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GREECE

LAW AND PRACTICE:

p.3

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Law and Practice

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GREECE LAW AND PRACTICE

Contributed by Bernitsas Law **Author:** Fotodotis Malamas

Bernitsas Law's Wealth & Estate Planning team is highly experienced in advising individuals and families on wealth and estate planning, the protection of assets, cross-border and domestic estate administration, the implications of the implementation of the OECD Guidelines and EU Directives on exchange of information. Bernitsas Law offers advice on personal tax liabilities, post-death planning, co-ownership of assets and establishing family offices. The firm has a notable expertise in wealth and succession planning, often developing innovative structures to enable clients to make use

of, transfer and eventually devolve their wealth, and also representing clients in high-value tax and estate disputes. Bernitsas Law has a fully comprehensive tax practice which advises private and public companies, partnerships and individuals – both on a stand-alone basis and as part of an integrated service across its advisory, transactional and disputes teams – identifying, anticipating and dealing with tax issues, risks and compliance arising in a business or private context.

Author



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1. Tax

1.1 Tax Regimes

Over the past eight years, the tax framework in Greece has developed within a fairly stressed financial environment. In an effort to cut the public deficit, the Greek State increased tax rates and also took measures to broaden the tax base, resulting in individuals, charitable foundations and other legal entities being adversely affected.

Greek tax resident individuals are liable to pay taxes on their global income, and non-Greek tax residents are liable to pay taxes on their income from Greek sources. Taxable income includes employment, business activity, capital and capital gains income, and is generally an aggregate of all types of income, minus income-generating expenses and applicable deductions.

The main characteristic of the Income Tax Code (ITC) is that there is no concept of total income, and every income category is taxed at a different rate. Income from employment, pension and business activities is taxed at a maximum rate of 45% for income exceeding EUR40,000. A further solidarity contribution is imposed on annual income exceeding EUR12,000, at a rate ranging from 2.2% to 10%.

Special treatment applies to severance payments on the termination of employment, in particular to every lump sum severance payment that is provided by any employer and for any reason resulting in the termination of the employment relationship or other agreement that connects the employer with the beneficiary of the payment. The maximum tax rate in this case is 30% for severance payments exceeding EUR150,000.

A favourable tax regime applies to annuities paid within the framework of group pension plans that are taxed at source, with the rate varying depending on the payment period. Periodically paid benefits are taxed at 15%, while lump sum payments of up to EUR40,000 are taxed at 10% and any amount above that at 20%; both are increased by 50% in the case of early redemption. Tax is withheld by life insurance companies and uses up the relevant tax liability of the employee.

Capital income is defined as income gained from dividends (taxed at 15%), interest (taxed at 15%), royalties (taxed at 20%) and real estate (taxed at 15%-45%). Gross income from rental property is automatically subject to a 3.6% stamp duty (excluding residential rentals). Capital gains derived from the sale of real estate property are taxed at a flat rate of 15% of the sale price, minus acquisition costs and related expenses. Capital gains tax has been suspended until 31 December 2018.

In an attempt to combat tax evasion from residential rentals, the State applies strict tax provisions for rentals through web platforms such as Airbnb and Tripping.

In principle, legal entities and persons are subject to income tax at 29%, and any dividends they distribute are subject to further taxation at 15% at the level of the shareholder. Although brief reference is made in Greek legislation to arrangements such as a trust or foundation, there are no provisions regulating the establishment and operation of these legal entities, and trusts are not recognised, creating impediments to family wealth planning. However, for tax purposes, specific provisions apply to income originating from trusts and foundations.

The imposition of various taxes on real estate acts as a disincentive to investment in immovable property. The main taxes applicable to real estate can be summarised as follows:

- *Unified Real Estate Tax (URET)* is levied annually on property located in Greece and consists of the main tax, calculated by reference to the size, location, zone price, surface, age, use and other characteristics of the property, and a supplementary tax, calculated on the total taxable value of all the taxpayer's property if this exceeds EUR200,000. The supplementary tax rate for individuals ranges from 0.1% to 1.15% depending on the value of the property; for legal entities it is 0.55%; and for non-profit legal entities it is 0.35% for real estate that is not used by the taxpayer personally. Buildings and plots used for business purposes by legal entities that own them are taxed at 0.1%. The taxable value for the imposition of the supplementary tax (EUR200,000) is expected to decrease, together with the zone price, with the aim of increasing tax revenues.
- *Local Real Estate Duty (TAP)* is payable to municipal authorities at rates varying between 0.025% and 0.035% of the assessed value of the property.
- *Special Real Estate Tax (SRET)* – legislators introduced Law 3091/2002 to deal with a trend where offshore companies whose activities are not considered normal – for example industrial, commercial or the provision of services – had acquired property in Greece and their gross income from these activities was greater than the gross income from the property. The law provides that legal entities that own full property rights, bare ownership or usufruct property in Greece must pay an annual special property tax at 15%, and sets out a number of exemptions related mainly to the nature of the activity of the legal persons. An exemption is provided for companies that have their headquarters in Greece or another EU country and are usually:
 - (a) S.A.s with shares registered to individuals or owned by declared individuals with a tax registration number in Greece; or
 - (b) limited liability companies, if the shares are owned by individuals or if the company declares the ultimate individuals owners of their shares, provided that these individuals have a tax registration number in Greece.
- *Real Estate Transfer Tax* – the prevailing real estate transfer tax rate is 3% and is calculated on the taxable value of the real estate. New constructions with a building licence issued from January 2006 are subject to VAT at 24%.
- Exceptionally, the acquisition of a primary residence is exempt from payment of transfer tax if the purchaser, their spouse or a minor child is domiciled in Greece and none of them is entitled to full ownership, usufruct or habitation in a residence. These provisions apply to contracts for the purchase of property where the purchaser resides in Greece or intends to do so and falls into the following categories of beneficiaries:
 - (a) Greek citizens;
 - (b) repatriates from Albania, Turkey and the former Soviet Union;
 - (c) citizens of the member states of the European Union and the European Economic Area (EEA);
 - (d) recognised refugees as defined by Presidential Decree 96/2008; or
 - (e) third-country nationals who enjoy the status of long-term residency in Greece as defined by Presidential Decree 150/2006.

