

INVESTING THROUGH A LOW TAX JURISDICTION STRUCTURE

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Greece provided a reasonably hospitable climate for foreign investment through the use of offshore companies in past. Presently new tax legislation has limited the use and renders such an investment not profitable. In this respect professional advice should be sought in order to appraise the investment opportunity and choose the appropriate investment scheme.

A. FOREIGN CORPORATIONS

1. Establishment by a foreign corporation of a branch office in Greece

Foreign Corporations may establish a branch in Greece. There is no distinction on whether the country of origin is a low or high tax jurisdiction. An application is filed at the Department of Commerce of the local Prefecture. Documents that must be submitted are:

- Articles of incorporation;
- Corporate resolution for the establishment of the branch of the company in Greece;
- Power of attorney to the person who is appointed director of the Branch in Greece;
- Certificate of Incorporation in the country of origin;
- Certificate of good standing from the country of origin;
- Certificate of fully paid-up capital (minimum amount of fully paid up capital 60.000 Euros for S.A. and 18.000 for limited liability Companies, or the equivalent in any other currency) issued by a public authority in the Country of origin (this rule does not apply to companies from an EU country).

This kind of branch is liable to the corporate tax rate and has all tax deductions and obligations as normal Greek Société Anonyme.

It is advised that foreign companies under the Société Anonyme status are preferred, as they need no other special authorization.

Once the approval has been obtained, the registration is then published in the Government Gazette.

2. Participation of a foreign corporation in Greek corporation

It has been widely used in the recent years, that corporations mainly from zero or low tax jurisdictions hold some interest on Greek corporations.

- Participation on Greek Société Anonymes

The participation of the foreign legal entity has no implications provided it is the Equivalent of a Greek S.A.

- Participation on Greek Limited Liability Companies

Regardless of its type the foreign legal entity shall have a permanent establishment in Greece.

3. Ownership of real property

Greeks and foreigners, often proceed to the acquisition of real estate in Greece through a foreign corporation. Panama and Liberian companies have been most commonly used, however certain tax structures had been elaborated in order to avoid future possible tax implications.

Currently a 15% Annual Special Real Estate Tax is levied on tax value of the real property owned by non EU companies.

Amongst other exemptions an exemption is available to ship-owning companies and shipping companies with Law 89/67 Offices in Greece (vide next chapter) with respect to self-used

property and property leased to other shipping companies used exclusively as offices or warehouses for business purposes.

- Deemed income of the corporation

Unless the real property is rented, the fact that its use is granted for free to a physical person or any other legal entity generates a deemed income that will be taxable at the applicable tax rate

B. OTHER VEHICLES FACILITATING OFFSHORE TRANSACTIONS

1. Ownership of Real Property in “Frontier Areas”

Pursuant to the Royal Decrees of 1927, 1928 and 1932, aliens were not allowed to conclude juridical acts in the frontier areas. Nevertheless, law 1892/ 1990 introduced some modifications and now determines the conditions for conclusion of juridical acts in such areas.

According to the provisions of this law, any inter vivos juridical act which constitutes real rights or contractual claims in favour of natural or legal persons on the frontier areas is prohibited.

Furthermore, the assignment of shares or parts of any type of company, which owns real estate in this area, as well as any change in partners of such companies, is prohibited.

Legal and natural persons with Greek nationality, ethnic Greeks, including Cypriots, as well as EU nationals, may apply for an exemption.

A special committee, which is composed of the Prefect and representatives of the Ministry of Defence, the Ministry of Economy, the Ministry of Public Order, and the Ministry of Agriculture is competent to grant such an exemption.

Legal or natural persons originating from third countries can also, upon request, obtain the above-mentioned rights after decision of the Ministry of Defence that is scarcely the case.

In this respect, the suggested vehicles are either Greek companies with EU incorporated legal entities, as their holding companies, or EU incorporated companies.

“Frontier areas” are considered to be: (a) the districts of Samos, Chios, the Dodecanese, Evros, Florina, Kastoria, Kilkis, Lesbos, Rodopi, Thesprotia and Xanthi; (b) the province of Nevrokopi of the district of Drama, the provinces of Konitsa and Pogonio of the district of Ioannina, the provinces of Almopia and Edessa of the district of Pella; and the province of Sintiki of the district of Serres and (c) the islands Santorini and Skyros, including such islets as fall within their administrative jurisdiction.

C. BUSINESS STRUCTURES ENJOYING LOW TAX JURISDICTION PRIVILEGES

1. Establishment in Greece of foreign commercial and industrial companies under law 89/67 (as initially applied, the current legal framework under law 3427/05 is described in par 3)

Foreign Commercial and Industrial Companies of any type or form legally operating in the country of their registration and dealing exclusively with commercial business whose object lies outside Greece, may be established in Greece following special permit granted by the Minister of Coordination.

