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ACCOUNTING & ADVISORY

DOING BUSINESS IN GREECE



Setting up a Business in Greece

Overview

Greek law provides for a variety of legal forms for carrying out a business. In addition to establishing a Greek company or entity (partnership), foreign enterprises may establish and operate a business in Greece by forming a Greek branch or entering into a joint venture with another enterprise. Foreign enterprises can also establish a presence in Greece (Law 89 office/company as revised by Law 3427/2005) whose sole scope of activity is to provide certain services to their head office or any other affiliate company not established in Greece. Individuals can operate as sole traders or freelance professionals.

An entity with its registered place of business in Greece is normally considered to be a Greek entity despite the fact that all of its members may be foreign.

For Taxes related to doing business in Greece, please read the relevant updated article.

Corporation – Anonymos Eteria (AE)

An Anonymos Eteria is a legal entity in which the liability of a shareholder is limited to the amount contributed to the share capital. This entity is the equivalent of the French "Société Anonyme" or the German "AG" and enjoys the highest status in Greece.

All actions required for the establishment of AEs (except for the temporary registration of its corporate name) are carried out by a Notary Public, who is considered the One-Stop Authority. The Notary Public interfaces with the other authorities as applicable, making most payments and submitting all documents and applications to the authorities involved in the establishment of the AE. Short timelines generally apply for the completion of the procedures.

In general, the following are required:

- Temporary registration of the corporate name with the competent Commercial Chamber;
- Preparation and signature of Articles of Association by the founders before the Notary Public to include provisions relating to, amongst others, the corporate name, registered address, duration, objects of activity, share capital (number and nature), Board of Directors and Shareholders;
- Payment of various registration duties;
- Registration of the corporation with the Registry maintained with the General Commercial Registry;
- Issuance of establishment approval by the Ministry of Regional Development and Competitiveness (only for specific corporations such as Banks, insurance companies etc.);
- Publication of the establishment of the AE in the General Commercial Registry's website.

The AE's establishment for corporate law purposes is considered to have been completed upon the registration of the AE with the General Commercial Registry, whereas ministerial approval of the Corporation's establishment is required only in specific cases (i.e. Banks, insurance companies etc.).

The AE's tax registration is also carried out by the One-Stop Authority.

The Articles of Association of an AE can be signed by one or more founding shareholder(s), either individuals or legal entities. The minimum share capital required for the establishment of an AE is currently EUR 25 000, which must be paid up in full upon incorporation and the payment thereof must be certified by the Directors within two months from the date of incorporation. Special laws prescribe higher minimum capital requirements for AEs with particular business activities, for example banking institutions and insurance companies.

The administration of an AE is carried out by the Board of Directors and by the shareholders at general meetings. The management of the AE is vested in the Board of Directors, which must consist of at least three members (for small entities one representative is also an option)

Limited Liability Company - Eteria Periorismenis Efthynis (EPE)

An EPE is a hybrid of an Anonymos Eteria and a partnership and is similar to the French Sarl or German GmbH. An EPE resembles an AE in that it is regarded as a legal entity separate from its partners and it has limited liability. An EPE resembles a partnership in the manner decisions are made. In particular, the majority of both the number of partners and of the capital is required.

The owners of the company are known as participants, unit holders or partners and are liable only to the extent of their contributed capital. Participation in the capital of an EPE and extent thereof is evidenced by the Articles of Association.

This form of establishment may be convenient for small and/or medium-size operations or operations which provide services to other group entities where the higher status of an AE is not considered necessary.

Similar to AE companies, all actions required for the establishment of EPE companies (except for the temporary registration of their corporate name) are carried out by the Notary Public who is considered as the One-Stop Authority. An EPE is formed by executing the Articles of Association before the Notary Public, payment of various duties and then filing of the Articles with the General Commercial Registry, with the establishment also being published in the General Commercial Registry's website. The EPE's tax registration is also carried out by the One-Stop Authority.

An EPE may be established by one or more partners. However, if upon establishment or at any time thereafter, the entire capital of the EPE is concentrated in the hands of one partner, the company's name must include the words "Sole Partner EPE". The partners of an EPE may be either individuals or legal entities.