This tax exemption is granted to an unmarried individual for the purchase of a residence of up to EUR200,000 and a land purchase of up to EUR50,000. The amount of these exemptions may be increased depending on the individual's marital status and number of children, and some other considerations. The exemption is dependent on the property not being further transferred by the buyer for a period of at least five years. If the purchaser intends to further transfer or establish any real estate right other than a mortgage on the property before the expiration of the five-year period, they must submit a property transfer tax return and pay the relevant tax from which they were initially exempt before the competent Tax Office.

Inheritance and gift tax are also charged and regulated by the Inheritance and Gift Tax Law (IGTL), with beneficiaries of the inherited or gifted property (heirs, legatees, shareholders and any persons who acquire property through inheritance) being classified into three categories.

Assets acquired through inheritance or donation are subject to tax at a maximum rate of 10% for first-class relatives (spouse, children or grandchildren), 20% for second-class relatives (parents and siblings, then their children or grandchildren) and 40% in any other case.

The law provides for specific exemptions or special tax treatment of specified transactions, *inter alia*, in the following cases:

- movable property situated outside Greece and held by a Greek national (citizen) who has been resident outside Greece for a period of at least ten consecutive years is exempt from Greek inheritance tax;
- the acquisition by inheritance of ships or participation rights in Greek or non-Greek ship holding companies is exempt from Greek inheritance tax, provided that these ships have a total capacity exceeding 1,500 gross registered tonnes; and
- funds acquired by way of a gift (donation) are subject to tax, calculated independently at 10% for first-class heirs and 20% for second-class heirs; these amounts are not further taxed along with other gifted (donated) items and consequently these tax scales do not apply in that case. In the case of death, such funds are taxed along with the other inherited items.

The transfer of properties through a Parental Gift is specifically regulated by tax law. The needs of Greek families and the special care that Greek legislation provides to family affairs has resulted in a more favourable treatment of Parental Gifts through more lenient tax provisions than in other transfers. The receiver of a Parental Gift is liable to pay tax at the time of the execution of the Parental Gift Deed, and the parties must file a Parental Gift tax statement before the

competent tax authority prior to the execution of the Notarial Deed for the conveyance of real estate property. Where the parent-grantor is a foreign resident, the competent tax authority is the Greek tax authority for foreign residents or any other tax authority appointed by a relevant ruling of the economy minister. For Greeks residing abroad, the parental gift deed may be executed before the Greek Consulate, the Parental Gift tax statement filed before the consul and the tax paid in full to the consul. The tax-free amount is currently EUR150,000, and where the Parental Gift is of real estate property, the remaining value of the property over the tax-free amount is taxed at a progressive tax rate of 1% to 10%. In the case of funds, a fixed rate of 10% applies.

1.2 Stability of the Estate and Transfer Tax Laws

The state of vulnerability that characterises the Greek economy, which is subject to permanent handicaps, makes it more difficult for business activities to develop, and in many cases exacerbates their economic difficulties. The current tax framework, especially given the increased tax rates that have been applied to real estate disposals, social security contributions and excise duties since 1 January 2017, deprives individuals and legal entities of economic resources that could be reinvested, and deprives consumers of disposable income that could help to increase trade. Despite the weak growth of the Greek economy (estimated at 1.6% for 2017), house prices continued to drop in 2017; in urban areas, house prices dropped by 0.67% during Q3 of 2017 (the decline in house prices may increase to 1.62% if adjusted for inflation).

In total, residential property prices have declined by 42.8% since 2008 (considered as the last year before the recession).

The downturn is expected to change in 2018 and house prices are expected to increase slightly. It is encouraging that the real estate transfers recorded at the Athens land registry rose by 16.2% compared to 2016.

Nevertheless, the considerable number of real estate auctions to be performed in 2018, along with high property taxes, may adversely affect the real estate market.

1.3 Recent Developments or Forthcoming Regulatory Changes

After the third review of the European Stability Mechanism (ESM) programme, Greece adopted new measures for the approval of the disbursement of the next bailout tranche. Dealing with non-performing loans (NPLs) through an effective out-of-court scheme and reforms to the Corporate Insolvency Code may assist the banking system to channel available financial resources to investments and consumption, and thereby boost economic growth. The establishment of the privatisation and investment fund and progress on privatisation is necessary, as is labour market reform in line with best European practices and the liberalisation of regu-

lated professions, which should contribute to a fall in unemployment rates. Further steps are required to modernise the business environment and public administration.

The Greek government and the Institutions aim to conclude the fourth bailout review by June 2018, and reach a deal on debt relief and the post-programme era of Greece.

1.4 Income Tax Planning

Greece is a high-tax country and this, combined with the capital controls in place, makes it unattractive for tax planning purposes. The extremely high income tax rates (up to 45%), tax on legal entities' profits (29% plus 15% on dividends), social security contributions and VAT (24%) create a constricting framework that hinders development.

However, tax incentive laws for legal entities and persons are in place, providing some benefits to investors. Recently, the Greek parliament ratified Law 4399/2016, which provides a general framework of tax incentives for private investment in Greece. For the first time, reference is made to the provisions of EU Regulation 651/17.7.2014, the General Block Exemption Regulation (GBER). The provisions of the new law will start to apply following the issuance of ministerial circulars for each type of state aid scheme.

The beneficiaries of the aid may vary depending on the type of scheme. In general, the following are eligible for the tax incentives stipulated in Law 4399/2016:

- sole proprietorships;
- commercial companies;
- co-operatives;
- social co-operatives as defined by Law 4015/2011;
- merging legal entities;
- legal entities under formation, as long as the publication procedure has been completed before the commencement of the investment; and
- joint ventures registered with the General Register, State and Municipal enterprises.

Certain exceptions apply to beneficiaries that are eligible for tax incentives provided for by Law 4399/2016.

The participation of a beneficiary in the investment cost may be put into effect either through their own funds or through external financing. The only limitation to the financing of the investment is that 25% of the total investment cost should not include state aid funding or a subsidy.

The minimum investment amount depends on the size of the beneficiary, and ranges from EUR50,000 up to EUR500,000 for large enterprises.

The content of the investment plan should comply with certain conditions.

All sectors of the economy may fall under the scope of the new tax incentive law. Specific sectors such as steel, coal and shipbuilding are excluded from benefiting from the provisions of this law, although investment projects in exempted sectors may be financed under certain conditions. Such projects include investment in (i) production of energy or heat from renewable energy sources, (ii) logistics, (iii) accommodation and leisure, and (iv) processing and trade of agricultural products and investment in fishing and aquaculture.