An application is submitted to the Private Investment Division and should mention:

- a. the company's Nationality;
- b. the form under which the Company is operating in the country of its registration;
- c. the form under which it will operate in Greece (branch office, agency, or office of the parent company)
- d. the Company's object;
- e. the name of the person who will be in charge in Greece;
- f. deposit of a bank guarantee from a Greek or a foreign bank of acknowledged standing which will be forfeited in favour of the Greek State in case of breach of the provisions of Law 89/67 by the company's personnel.

The application has to be submitted and signed by a Greek Attorney at Law. In case that the person in charge of the Company's office in Greece is not a Greek National, a Greek Attorney at Law should be appointed as such in order to receive all official correspondence.

Foreign and Industrial Companies which have obtained an establishment permit shall, without any formality, be entitled to the following facilities concerning residence permits, custom duties, taxation and other matters, provided they are exclusively engaged in commercial activities whose objects lie outside Greece:

- a. permission of employment and residence in Greece for the foreign personnel (the permits are without any formality issued for the period of two years and are renewable for the same period upon declaration from the Company that the persons in question are still employees of the company's branch);
- b. tax clearance certificates valid for one year, may be issued to the aforesaid personnel;
- c. total exemption of the Company from:
 - custom duties
 - import taxes
 - stamp duties
 - contributions
 - turnover tax
 - luxury taxand any other taxes, duties or charges in favour of the State;
- d. total exemption from taxes, duties, or charges for any article necessary for equipping their office in Greece;
- e. exemption from income tax, as well as other tax, charge or contribution in favor of the State or any other third party for all persons of foreign nationality employed by the company, provided they hold a duly issued valid permit for employment and residence in Greece;
- f. import and keep free of duty a car for the foreign personnel (every alien employee has the right to one duty free car, which will be provided with standard Greek plates);
- g. import free of duty of the household equipment for the foreign personnel;
- h. import and export without any formality of samples and advertising material of no commercial value.

The branches or offices shall enjoy the above mentioned facilities and immunities, provided that they cover, by importing foreign exchange not necessarily assignable, their operation expenses in Greece by the equivalent of at least \$USD 50,000 and that all payments made in Greece should be made on their account or on the account of their parties.

2. Foreign shipping companies establishing an office or a branch in Greece under the provisions of Law 27/75

Branches or offices of foreign companies dealing exclusively with the management, exploitation, chartering, insurance, average adjustments, brokerage of sale, shipbuilding, chartering or insurance of ships under Greek or foreign flag may be exempted from income taxation, despite having a permanent establishment in Greece, in exchange for their obligation to import foreign currency to finance their local operation (minimum of funds imported and spent on office expenses in Greece USD50,000,00)

They enjoy the same facilities and immunities as the branches or offices established under the provisions of Law 89/67, except from the following:

- the import and keep free of duty of the car;
- the amount of the bank guarantee is \$USD 10,000;
- the fee of \$USD 2,000 is paid to the Greek Government upon the grant of the permit of establishment;

The amount of \$USD 50,000 that should be spent in Greece justifies the presence of 4 aliens (i. e. four principal residence permits). If a fifth alien should be added as an employee of the office \$USD 12,000 more should be imported and spent (i.e. for every additional employee the sum of \$USD 12,000 should be added)

3. Headquarters Establishment in Greece (Law 89/67)

Establishment in Greece of foreign commercial and industrial companies according to LAW 89/67 as amended by Law 3427/05 and in force today.

Foreign companies may be established in Greece according to the provisions of Law 3427/05, aiming exclusively at the provision of the following services to their head-offices or affiliates abroad (within the meaning of Article 42e of Law 2190/1920):

- Consulting services
- Centralised accounting services
- Quality control of production, products, procedures and services
- Preparation of studies, designs and contracts
- Advertising and marketing services
- Data processing services
- Receipt and supply of Information and Research & Development services.

Established companies under this regime, are obliged a) to employ a staff of at least 4 employees in Greece and b) to have at least 100,000 Euro per year operating expenses in Greece.

Tax incentives for companies established under this regime:

The gross income from services provided (only collected by bank remittances) is calculated according to the cost-plus method.² Profit margins (amounting to not less than 5%) are set separately for each company, in application of competent regulatory authority criteria (Committee of Ministry of Economy), mainly consisting in the nature of services provided, the area of business activity and the OECD Guidelines on intragroup charges.

The taxable income of the company is determined after all expenses on considered profit margin are deducted from the gross income, on the condition that they are supported by fiscal documents in compliance with the provisions of the Accounting Books and Records Code.

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