sup> Apart from the restrictions for real estate investments there are also restrictions concerning the owners of shares in private radio or TV companies by non EU citizens and certain limitations for the participation of non EU citizens in airline companies, shipping interests and mining interests.

<sup>93</sup> Art. 2§1 of the Presidential decree 186/1992, as amended by art. 1§1 of L. 3052/2002.

<sup>94</sup> According to the list of the Ministry of Finance published on 9-1-2004 there are 34 DTTs currently in force between Greece and: Albania (1999), Armenia (2002), Austria (1971), Belgium (1969), Bulgaria (1994 & 2001), Croatia (1998), Cyprus (1968), Czech Republic (1989), Denmark (1991), Finland (1981), France (1964), Germany (1967), Georgia (2002), Hungary (1984), Italy (1991), India (1966), Israel (1998), Korea (1998), Luxembourg (1995), Netherlands (1984), Norway (1991), Poland (1991), Portugal (2002), Romania (1995), Slovakia (1989), Slovenia (2002), South Africa (2002), Spain (2002), Sweden (1963), Switzerland (1984), Ukraine (2002), United Kingdom (1953), USA (1953), Uzbekistan (1998). Further DTTs have been signed with the Russian Federation (2002) and Turkey but they have not yet entered into force.

<sup>95</sup> Treaties with: Germany, Finland, Italy, Spain and the USA. However the treaty with the USA is of no major importance since according to a protocol signed by the contracting parties immovable property is not covered by the treaty.

### 2.2.1 Income from immovable property

According to art. 6§1 of the OECD Model income from immovable property which is situated in one contracting state by a resident (individual or enterprise) of the other contracting state may be taxed in the country where the immovable property is situated.

As far as the notion of income from immovable property is concerned, DTTs signed by Greece introduce no substantial differences compared to the OECD Model definition. As far as the taxation of the income from immovable property is concerned, in the vast majority of the Greek DTTs the said income is taxed according to the standard OECD Model clause. However there are a few remarkable exceptions. In the DTTs with India, Austria and Israel, it is provided that the country of source (that is: the country where the immovable property is situated) will have the exclusive right to tax the income derived from the immovable property (“*shall be taxable only*”- “*is only taxed*”). The same interpretation must also be accepted for the DTTs with France and Belgium, where the phrase “*is taxed*” is used instead of the proposed standard OECD Model clause “*may be taxed*”.

In the DTT with the USA<sup>96</sup> a right of election is granted to the taxpayer. According to the relevant provisions a resident or a corporation of one of the contracting states deriving from sources within the other state royalties in respect of the operation of mines, quarries or other natural resources or rentals from real property may elect for any taxable year to be subject to the tax of such other contracting state on the basis of net income (that is: as if he were engaged in trade or business therein through a PE) as determined under the laws of such other contracting state during such taxable year.

In the DTT with the UK there exists no separate article regarding the taxation of income from immovable property. For the taxation of income from natural resources the rules for business profits apply, since according to art. II§1(k), income from mines and farms is considered to be business income. For such income to be taxed in the source country a PE is needed. According to the definition of the PE given in art. II§1(λ) a PE always exists in the case of a farm, a mine, a quarry or any other place of extraction of natural resources in the source state.

### 2.2.2 Capital gains

Under the interpretation given by the competent authority, the capital gain from the alienation of real property or shares is treated as business income under domestic legislation. Therefore when real property or shares are alienated, the profit derived is taxed according to art. 7 of the OECD Model. However a brief overview of the capital gains articles contained in DTTS will be given here below.

All the DTTs Greece has signed contain a clause similar to the one of art. 13§1 of the OECD Model. According to this provision, capital gains from the alienation of the immovable property (as defined in art. 6 of the OECD Model) may be taxed in the state where the immovable property is situated. However in the DTTs with Belgium, Austria and Israel it is provided that those capital gains will only be taxed in the country where the immovable property is situated.

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<sup>96</sup> Income from real property and natural resources is dealt with in art. VIII of the Treaty. This Treaty was signed in 1950 and it entered into force in 1953.

According to art. 13§4 of the OECD Model<sup>97</sup>, gains from the alienation of shares of companies owning immovable property is assimilated to the taxation of capital gains from the alienation of immovable property. The regulation is similar to the one of art. 13§1 of the OECD Model, deviating from the regulation of art. 13§5, according to which capital gains from the alienation of shares of a company are only taxed in the state of residence of the alienator. Therefore, in cases where no provision corresponding to art. 13§4 of the OECD Model or other special provision<sup>98</sup> exists, the rule of art. 13§5 of the OECD Model will apply<sup>99</sup>.

