



## Tax treatment of gains on transfer of securities clarified

Greece's Ministry of Finance issued a circular on 26 January 2015 (POL. 1032/26.1.2015) that clarifies the tax treatment of capital gains derived from the transfer of securities, as well as gains on the transfer of a business taking place as from 1.1.2014 onwards by an individual or legal entity (whether Greek or foreign) under articles 42 and 43 of the 2013 Income Tax Code. The most important clarifications are as follows:

**Gains derived by nonresident legal entities**  
Gains derived by a nonresident legal entity from the transfer of shares, units, derivatives and other securities of a Greek company will be treated as business profits subject to Greek tax (at a rate of 26%) only if the nonresident entity has a permanent establishment (PE) in Greece and the gains are attributable to that PE. Thus, a nonresident investor that sells its participation in

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a Greek company will not be taxed in Greece, unless it has a Greek PE to which the capital gains are attributed. If the gains are exempt, the nonresident is not required to file a Greek tax return or to invoke the provisions of an applicable tax treaty (if it has no other Greek income).

#### **Gains derived by nonresident individuals**

Gains derived by a nonresident individual from the transfer of shares, units and other securities of a Greek company are exempt from Greek tax if the individual is resident in a country that has concluded a tax treaty with Greece and the individual submits a tax residence certificate to the custodian (who must demonstrate to the Greek tax authorities that the exemption applies). The nonresident individual is not required to file a Greek tax return or to obtain a Greek tax identification (ID) number (if he or she has no other Greek income).

If the exemption does not apply, the gains will be subject to a 15% Greek income tax. In that case, the nonresident individual must file a Greek tax return. In order to file a return, the nonresident individual must obtain a Greek tax ID number. The deadline for the filing of the respective income tax return is by 30 June 2015 for transfers that took place within 2014 and by 30 April of the year following the year of the transfer for transfers that will take place as from 1 January 2015 onwards.

A 15% tax also will apply if the individual is resident in a “non-cooperative state” (i.e. a non-EU member state that has not signed a treaty for administrative assistance in tax matters with Greece and has not signed such a treaty with at least 12 other states). However, in this situation, the individual will be required to submit an income tax return to the competent Greek tax authorities (and will need to obtain a Greek tax ID number) and pay the entire tax due in advance (i.e. prior to the said transfer).

#### **Taxable gains derived by Greek resident individuals**

A 15% capital gains tax will be imposed on capital gains derived by a Greek resident individual from the transfer of the following:

- “Warrants” acquired through a participation in the capital increase of the National Bank of

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Greece, Alpha Bank or Piraeus Bank (provided the individual transferring the warrants holds at least 0.5% of the share capital of the relevant bank at the time of the transfer);

- Units in UCITS registered in any country outside Greece, the EU, EEA & EFTA; and
- Listed shares and other listed securities (whether Greek or foreign) acquired after 1 January 2009 if the participation in the capital of the company equals or exceeds 0.5% at the time of the transfer. The circular clarifies that the FIFO (first in, first out) method applies to individual shareholders whose participation exceeds 0.5% and who acquired the shares both before and after 1 January 2009, so that the shares acquired before 1 January 2009 are exhausted first.

The resident individual is not required to submit a tax return at the time of the transfer; instead, he/she must report the capital gains in the annual income tax return, with taxation taking place at the end of the tax year.

### **Nontaxable gains**

The circular clarifies that capital gains derived from the transfer of the following securities by Greek or nonresident individuals or legal entities are not subject to tax:

- Units of Greek, EU/EEA/EFTA UCITS;
- Greek, EU/EEA/EFTA corporate bonds (and any difference between the nominal value and the purchase value of the bonds at their expiration date is exempt from tax); and
- Shares of shipping companies whose income is taxed under the law regulating shipping companies.

Moreover, the circular clarifies that gains derived from the transfer of listed shares and other listed securities acquired before 1 January 2009 by Greek individuals are tax exempt regardless of the extent of the participation in the company's capital. Gains derived after that date are exempt if the participation is less than 0.5%.

It is also clarified that the non-participation of a shareholder in the capital increase of a company is not considered as a transfer of securities and is, thus, not taxable as such.

### **Determination of capital gains**

The circular provides clarifications with regard to the determination of the sales and the acquisition prices in various scenarios, i.e. transfers of securities by individuals and legal entities, transfers of securities that initially were acquired by donation/inheritance, contributions of securities, transfers of individual enterprises, transfers of securities of foreign companies, etc..

In determining the final amount of capital gain or loss from a transfer, all transactions relating to securities that took place within the same year are taken into account. Capital losses may be carried forward for five years and may be set off, in the case of individuals, against future capital gains from the transfer of the relevant securities and in the case of legal entities against future business profits.

Finally, the circular clarifies that where the purchase price of securities is to be paid in installments in subsequent years, the resulting capital gains will be taxed in the year of the transfer, irrespective of when the payments are made.

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