The new law makes a distinction between the maximum amount or percentage of eligible expenses for regional and non-regional state aid, with the following types of state aid provided for by the law:

- tax exemption;
- subsidy of funds to cover part of the eligible expenses (not available to companies that did not generate profits in any of the seven years prior to the year in which the application for state aid is filed);
- subsidy of leasing for the acquisition of machinery and equipment limited to a period of seven years (not available to companies that did not generate profits in any of the seven years prior to the year in which the application for state aid is filed);
- subsidy of payroll cost;
- for major investments (with a value of more than EUR20 million), a fixed corporate income tax rate for a 12-year period commencing from the completion of the investment is provided for, in which case state aid may not exceed EUR10 million;
- for investments up to EUR5 million, a tax exemption at a rate of 10% of the investment cost is provided for; and
- funding of business risk through a fund of funds.

Each or a combination of these may be provided, with the total amount of state aid being comprised of all the types made available for each investment project.

1.5 Efforts to Address Real or Perceived Abuses/ Loopholes

By way of Law 4174/2013 determining the Code of Tax Procedure in force as of 1 January 2014 onwards, Greece introduced a general anti-avoidance clause into its tax system, on the basis of which the tax administration can ignore any 'artificial' arrangement deemed to be aimed at tax avoidance or tax evasion and leading to a tax benefit for the taxpayer when assessing tax due. An arrangement is considered artificial if it lacks 'economic or commercial essence'.

The Greek Ministry of Finance issues an annual list of jurisdictions that are deemed to be non-co-operative, and a

list of jurisdictions that are deemed to have preferential tax regimes, with some jurisdictions appearing on both lists.

Non-co-operative jurisdictions are generally non-EU countries that have not entered into an agreement on administrative assistance in tax matters with Greece and another 12 countries. According to the Income Tax Law, countries with a preferential tax regime are those with a statutory corporate income tax rate lower than 50% of the Greek rate.

The tax consequences of transacting business with a resident of a non-co-operative jurisdiction or a jurisdiction with a preferential tax regime are as follows:

- dividends received from a subsidiary located in a non-co-operative country do not qualify for benefits under the participation exemption; and
- for the purposes of Greece's controlled foreign company rules, the undistributed income of a foreign legal entity will be considered as taxable income of a Greek resident that controls the foreign entity if, *inter alia*, the foreign entity is resident in a non-co-operative country or in a non-EU country that has a preferential tax regime.

For EU countries with a preferential tax regime, the CFC rules apply only if the scheme is a wholly artificial arrangement, the purpose of which is to avoid or evade tax.

Greece has ratified the OECD Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information by way of Law 4428/2016, which was signed by Greece on 29 October 2014 (the Agreement). In accordance with the Agreement, Greek financial institutions or Greek branches of international financial institutions are under an obligation to report account information regarding interest, dividends, account balances and sale proceeds from financial assets to the Ministry of Finance, and to follow certain procedures, consistent with the reporting and due diligence procedures set out in the OECD Common Reporting Standard. The Greek competent authorities are obliged to automatically exchange this information annually with the competent authorities in signatory countries where account holders are resident.

Law 4378/2016 has already incorporated Council Directive 2014/107 on the mandatory automatic exchange of account information between EU Member State competent authorities into domestic legislation. On this basis, information regarding interest, dividends, account balances and sale proceeds of financial assets concerning the 2016 tax year will also be exchanged for the first time from 1 January 2017.

2. Succession

2.1 The Role of Notable Cultural Factors in Succession Planning

Greece has one of the largest numbers of small and medium-sized enterprises (SME) in the European Union. The majority of these enterprises are family businesses, and the main shareholder is usually also the CEO or chairman of the board or the main partner taking the most important decisions. Greek cultural norms create hurdles to the transfer of business, rendering the entire process fairly complex and difficult. The older generation generally wishes to transfer businesses to the next generation, but is reticent to do so and ill-equipped to prepare for the process. The legal framework does not simplify the transition process from one generation to the other, with business owners facing impediments including high inheritance and gift tax rates, bureaucracy and a complex legal framework.

The Greek State has not provided any tools to entrepreneurs for the successful transition of the family business, and it appears that large families are more concerned with the transition of their businesses to the next generation. It appears that the second generation tends to be better prepared for the transition in terms of knowledge and experience, and as a result the probability for survival of family businesses is higher in large families than small ones.

2.2 International Planning

The tendency towards globalisation has also affected Greek businesses and, again, large families have proved better equipped for the international challenge compared to SMEs. Their working relationships with foreign businesses and the acknowledgment that cross-border expansion entails a different legal framework for each country contribute to better preparation for a smooth business transition. However, the complexities of the tax environment and inheritance issues such as forced heirship generate concerns for the transition process.

2.3 Forced Heirship Laws

One of the institutions of inheritance law that determines how property passes after death is forced heirship, which aims to protect the closest relatives of the deceased and, more specifically, descendants, parents and surviving spouse (forced heirs). Forced heirs are always entitled to a certain percentage of the estate despite the will of the deceased, and they have all the duties and rights of heirs. However, the deceased may exclude a forced heir if a reason for disinheritance exists.

2.4 Prenuptial and Postnuptial Agreements

Spouses are permitted to make a post-nuptial agreement, in which they can specify the details concerning common property and what it includes, as well as determining how

the property/estate will be administered. They can also make a post-nuptial agreement annulling a previous one without any restriction, and enter into the property self-sufficiency system (or 'patrimonial self-determination of spouses system', whereby marriage does not change the patrimonial self-determination of the spouses, so each spouse keeps the ownership of his/her own property) with a claim for participation in acquisitions.

They can later choose the community of property system (or 'choice of joint ownership system', where the spouses agree to have community in equal parts to all the assets of their respective estates without a right of disposal by either of their undivided share) in its original or a revised form (eg, with fewer or more common property assets); the property self-sufficiency system applies for the remainder of their asset, with a claim for participation in acquisitions. For both spouses, those agreements have a legally binding nature based on the general rules, but in order to bind third parties they must be recorded in a public register.

The law only requires a document signed by the parties before a notary public in the case of community of property, but in general does not prohibit other agreements from being drafted in a notarial form, which makes them more binding from a legal standpoint. Nevertheless, parties may choose a simple private document where the law does not require a notarial document. Therefore, if, for example, one spouse mandates the other spouse to manage his or her assets within the framework of the legal system, he/she will not use a notarial document unless the specific administrative act is dictated by the general rules which require a notarial document.