Currently there are no minimum capital requirements for the formation of an EPE. The capital is divided into equal parts or units with no minimum par value, which must be fully paid-up at the time of incorporation.

An EPE is administered and represented by one or more persons (administrators), who need not necessarily be partners of the EPE, and are appointed by the Articles of Association or by the partners in meeting.

Branch

A branch of a foreign company may be established in Greece through registration with the General Commercial Registry. For this purpose, certain documents must be filed with the General Commercial Registry, including Articles of Association of the foreign company, a certificate of good standing of the foreign company issued by the competent foreign supervising authority, a resolution of the competent corporate body of the company approving the establishment of a branch in Greece, and a Power of Attorney appointing the branch's legal representative(s) in Greece and the person(s) authorized to receive correspondence in Greece (if a legal representative does not reside in Greece).

Following registration with the General Commercial Registry and publication in the General Commercial Registry's website, where required, the branch must be registered with the competent tax authorities (the tax registration is not carried by the General Commercial Registry but is effected separately at the competent tax office).

The branch is administered by its legal representative(s) in Greece (see above). The representative(s) of the branch is/are generally under the same management liability as the member(s) of a Board of Directors of an AE or the administrator of an EPE.

General Partnership - Omorythmos Eteria (OE)

A general partnership is an entity in which all the partners are jointly and severally liable for the debts of the partnership without limitation in liability.

The Articles of Association of a partnership need not be signed before a Notary Public and may take the form of a private agreement. General partnerships are established through One-Stop Authorities (General Commercial Registry etc.) and their Articles of Association are filed with the General Commercial Registry. Under certain particular circumstances, a summary of OE articles may need to be published in the General Commercial Registry's website.

There is no minimum capital requirement. The capital may be contributed in cash or in kind, or in the form of personal services to the partnership.

The affairs of the partnership are administered by one or more administrators.

Limited Partnership - Eterorythmos Eteria (EE)

In all respects, a Limited Partnership is similar to a General Partnership, except that the liability of the limited partner (eterorythmos eteros) is limited to his contributed capital. At least one partner must have unlimited liability (omorythmos eteros). If a limited liability partner is engaged in the management of the partnership he loses his limited liability status.

Private Capital Company – Idiotiki Kefalaiohiki Eteria (IKE)

A Private Capital Company is exclusively liable for its corporate debts, whereas the liability of its partners for corporate debts towards third parties is limited to the amounts specifically mentioned in its Articles of Association.

The Articles of Incorporation of a Private Capital Company must take the form of a notary deed only in certain cases; otherwise a private agreement is sufficient. Private Capital Companies are established through the General Commercial Registry and their Articles of Incorporation are filed with this Registry.

There is no minimum capital and the partners can participate in the company by contributions in cash or in kind, in the form of personal services to the firm, or in the form of guarantees/liability undertaken by the partners towards third parties.

The affairs of the company are administered by one or more administrators.

Joint Venture – Kinopraxia (JV)

The term joint venture (JV) is used in commercial practice to indicate the cooperation of individuals or legal entities for the purpose of pursuing and carrying out a specific project. A joint venture (JV) is not recognized by law as a separate legal entity. If registered with the General Commercial Registry, the J V is considered a union of persons and acquires legal and bankruptcy capacity. If the JV carries out commercial activities, it must be registered with the General Commercial Registry and the provisions regulating General Partnerships apply to it. Further, if the JV is not obligatorily registered with the General Commercial Registry, it can be recognized as a fiscal entity for tax purposes, provided that certain conditions are met, including the filing of the JV agreement with the tax authorities prior to the commencement of its activities.

Law 89 office/company (as revised by Law 3427/2005)

Foreign entities may establish an office or a company in Greece under the provisions of Law 89/1967 as amended by Law 3427/2005, for the sole purpose of providing to their head offices or to their foreign affiliates (companies not established in Greece) consulting services, centralized accounting support, quality control of production, processes and services, project planning services, advertising and marketing services and data processing services. The personnel of Law 89 entities must consist of at least four persons and the company's annual operating expenses must amount to at least EUR 100 000, to be covered via bank remittances.