In the DTT with Spain art. 13§4 provides that the alienation of both shares and other participation rights to a company whose capital consists, either directly or indirectly, “*principally*” of immovable property may be taxed in the state where the immovable property is situated. Contrary to the OECD Model clause, in this DTT no specific percentage is set, so there is a problem with the interpretation of the term “*principally*”. In the DTT with Ukraine the relevant provision (art. 13§2) is broader than the OECD Model. It covers not only companies but also participation in partnerships whose assets consist, “*principally*”, of immovable property or rights on immovable property. Again there is a problem with the definition of the term “*principally*”.

In the DTT with Israel the relevant provisions deal both with the alienation of substantial participation and with the alienation of participation in a real property company. In the former case, the source-state has a right to tax the capital gain, under certain conditions. In the latter, gains from the alienation of shares or similar rights not dealt in a stock exchange, being shares in a company whose 50% or more of the assets consist of immovable property situated in a contracting state, shall be taxable only in that state. The same applies to the alienation of an interest in a partnership, trust or estate, the property of which consists principally of immovable property situated in a contracting state (art. 13§5).

### **3. TAX ASPECTS OF HOLDING REAL ESTATE LOCATED IN GREECE**

Holding of real estate can be either direct, through the acquisition and holding of real property, or indirect, through the acquisition and holding of shares of companies investing in real property. When there is a DTT that applies, then the relevant rules of the DTT will have priority over the domestic rules and any advantages contained therein will restrict the domestic tax liability; see Chapter 2.2.1. When there is no such treaty or there is one but it provides that the relevant income may be taxed without restrictions in the state where the real property is situated, then the domestic rules will fully apply.

#### **3.1 Investor is a (non resident) individual**

In the case of a direct investment, for the taxation of income derived from the holding of real property see Chapter 1.1.1 (on income from real property), Chapter 1.1.4 (on supplementary

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<sup>97</sup> In the vast majority of Greek DTTs there is no provision similar to art. 13§4.

<sup>98</sup> This is the case with the DTTs with Norway, the Netherlands, Finland (art. 6) and Austria.

<sup>99</sup> For example, in the DTT with Uzbekistan, art. 13§4 provides that the capital gains from the alienation of shares representing an at least 15% participation in a company that is resident in one contracting state may be taxed in the state where the company is a resident. It is obvious from the wording of this provision that it concerns any substantial participation in any company and it is not aimed only to companies investing in immovable property.

tax on income from real property), Chapter 1.2.1 (on stamp duties on property rentals), Chapter 1.2.6 (on real estate tax) and Chapter 1.2.8 (on municipal tax on real estate).

In the case of an indirect investment the following apply:

a. In case of holding of shares in a company

Holding of shares generates dividend income for the shareholder. In Greece dividends are not taxed at the level of the shareholder: according to articles 54§1 and 114§2 the legal entity distributing the profits is liable to tax, the profits are distributed tax-free to the shareholders and the shareholder has no tax liability for this income. The same is valid for the profits arising from the participation in a limited liability company.

Especially for the case of holding shares in a real estate investment companies and real estate mutual funds see Chapter 1.1.5

b. In case of holding interest in a partnership

Foreign partners are treated as Greek partners for tax purposes. Absent a DTT, participation in a partnership creates a PE for the foreign person. Income arising from the participation in a partnership is taxed according to the rules set out in Chapter 1.1.3. The portion of profits that is taxed at the level of the partnership, when distributed to the members of the partnership, is tax-free and the members of the partnership have no tax liability for that income.

### **3.2 Investor is a (non resident) corporation**

See Chapter 3.1. In addition, care must be taken that the foreign entity does not fall in the scope of application of the special tax on real estate; see Chapter 1.2.7.

### **3.3 Investor is a (non resident) partnership**

See Chapter 3.1. In addition, care must be taken that the foreign entity does not fall in the scope of application of the special tax on real estate; see Chapter 1.2.7.

### **3.4 Investor is a (non resident) trust**

Greek private law does not recognize “trusts” as persons. Therefore when real property is bought, then it is registered under the name of the trustee(s). The same is valid when shares are bought or interest in a partnership. Depending on whether the trustee is an individual or a company, the corresponding provisions apply (see Chapter 3.1) and care must be taken so that in the latter case the foreign entity does not fall in the scope of application of the special tax on real estate; see Chapter 1.2.7.