In principle, future spouses or spouses can choose only the property self-sufficiency system with a claim for participation in acquisitions, which is usually an implied matter between the spouses, or the community of property system by way of a notarial document and registration in a public register, in which case the law prohibits any mention in the contract of rules that are a result of custom, abolished law, or even foreign law.

If spouses can modify a statutory regime or create their own regime through pre- and/or post-nuptial agreements, those modifications may be made to:

- categories of assets;
- administration of assets; and
- distribution of assets.

Naturally, depending on the outcome of the divorce, the spouses can determine any adjustment they agree in accordance with the general rules.

There has recently been a movement towards spouses reaching an agreement regarding the amount of spousal support due for the time after the divorce and a mutual waiver of the claim to participate in acquisitions, especially in the case of amicable divorces.

Apart from waiving the claim to participate in acquisitions and the regulation regarding spousal support, or matters concerning children and the use of the matrimonial home, there are no other typical perennial conditions in agreements.

The court controls *ex post* when the action or other legal means is initiated, if a contractual clause is valid, or if the parties have ignored a legal rule. Its power is limited to declaring the invalidity of the relevant clause.

2.5 Marital Property

Future spouses can enter into an agreement regulating their choice of system for the community of property, and can even stipulate which assets shall be included in the common property, if they so wish.

If the spouses are unable to reach an agreement, the property self-sufficiency system with a claim for participation in acquisitions will come into force. In practice, future spouses do not enter into any agreement except regarding the family name of their children, for which the law requires an explicit declaration. In the event that the spouses fail to make such a declaration, or in the case of a possible disagreement, the Greek Civil Code states that the children shall bear the family name of their father.

Theoretically speaking, the law does not rule out a prenuptial agreement regulating the property relationship of the future spouses, but an option to enter into a prenuptial agreement is deemed unnecessary because it does not offer anything beyond the existing regulations, which are considered mandatory and which future spouses may not contract out of.

Only when one spouse mandates the other to administer their communal assets must both spouses categorically agree that the rules of the Greek Civil Code will not come into force. Consequently, the administrator is obliged to provide information to their spouse on the administration of their assets, and to repay any income that they have collected. However, it is understood that they cannot waive their right to withdraw the power of administration, as the relevant rule of the Greek Civil Code is mandatory.

2.6 Effect of Transfer of Property on the Cost Basis of Property Being Transferred

The value of transferred property must be assessed by either an independent asset valuer or the tax authorities. This

valuation may be used in the future as the cost basis of the property being transferred.

2.7 Vehicles or Planning Mechanisms to Transfer Assets to Younger Generations Tax-Free

There are no favourable tax provisions for the transfer of assets to the next generation which facilitate tax-free transactions. However, for assets valued at less than EUR150,000, a donation (gift) to first-class relatives (spouse, children or grandchildren) does not give rise to tax implications. Tax incentive laws for the transformation or merger of legal persons or entities may also be used for the transition of assets from one generation to the next.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations, or Similar Entities

The entities that can be used for tax planning are usually charitable foundations and, in the case of inheritance, a substitution in trust, whereby a testator may impose on an heir the obligation to surrender to another beneficiary the inheritance or a portion thereof which the heir has acquired after the occurrence of a specified event or at a specific time.

The Independent Authority of Public Revenues issued Ministerial Circular POL. 1114/2017 (the "Circular") with regard to the tax treatment of foreign trusts and foundations.

In general, trusts are treated as either transparent or opaque legal entities for income tax purposes, whilst foundations are treated as opaque legal entities. In both cases, however, it appears that the Ministry of Finance has adopted the look-through approach, treating beneficiaries as subject to inheritance or gift or donation tax.

3.2 Possible Tax Consequences of Designation as a Fiduciary or a Beneficiary of a Foreign Trust, Foundation or Similar Entity

In accordance with the Circular, the Trust (an institution that originates from Anglo-Saxon Law) constitutes a particular regime for property management and settlement, which lacks any legal personality and is established either by means of a statement of will of the property owner or with the transfer of such property, in life or at death, by means of a will. The settlor or trustor contracts with the trustee by way of a deed of settlement and transfers to the latter property assets, which the trustee manages to the benefit of trustees, beneficiaries or the settlor, or to his/her own benefit, for the service of a specific purpose, which the trustee defines. More specifically, the trustee acquires the property of the settlor separately from its own and is obligated to keep it and deliver it in accordance with the terms and conditions of the trust,

while the beneficiaries are natural or legal persons or legal entities who enjoy the benefits of the trust from the trustees, either via regular payments or upon the expiration of the trust, also in accordance with the conditions set by the settlor (in life or after death).

The Circular does not provide a clear definition of a "trust", but describes its operation and the relationship between the settlor, the trustee and the trust.

It should be noted that Greek law does not provide for the definition, setting up or operation of a trust structure, as under Common Law. Up until 2010, there was limited reference in Greek law to trusts and foundation structures which are in use under common law practice. These were:

- a reference in the Greek Inheritance Tax Law, which provides that "In case, by virtue of a will, property assets which are located abroad but are acquired and taxed in Greece are placed in a 'trust' (as defined under Anglo-Saxon law), beneficiaries of the funds and/or property received are taxed in respect of these funds directly, unless for some other reason they are excluded from this obligation. Persons ultimately acquiring the funds and/or property are taxed for the full ownership or value of such funds and/or property at the time it is transferred to them"; and
- a reference in the Anti Money Laundering Law, which includes trust and foundation structures in the definition of 'beneficiary' and provides for the liability of lawyers and consultants advising on the establishment and operation of such structures, and for the interpretative guidelines on the materiality of interests that individuals should hold in such structures in order to be treated as 'beneficiaries' for the purposes of the law.

The ITC makes numerous references to trust and foundation structures. It defines various terms for taxation purposes and provides, *inter alia*, that any trust or foundation structure falls within the definition of the term legal entity (*nomiki ondotita*) and is therefore subject to taxation in Greece.

Despite the fact that the ITC was introduced on 1 January 2014, the Ministry of Finance only issued a Circular to interpret the respective provisions in July 2017.

In the income tax field, the Circular examines the period after the introduction of the new Income Tax Code (ITC) and the period before it (the Old ITC).