Offices/Branches of foreign shipping entities

Foreign shipping entities may establish an office or branch in Greece under the provisions of Article 25 of Law 27/1975 for activities exclusively related to the management, operation, brokerage, chartering, average adjustment and insurance of non-passenger ships (Greek or foreign flagged) greater than 500 registered tons engaged in international traffic and the representation of foreign ship owning entities or of other foreign shipping entities that have objects similar to the above activities. The office's/branch's annual operating expenses must amount to at least USD 50 000 to be covered via bank remittances. A bank guarantee not less than EUR 5 000 shall be deposited as a guarantee for the office's/branch's compliance with the above provisions.

Sole Traders/Freelance Professionals

Individuals may carry out operations in Greece as sole traders or freelance professionals. They are fully liable for their operation's debts and obligations. Registrations are required prior to commencing any activity.

Taxes Related to Doing Business in Greece

Overview

Most foreign businesses choose to formalize their presence in Greece by establishing a Corporation (AE company), a Limited Liability Company (EPE company) or a branch. Foreign entities may also establish an offshore office for the provision of specified services to their head office or other foreign affiliated companies under the provisions of Law 89/67 as revised by Law 3427/2005. Nevertheless, even if it is not formally registered in Greece, the activities of a foreign enterprise could lead to the acquisition of a "permanent establishment" in Greece, giving rise to corporate tax on income arising in Greece as well as other tax and accounting obligations. The provisions of the ITC in conjunction with those of the applicable Double Taxation Treaties between Greece and the foreign entity's jurisdictions define when a permanent establishment arises (normally the maintenance of a branch, factory, or other fixed place of business).

Furthermore, all foreign companies who construct buildings on their land in Greece or expand existing buildings owned by them or earn income from real estate in Greece must maintain accounting books and issue/receive certain tax records, even if they have no establishment in Greece. All other foreign companies who merely own real estate have much fewer obligations.

Tax withholdings apply on certain payments made to foreign tax residents even when they have no presence in Greece.

Corporate Taxation

The tax rate is 24% on profits of Corporations (AE companies), Limited Liability companies (EPE), partnerships, cooperatives and joint ventures. Distributed dividends/profits are subject to a withholding tax at the rate of 5% (not applicable where single entry accounting books are maintained). The 5% withholding tax does not apply to profits which are credited or remitted by a branch in Greece to its head office abroad nor to dividends paid by a Greek subsidiary to its EU affiliate (subsidiary) (provided certain conditions are met as per the EU Directive 2011/96).

Under the beneficial provisions of Law 89/67, foreign entities may establish a presence in Greece with the exclusive purpose of providing certain services to their head office or any other foreign affiliate company (such as consulting, centralized accounting support, quality control of production, processes and services, project planning services, advertising and marketing and data processing services). Such establishments will be taxed on the higher of the actual revenues reported in their accounts or the deemed revenues that will be defined on a cost plus basis by application of a certain mark-up which is pre-agreed with the Ministry of Finance according to their specific sector and service, and in any case not lower than 5%.

Foreign shipping companies may establish a branch or an office in Greece under Law 27/75 enjoying a beneficial tax regime provided that certain conditions are met. According to this regime as currently in force payment of Greek tonnage tax for foreign flagged ships managed by a Greek ship management office results in the full exemption of profits derived from the exploitation of such ships from any other Greek income taxes (foreign tonnage tax paid abroad is credited against the corresponding Greek tonnage tax). Such

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branches/offices were also established under Law 89/67 until 2006 and although they now fall under Law 27/75, they are still commonly referred to as Law 89 offices etc.

Furthermore, a 10% withholding tax is applicable on dividend distributions to Greek tax residents by such offices which are engaged in activities other than the management and exploitation of Greek or foreign flagged ships.

Construction Companies

The taxable profits of construction companies engaged in public or private construction projects are subject to taxation in the same manner as all other legal entities on the basis of their accounting profits. A 3% withholding tax that is set off against the final tax is applied on all payments made to construction companies.