## **4. TAX ASPECTS OF SELLING REAL ESTATE IN GREECE**

Selling of real estate in Greece triggers real estate transfer tax. VAT provisions are not yet into force (see Chapter 1.2.3). If the seller is carrying out business, then income tax provisions (capital gains) are also applicable. On the contrary, selling of shares in a company or interest in a partnership never triggers real estate transfer tax; only income tax

(capital gains) is levied on the capital gain realized there from. For inheritance and gift taxes see Chapter 1.2.4. For cases falling under a DTT, see Chapter 2.2.2.

#### **4.1 Sale of real estate by a non-resident (direct investment)**

In the case of alienation of real property the provisions of the Real Estate Transfer Tax apply; see Chapter 1.2.2.

There is no tax on the capital gain realized by a non-resident individual (non-business). When a non-resident company or an individual carrying out business sells real property, the capital gain realized is considered to be business income<sup>100</sup> and will be taxed as such; see Chapter 1.1.2

#### **4.2 Sale of shares in a Real Estate Company by a non-resident**

When shares are alienated, then the relevant general provisions of the ITC apply, the capital gain realized is taxed as business income and the individual has no other tax liability for that income; see Chapter 1.1.2.

#### **4.3 Sale of interest in a Real Estate Partnership by a non-resident**

This is considered to be capital gain and is taxed as normal business income; see Chapter 1.1.2. It has to be noted that, absent a DTT, participation of a non-resident individual or company in a Greek partnership constitutes a PE for the foreign person.

### **5. RECOMMENDATIONS FOR THE ACQUISITION OF REAL ESTATE IN GREECE**

Both direct and indirect investments by an individual are attractive and they have advantages and disadvantages. The individual income tax rates are normally lower than the corporate tax rate, so in many cases the direct investment by an individual will be less burdensome than indirect investment. On the other hand, immediate shareholding in a company owning real estate has the advantage that any dividend or distribution of profits is tax-free for the shareholder. However, in this case the tax burden of the company has to be taken into account. Partnerships, although they have a lower tax rate than AE and EPE, are not very attractive since they normally constitute a PE for the non-resident investor and a portion of their profits is taxed in the name of the member of the partnerships. Direct investment by an individual will not trigger the special tax on real property provisions (see Chapter 1.2.7.). Taxes imposed in case of the liquidation of either the direct or the indirect investment have also to be taken into account. Real estate transfer tax is only triggered when real property is transferred while in the case of alienation of shares or interest the capital gain realized is taxed as business income (see Chapter 4).

In general, the form of business entity preferred by the majority of foreign companies for doing business in Greece is the corporation (*AE*) and the limited liability company (*EPE*), usually in the form of a subsidiary, as it has more advantages (regarding income taxation) than a branch. For the acquisition and holding of real estate, in case the investor is coming from a non-treaty country the setting up of an AE is preferred, since, absent a treaty,

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<sup>100</sup> Art. 28§2 and art. 105§9 of the ITC.

participation in any kind of legal entity other than an *AE* creates a PE in Greece<sup>101</sup>. When there is a DTT, then acquisition through a limited liability company (*EPE*) is also possible without implications<sup>102</sup>. Setting up a partnership is more troublesome, since it is not clear from the side of the competent authority if participation in a partnership constitutes a PE under the DTTs. Charities are not recommended, since their income derived in Greece from any source is taxable and the only income that is exempted is the one acquired in the course of the realization of their charity aims<sup>103</sup>. Income from immovable property is very difficult to fall in this category.

The Greek government in trying to combat tax evasion has enacted legislation discouraging the use of offshore companies for the holding of real property in Greece. The most important such measures are the enactment of the special tax on real property (Chapter 1.2.7) and the non-deductibility of expenses to and from offshore companies. Therefore the use of such structures for holding real estate in Greece are not so attractive any more. In any case a direct investment by a foreign entity is preferred, special care must be taken so that the special tax on real estate (Chapter 1.2.7) provisions are not triggered.

Investment via a REIC or REMF is not possible as yet, since no REIC or REMF has been set up, even though the relevant legislation is already four years old.

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<sup>101</sup> Art. 100 of the ITC.

<sup>102</sup> It has been ruled that participation in an *EPE* does not constitute a PE under the DTTs.

<sup>103</sup> Art. 99§1στ' of the ITC.

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