After the introduction of the ITC, trusts are recognised as legal entities but not legal persons. As a result, withholding tax applies for passive income, such as dividends, interest and royalties. Real estate income is considered business income subject to the corporate income tax rate, currently 29%.

The Circular clarifies that the provisions of Double Tax Treaties also apply to trusts and foundations, unless otherwise provided for by the respective Double Tax Treaty.

For the period to which the Old ITC applies, trusts are not considered as legal entities.

Furthermore, the Circular provides guidelines for the tax treatment of trusts and foundations from an inheritance and donation tax perspective. It appears that the Ministry of Finance has adopted the look-through approach, treating beneficiaries as subject to inheritance or donation tax.

In particular, for the period after the introduction of the ITC, any income from dividends, interests and royalties acquired in Greece by foreign trusts is subject to withholding tax (at 15% or 20%, as the case may be), after which their tax obligation is exhausted, to the extent they do not have a permanent establishment in Greece.

Income from immovable property acquired in Greece is taxed as income from business activity at the tax rate of 29%.

Finally, capital gains acquired from the transfer of securities are not taxed in Greece, unless it is deemed that a foreign trust maintains a permanent establishment in Greece.

It should be noted that the above provisions apply subject to the provisions of the Treaties for the Avoidance of Double Taxation ("TADT"). Consequently, where a trust is tax resident in a country with which Greece has concluded a TADT, the provisions of the respective TADT in force will apply; in any other case, the provisions of domestic legislation shall apply.

Tax Treatment of Income Acquired by Settlers of Foreign Trusts or Foreign Foundations Who Are Tax Resident in Greece, or From Foreign Trusts or Foreign Foundations, in Their Capacity as Beneficiaries

Provided that a foreign trust is a legal entity in accordance with the provisions of the ITC, distribution of profits to its settlers and/or beneficiaries – whether they are legal persons or entities – constitutes income from dividends and is subject to withholding tax at 15%. This is subject to the beneficiary having contributed their own funds to these entities.

In all other cases, when distributions are effected to persons who are different than those who have contributed funds to said entities (ie, third party beneficiaries), the provisions for taxation on successions (inheritance) or donations (gifts) apply, depending on whether distributions are effected after the death of the settlor or during his/her lifetime. An exception is the case in which a settlor of the trust dies and after death or by means of gift resulting from the death, a beneficiary successor acquires the possession of property as

sets or returns from these assets (eg, rentals and dividends). In such cases, this is treated as income of the successor or transferee of the grant due to death, and is taxed based on the provisions of the Code of Income Taxation, given that said property assets constitute their personal property (according to the provisions outlined above).

It should be noted that, under the above conditions, the taxable income of the settlor-beneficiary (either natural person or legal person or entity) includes the non-distributed income of the trust if the conditions for CFC rules are met.

Trustees of a foreign trust or managers of a foreign foundation are not vested with the same tax obligation for income originating from Greece as regards their income taxation, since this is income of the trust/foundation. They are only taxed for professional fees they may receive for management services rendered, in accordance with the relevant provisions of Law 4172/2013 and based on the category of income acquired, as concluded by the terms and conditions of the trust agreed upon and based on their form (natural or legal person). The above applies without prejudice to the provisions of the applicable TADT.

Given that foreign trusts are considered as liable to tax under the Old ITC (accounting periods commenced before 1 January 2014), the settlor is taxed for the income he/she gained as the beneficiary of the trust, with respect to the form thereof (natural or legal person) and the source of income gained, as follows:

- If the settlor-beneficiary is a natural person and the benefit gained derives from interest, income is taxed based on the provisions of article 12 or 24 of Law 2238/1994 respectively; if it derives from other securities, income is taxed based on the provisions of articles 24-27 of the same law. Furthermore, if the benefit derives from the surplus value of the transfer of shares not listed on a stock market, it is taxed in accordance with the provisions of article 13, while if it derives from surplus value of shares that are listed on a stock exchange, it is released based on the provisions of article 38. If the benefit derives from the exploitation of real estate, it is taxed based on the provisions of articles 20-23 of Law 2238/1994.
- If the settlor-beneficiary is a legal person, the provisions of article 105 of Law 2238/1994 apply for the specification of its income, and it is taxed in accordance with the provisions of article 109 of the same Law.

Finally, in terms of income taxation, trustees of a foreign trust do not have the same tax obligation for income deriving from sources in Greece which is income of the settlor of the trust; they are only liable to tax on professional fees they may receive due to management services rendered, in accordance with the provisions of the Old ITC and based on

the category of income gained, as this category results from the agreed terms of the trust and the form thereof (natural or legal person). The above provisions apply without prejudice to the provisions of the relevant TADT.

Tax Treatment of the Proceeds of the Winding up of Foreign Trusts and Foreign Foundations

After Law 4172/2013 entered into force, where a foreign trust or foundation is wound up, the amount that has been defined upon its incorporation to be collected by the beneficiary-settlor at the time it is wound up is deemed the same, with the product of liquidation. Consequently, it is treated as a profit distribution and will be treated for tax purposes as a dividend received by the beneficiary, legal person or legal entity, to the extent it exceeds the initially paid-up capital.

Before Law 4172/2013 entered into force, the winding up of a foreign trust was immaterial in terms of taxation, although tax liabilities may have arisen for the settlor.

Moreover, provided that the contribution of funds to a trust or foundation constituted a criterion for the acquisition of property assets neither before nor after the ITC entered into force, a natural person who is the settlor of a foreign trust or foundation shall not bear any tax liability.

Despite the introduction of the above provisions, Greek doctrine and case law do not recognise the notion of a trust, which does not take precedence over forced heirship rules if challenged. As Greek law does not recognise the notion of legal/equity ownership, a trust may not hold real estate assets in Greece or be registered as the owner of real estate. Legal theory recognises that the role of a trustee may be similar to the role of a testamentary executor, but there is no legal provision or case law supporting this.

Foundations

Greek law does not provide for the definition, setting up or operation of a private foundation structure, as under common law practices. Under Articles 108–121 of the Greek Civil Code, only the establishment and operation of a Greek Civil Code charitable foundation is regulated. A foundation established under Greek civil law may pursue nonprofit and financial activities following the issuing of the presidential decree approving its operation and organisation. In general, private foundations are not recognised by the Civil Law Code as legal entities or legal persons but, if a private foundation is established in compliance with the legal system of the country in which it is established, it is usually recognised as having legal personality.