Deductibility of Expenses and Other Issues

All expenses that meet certain criteria are deductible except for certain expenses that are specified as being non-deductible.

In particular, all actual and evidenced business expenses are deductible if they are incurred for the benefit of the business or are carried out in the course of its ordinary commercial transactions, their value is not considered lower or higher than the market value on the basis of information available to the tax authorities and they are recorded in the entity's accounting books in the period in which they arose and evidenced by proper supporting documentation. Moreover, such business expenses must be incurred for the purposes of generating income in order to be deductible. The non-deductible expenses which are specifically defined include: interest on loans (other than bank loans) to the extent that the amount exceeds interest that would have been payable on revolving lines of credit provided to non-financial institutions, expenses exceeding EUR 500 whose partial or total payment was not effected through banks, unremitted social security contributions, fees for illegal activities, income tax/penalties (including entrepreneurship duty and special solidarity contributions) as well as VAT which apply to non-deductible expenses, amounts paid to individuals or non-EU legal entities that are tax resident in non-cooperative countries or in countries with a preferential tax regime (unless the tax payer can prove that such payments relate to actual and ordinary transactions and they do not reflect the transfer of profits, income or capital gains for tax avoidance purposes) etc.

The maintenance of tax free reserves (except for reserves formed pursuant to Investment Incentive Laws) is not permitted.

Losses may be carried forward for five subsequent years from the end of the tax year in which they arose unless there has been a transfer of more than 33% of the (direct or indirect) shareholdings or of voting rights of the taxpayer and the taxpayer cannot prove that this transfer was carried out exclusively for commercial or business reasons and not for tax evasion/tax avoidance purposes.

Capital gains (or losses) are generally regarded as ordinary business income (or losses).

Transfer Pricing Issues

Intra-group transactions should follow the arm's length principle. More specifically, when intra-group transactions are carried out cross-border or domestically, under different economic or commercial conditions from those that would apply between non-associated persons or between associated persons and third parties, any profits which would have been derived by the domestic company without those conditions, but were not derived due to the different conditions, will be included in the profits of the company only to the extent that they will not reduce the amount of tax payable. An extensive definition of "associated person" is provided.

The ITC explicitly refers to the OECD Guidelines as far as the interpretation and application of its provisions relating to intercompany transactions is concerned. Moreover the documentation requirements of intercompany transactions is included in a separate law, i.e. the Tax Procedure Code.

For each tax year, a Transfer Pricing Documentation File supporting the appropriate transfer pricing method must be prepared and a Summary Information Sheet must be submitted (both within 6 months from year end).

The obligations apply to all intercompany transactions with one or more associated persons unless the value of all transactions do not exceed the amount of EUR 100 000 in total where the gross revenues of the financial year of the taxpayer does not exceed the amount of EUR 5 000 000, or EUR 200 000 where the gross revenues of the financial year for the taxpayer exceed the amount of EUR 5 000 000.

Companies may obtain an Advance Pricing Agreement (APA) covering the transfer pricing methodology of specific cross-border intra-group transactions for a certain duration. Special rules and conditions apply.

Tax on the sale of shares by foreign tax residents

Currently, the transaction tax on the sale of shares held by foreign tax residents is 0.20% on the sale price for shares listed on the Athens Stock Exchange (not applicable to transactions effected by Market Makers in certain circumstances). Relief for this transaction tax is not available under the terms of the applicable Double Taxation Treaties.

Profits arising from the transfer of shares (listed and non-listed) are treated as business income for legal entities disposing of the shares and taxed at the corporate tax rate (currently 24%). This tax does not apply to non-resident entities with no permanent establishment in Greece.

The transfer of shares (listed and non-listed) by individuals is subject to capital gains tax at the rate of 15%. There is specific exemption from taxation of capital gains arising from the sale of listed shares that were acquired after 1 January 2009 when their seller owns less than 0.5% of the share capital of the company whose shares are being sold. The same exemption also applies as regards listed shares that were acquired before 1 January 2009 (irrespective of the seller's percentage of ownership of the share capital of the company).