Charitable foundations are regulated in detail by Article 108–121 of the Civil Code and Law 4182/2013. The Income Tax Law refers to foundations and the concept of a legal entity includes, inter alia, the foundation, which means that founda-

tions are subject to income tax in accordance with the provisions of the new income tax system.

Assets donated to or inherited by charitable foundations are subject to tax at 0.5%, and cash donations of up to EUR1,000 are tax exempted. Charitable foundations do not normally distribute potential surpluses, although if they do it will be treated as a dividend for Greek tax residents and will be subject to income tax at 10%.

Tax Treatment of foreign Trusts and Foreign Foundations which Acquire Income in Greece

Pursuant to the ITC, any income from dividends, interest and royalties acquired in Greece by foreign foundations is subject to withholding tax at the rate of 15% or 20%, as the case may be, with which their tax obligation is exhausted to the extent they do not have a permanent establishment in Greece.

Income from immovable property is taxed as income from business activities, at the rate of 29%.

Finally, capital gains acquired from the transfer of securities are not taxed in Greece, unless it is deemed that the foundation maintains a permanent establishment in Greece.

It should be pointed out that the above provisions apply subject to the provisions of the TADT. Consequently, where a trust/foundation is tax resident in a country with which Greece has concluded a TADT, the provisions of the respective Treaty in force will apply; in any other case, the provisions of domestic legislation shall apply.

Tax Treatment of Income Acquired by Settlers of Foreign Foundations Who are Tax Resident in Greece, From a Foreign Foundation, in their Capacity as Beneficiaries

Under the terms of the ITC, the distribution of profits to the settlors-beneficiaries thereof, who are either legal persons or entities, constitutes income from dividends and is subject to 15% withholding tax. This is subject to the beneficiaries having contributed their own funds to these entities.

When distributions are effected to persons other than those who have contributed funds to said entities (ie, third party beneficiaries), the provisions for taxation on succession (inheritance) or donation (grants) apply (depending on whether they are effected after the death of the settlor or during his/her lifetime)

There is an exception where a trust settlor dies and, after death or by means of a grant due to death, a beneficiary successor acquires possession of the property assets, in which case returns from these assets (such as rentals and dividends) are treated as income of the successor or the grantee and taxed based on the provisions of the Code of Income Taxa-

tion, given that said property assets constitute their personal property (according to the provisions detailed above).

Under the above conditions, the taxable income of the settlor-beneficiary (either natural person or legal person or entity) includes the non-distributed income of the trust/foundation if the conditions expressly defined in Article 66 of Law 4172/2013 are met.

Finally, it should be noted that managers of a foreign foundation are not vested with the same tax obligation for income originating from Greece as regards their income taxation, since this is income of the foundation. They are only taxed for professional fees they may receive due to the management services rendered in accordance with the relevant provisions of the ITC, based on the category of income acquired, as concluded by the terms and conditions of the foundation agreed upon and based on their form (natural or legal person). The above provisions apply without prejudice to the provisions of the relevant applicable TADT.

Before Law 4172/2013 entered into force

The following applies to income that has resulted from accounting periods which commenced before 1 January 2014, when Law 1472/2013 entered into force:

- Tax treatment of foreign foundations that acquire income in Greece – pursuant to the terms of the ITC, any income from dividends, interest and royalties acquired in Greece by foreign foundations is treated as taxed income from securities. In other words, a tax withholding is effected based on the rate in force from time to time, with which their tax obligation is exhausted, always to the extent they do not have a permanent establishment in Greece.
- Income from immovable property that was acquired in Greece is subject to income tax as a business profit.

In addition, for the income (surplus value) gained from the transfer of listed or unlisted titles acquired by the above legal persons, the provisions of articles 38 and 13 of the same law apply respectively.

Tax Treatment of Income Gained by Settlers of Foreign Trusts or Foreign Foundations who are Tax Resident in Greece, in their Capacity as Beneficiaries

Tax Treatment of the Settlor of a Foreign Foundation

If the settlor-beneficiary is a natural person, any benefit acquired by it constitutes income and is subject to income tax at a progressive scale applicable from time to time.

If the settlor-beneficiary is a legal person, profit distributions received from the foreign foundation constitute income from dividends, which is taxed as business income.

Finally, it should be pointed out that the managers of the foreign foundation do not have the same income tax obligation for income deriving from sources in Greece that is income of the settlor of the foundation; they are taxed only for professional fees they may receive due to the management services rendered, in accordance with the provisions of the Old ITC and based on the category of income gained, as this category results from the terms of the trust and the form thereof (natural or legal person). The above provisions apply without prejudice to the provisions of the relevant TADT.

Tax Treatment of the Proceeds of the Winding up of Foreign Foundations

After Law 4172/2013 entered into force

Where a foreign foundation is wound up, the amount that has been defined upon its incorporation to be collected by the beneficiary-settlor on winding up of the legal entity is deemed a proceed of liquidation and treated for tax purposes as a dividend received by the beneficiary or legal person or entity, to the extent it exceeds the initially paid-up capital.

Before Law 4172/2013 entered into force

Where a foreign foundation is wound up, to the extent they exceed the initially contributed capital, amounts paid out constitute income for the beneficiary natural person and are subject to income tax at the applicable rate from time to time, on a progressive scale. For beneficiary legal persons, the amounts constitute income from securities of foreign origin and are taxed as business income.

3.3 Structure of Irrevocable Trusts, Foundations or Similar Entities

There were no such changes as of early 2018.

3.4 Possible Tax Consequences of a Beneficiary or the Donor of a Trust, Foundation or Similar Entity also Serving as a Fiduciary

From a tax point of view, the beneficiary of a foreign trust, foundation or similar entity will be considered as the owner of any proceeds deriving from them; as a result, Greek citizens may be subject to income, inheritance or gift tax.

3.5 Structures That Permit Future Changes and Allow Settlers to Retain Extensive Powers

Greece has not taken any steps in these areas.

3.6 Tax Consequences of a Beneficiary Serving as a Fiduciary

In principle, the role of a fiduciary is recognised in Greece, although there are no planning opportunities that may result from this role.

4. Family Business Planning

4.1 Most Popular Method for Asset Protection

The tax and legal environment creates impediments to business succession planning strategies in most cases. Potential structures used for succession should take possible future tax implications into consideration. The most common structure used to pass wealth and control through generations is the transfer of securities by way of a sale or a donation, depending on their value, a method of planning which is effective in cases of no or very small liability to capital gains tax. Donations of securities are tax exempt for amounts up to EUR150,000, after which the maximum rate is 10% for donations to first-class relatives (spouse, children or grandchildren), whereas the sale of securities incurs capital gains tax at a rate of 15%.

In some cases, the older generation contributes assets to a newly established company and its shares are donated or transferred to the next generation. In cases where the next generation has already established a legal entity, tax incentive laws may be used for the transfer of wealth to them by way of a merger without any tax implications.

4.2 Transfer of Partial Interest in an Entity

When a partial interest in an entity is transferred during lifetime or upon death, the fair market value of the interest for transfer tax purposes is not adjusted to reflect a discount for lack of marketability and control. For tax purposes, the value of a partial interest is its fair market value at the time of the transfer.

4.3 Most Popular Method for Asset Protection

To the extent that there is no framework for trusts or foundations other than charitable foundations, the structures available for asset protection are fairly limited, with the most popular being the foundation. Under this structure, assets such as artworks and antiques are contributed to a foundation with a public benefit scope. Buildings can also be contributed to a foundation to be used for exhibitions or other purposes benefiting the public.

5. Wealth Disputes

5.1 Trends Driving Wealth Disputes

Increasing financial pressure on family members and dependents, as well as a greater willingness to hold executors and trustees to account for their actions, can mean a higher than usual level of complexity in disputes of this nature, with disputes relating to family and inherited wealth becoming increasingly common. Complex family structures involving second or even third families, cross-border estates that span two or more jurisdictions, and generally more valuable estates all tend to give rise to circumstances in which there

is more scope for probate and will disputes, or contentious probate.

5.2 Mechanism for Compensating Aggrieved Parties

The main mechanism in Greece for compensating aggrieved parties in wealth disputes is action before the civil courts. The rules that govern civil procedures in Greece are regulated by the Code of Civil Procedure. In disputes where there is an imminent danger or an issue of urgency, the Code provides for pre-action interim remedies, or safety measures, over and above the ordinary procedures. As an alternative, disputes may be resolved through arbitration or mediation, although mediation has only recently been introduced into the Greek legal system and only a small number of disputes are resolved through it.

In principle, damages are pecuniary, although the court may take into consideration any special circumstances and order the reinstatement of the former situation, or *status quo ante*, in lieu of monetary damages if such method of compensation is not contrary to the interests of the creditor. Damages comprise a decrease in the existing *patrimonium* of the plaintiff, as well as loss of profit. Monetary compensation may be due in cases where loss is not pecuniary.

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries

In principle, Greek legislation does not provide for the use of corporate fiduciaries within the meaning attributed to this term in common law countries, other than in the issuance of bonds. The Bond Law (Law 3156/2003) introduced the possibility for a group of bondholders to be represented by a bondholder agent, who takes security on their behalf. The duties of the bondholder agent are performed by a trustee, which may be a credit institution or an affiliated company that legally provides services in the European Economic Area. Unless otherwise provided for in terms of a covered bonds issue, trustees are liable to bondholders for wilful misconduct and gross negligence.

A newly established form of corporation bears some of the characteristics of a corporate fiduciary. The Non-Performing Loans (NPLs) Law provides for companies in the form of Sociétés Anonymes, which may undertake the management of such loans with a licence from the Bank of Greece and be delegated the management of claims arising from loan and/or credit agreements that have not been performing for a period exceeding 90 days. The management of claims arising from loans and/or credits that have been performing may only be delegated together with claims against non-performing debtors.

Acting as non-beneficiary parties, management companies are entitled to file any legal remedy and to undertake any other judicial action to recover the claims under management, as well as to initiate, appear or participate in any pre-insolvency resolution, insolvency, debt-settlement and special administration procedures under Articles 61 et seq of Law 4307/2014. Where companies participate in judicial proceedings as non-beneficiary parties, the res judicata of the judgment shall apply both in favour of and against the beneficiary of the claim. For the purposes of this law, management companies may hire companies operating in accordance with Law 3758/2009 to inform debtors of their outstanding debts, or companies with a similar objective operating in a member state of the EU or the EEA. Companies managing non-performing loans established under this law must comply with the provisions of Law 3758/2009.

6.2 Piercing the Veil of a Trust or Legal Entity

As trusts and foundations are not institutions recognised by Greek legislation (with the exception of charitable foundations), such mechanisms are not applicable.

6.3 Authorisation to Hold Active Businesses

Trusts, foundations or similar entities are not authorised to own or run an active business.

6.4 Mechanisms to Protect Fiduciaries from Liability

To the extent that the institution of corporate fiduciaries is not provided for in Greek legislation, there are no specific stipulations regulating their liability.

7. Citizenship

7.1 Requirements for Domicile/Residency/Citizenship

Many foreign nationals of Greek descent or who identify with the Greek culture wish to become Greek citizens. There are several fairly complex ways to achieve this, depending on certain characteristics of the applicant, including their status, place of birth, timing and origins.

Greek Citizenship by Birth

A child born in Greece does not automatically obtain Greek citizenship, unless:

- their mother was a Greek citizen during her pregnancy and at the time of their birth;
- their father was a Greek citizen at the time of their birth; or
- both their parents were non-Greek immigrants living in Greece with a valid resident's permit for at least five consecutive years prior to their birth.

If one of these requirements is met, the child may obtain Greek citizenship by birth, although parents can of course opt out and declare another country's citizenship in accordance with the laws of that country.

Becoming a Greek Citizen by Going to School

A child who does not fulfil any of the prerequisites mentioned above may still obtain Greek citizenship if:

- they enrol in the first grade of a Greek primary school and are still attending when the application is filed; and
- at least one of their parents had been living in Greece legally with a valid permit for at least five years prior to the child's birth. In case the child was born before the completion of this five years period the necessary period of legal and continuous residence of the parents is extended to ten years; and
- at least one of the parents holds a legal resident's card, as described in the new statute; and
- they have not reached the age of 18 years.