Notwithstanding the above, the withholding tax may be reduced for the sale of listed and non-listed shares where a Double Taxation Treaty between Greece and the foreign tax resident's jurisdiction is evoked.

Withholding Taxes

Tax is withheld in Greece on payments effected to foreign tax residents according to the following rates:

- Dividends: 5%
- Interest: 15%
- Royalties: 20%

Payments for services may also be subject to withholding tax in Greece at the rate of 20% (i.e. service fees for technical projects, management fees, consultancy and other related services). Exceptionally, the rate is 3% on payments made to construction companies as indicated above. No WHT applies, if paid to non-Greek tax residents with no Greek PE.

The rates in the Double Taxation Treaties concluded between Greece and other jurisdictions apply where they are lower than the above rates provided under Greek Tax Law.

Indirect and Other Taxes

The most important indirect tax is Value Added Tax (VAT) (the normal rate is 24%) and it applies on the majority of sales of goods and service supplies.

VAT at the rate of 24% also applies to the first transfer by businesses of newly constructed buildings whose construction license was issued on or after 1 January 2006, on the condition that such buildings have not yet been used prior to their transfer (exemptions may apply for the purchase of a primary residence).

Under certain conditions, foreign entities are required to register for VAT purposes in Greece, before carrying out activities triggering Greek VAT implications.

Other taxes include capital concentration tax (1%) on certain capital injections and stamp duty (1.2% to 3.6%) which applies to certain transactions such as loans, assignments, etc.

Special Taxes on Real Estate

Currently, individuals and legal entities owning real estate in Greece are subject to the Unified Real Estate Tax (UREOT), irrespective of their citizenship, residence or registered address. UREOT is imposed on property owned as at 1 January of each year. Real estate subject to the tax includes plots of land located outside city limits. Exemptions continue to apply and cover certain categories of real estate and taxpayers (e.g. the State, public legal entities, churches, monasteries, museums etc.).

UREOT consists of a main tax and a supplementary tax and is determined by the tax authorities on the basis of E9 returns where tax payers declare all their real estate holdings. The main tax for real estate located within city limits ranges between EUR 2 and EUR 13 per square meter for buildings and between EUR 0.0037 and EUR 11.25 per square meter for plots of land. The main tax for plots of land located outside city limits is EUR 0.001 per square meter and it is increased fivefold if a residence is built on the plot of land. The above rates are multiplied by coefficients that depend on a number of factors deemed to affect a property's value, such as its location, surface area, age, etc.

The supplementary tax is imposed on individuals owning real estate whose cumulative aggregate value exceeds EUR 200 000 and it is calculated on the excess value at progressive rates ranging from 0.1% up to 1.15%. Legal entities are also subject to supplementary tax, which is generally calculated at the rate of 0,10% on the total value of their real estate.

Under conditions, partial or full reductions of tax can be granted to individuals and postponement of tax can be allowed for legal entities.

In addition, Greek and foreign companies owning or having usufruct rights on (use of) real estate located in Greece are subject to a special annual tax calculated at the rate of 15% on the objective tax value of real estate, unless certain conditions are fulfilled (including (a) if their ultimate individual shareholders are revealed/obtain a Greek tax number, and (b) certain entities, such as listed entities, banks, etc.).

Furthermore, the holding of Greek real estate gives rise to certain municipal property taxes (not normally of significant value), which are collected through electricity bills.

Real estate transfer taxes apply for transfers of real estate not subject to VAT (see above), with the current rate being equal to 3% (exemptions may apply for the purchase of a primary residence).

Annual Tax Audit Certificate

Currently, Greek tax legislation requires a tax audit to be carried out by a Greek Certified Auditor for all AE and EPE companies and Greek branches of foreign banks that are obliged to have their statutory audits carried out by a Greek Certified Auditor. If the Annual Tax Audit Certificate is issued without any reservations, the tax affairs of the company are considered final and the tax authorities will not normally carry out their own audit except where the taxpayer is selected for a sample audit. For periods starting from 01 January 2016 onwards, the requirement for an Annual Tax Audit Certificate is optional.