Alternatively, a non-Greek minor legally residing in Greece can still obtain Greek citizenship if they have attended at least nine years of primary/secondary Greek school, or six years of secondary Greek school. A non-Greek adult legally residing in Greece can obtain Greek citizenship if they have obtained a high school diploma in Greece and then graduated from a higher education institution (university or technical education institution). In this case, as soon as Greek citizenship is obtained, any underage and unmarried children automatically become Greek citizens as well.

Claiming Greek Citizenship Through Ancestors

Persons born outside Greece whose parent or parents are Greek, or who have one or more Greek grandparents, are entitled to claim Greek citizenship through their ancestor(s) born in Greece.

Residency

An individual is considered a Greek tax resident if one of the following conditions is met:

- the individual maintains a permanent or principal residence in Greece, and Greece is their habitual abode or where their main personal, financial or social interests are situated;
- the individual is a consular, diplomatic or public official, or a public servant of Greek nationality serving abroad; or
- the individual is physically present in Greece for a period exceeding 183 days within any 12-month period, either continuously or at intervals (this principle does not apply to individuals present in Greece for medical or leisure purposes for a period not exceeding 365 days either continuously or at intervals, though such an individual may be

considered a tax resident in the event that they fall within the first two points above).

No official register of Greek citizens residing abroad existed as of early 2018. The submission of annual income tax returns to a local tax office based on the individual's home address is treated as evidence of Greek tax residence, while submission of an annual income tax return to the tax office for foreign residents based on an overseas home address is treated as evidence of non-Greek tax residency. In an attempt to clarify and clear the register of taxpayers registered and submitting tax returns with the tax office for foreign residents, the tax authorities have periodically issued legislation asking taxpayers to submit specific documentation to prove their non-Greek tax resident status. Following the implementation of the New Income Tax Law and the detailed regulation of the rules regarding changes in tax residency, an unofficial registry could be considered to be in place based on the above status quo.

The ITC provides that a legal person or entity is considered as tax resident in Greece if at least one of the following conditions is met:

- it has been incorporated or established in accordance with Greek legislation;
- it has its registered seat in Greece; or
- its effective place of management is located in Greece during any period within the fiscal year.

The determination of the effective place of management is based mainly on the following criteria:

- where day-to-day management takes place;
- where strategic decisions are made;
- where the annual general meeting of shareholders/partners is held;
- where books and records are kept;
- where the meetings of the board of directors (or other executive board) take place; and
- the residence of the members of the board of directors (or members of the executive board).

It could be argued that the legal person or entity may be considered as having their effective place of management in Greece by the tax authorities even if only one or some of the criteria are satisfied. The decision as to the tax residency status of a legal person or entity lies primarily with the legal person or entity themselves and the tax office auditing the case. In the event that a legal person or entity satisfies the criteria set out above, they should be registered as a Greek resident person or entity and subject to Greek taxation rules. If a legal person or entity does not register with the Greek tax authorities despite the criteria for effective management being met, the tax authorities are entitled to attribute residency

status during the course of a tax audit, either at the premises of a third party or at the place where the commercial books of this third party are held. A third party's premises can be the house of a member of the board of directors or the premises of a person developing a business activity in Greece and effectively acting as a dependent agent and for the account of a non-Greek entity.

In cases where a foreign legal entity or person is considered as having a permanent establishment in Greece, any income deriving from business activities carried out in Greece through the permanent establishment will be subject to income tax at the normal corporate income tax rate of 29%.

7.2 Expedient Means for an Individual to Obtain Citizenship

There are a few other clearly defined ways to obtain Greek citizenship, which are relevant to specific situations:

- minors under 18 years of age who are born out of wedlock can be legally recognised by a Greek father born in Greece;
- minors under the age of 18 years can be legally adopted by a Greek national born in Greece;
- foreigners of Greek ethnic origin admitted to military academies as officers, enlisted in the armed forces as volunteers or promoted to officers of the military forces can claim the Greek citizenship; and
- foreigners who are not of Greek origin or ancestry but are resident long-term or permanently in Greece can go through the naturalisation process after three to seven consecutive years of legal residence in Greece, provided that they are fluent in Greek and they earn a certificate in Greek ancient history and culture, and obtain Greek citizenship. Marriage to a Greek citizen will not automatically give rise to a claim to citizenship but will shorten the time which the naturalisation procedure takes.

8. Planning for Minors/Adults with Disabilities

8.1 Special Planning Mechanisms for Minors or for Adults with Disabilities

Greek legislation does not recognise trusts, foundations or similar entities, and this absence of structures available for efficient planning for minors or adults with disabilities renders any planning for their physical and financial care difficult.

8.2 Appointing a Guardian

The appointment of a guardian is provided for by the Civil Code, on the condition that neither parent has nor is able to exercise parental care. In this case, the court will appoint a guardian or entrust the exercise of parental care to a third party and determine the particulars of guardianship in ac-

cordance with the law. The following persons may be appointed as a guardian:

- a spouse;
- a physical or juristic person appointed by testamentary disposition or by a declaration made before a justice of the peace or notary; or
- the person most appropriate in the view of the court.

An adult may be placed under judicial assistance or guardianship where by reason of intellectual, psychological or physical impairment they cannot take care of themselves or their affairs entirely or partly, or if they pose a risk to the life of their spouse, descendants or parents through drug abuse or alcoholism.

A minor who is under parental care or guardianship may be placed under judicial assistance or guardianship where the relevant conditions are fulfilled in the last year of their minority. The consequences of being placed under judicial assistance begin to take effect when the minor comes of age.

A court can decide whether an individual is eligible for judicial assistance following the request of the individual, their spouse, parents, children or the public prosecutor, or through the initiative of the court itself. In cases of physical disability, a court will decide solely on the basis of a request filed by the disabled person themselves.

9. Planning for Nontraditional Families

9.1 Children Born Out of Wedlock and Adopted Children

According to Article 1463 of the Greek Civil Code, a person's relationship to their mother (and her relatives) is established solely by birth, and that with their father (and his relatives) is presumed from the marriage of the mother to the father or established by means of voluntary or court-imposed acknowledgement of the child by the father.

A father may acknowledge a child born out of wedlock as his own, provided that the mother consents. Where a mother has died or has no legal capacity to consent, the acknowledgment shall be effected by the sole declaration of the father, unless the father has died or has no legal capacity, in which case the acknowledgment may be effected by the father's parents. If the child has died, the acknowledgement shall be effective in favour of their descendants.

An acknowledgment by a father or his parents takes place by means of a declaration made before a notary public or in a last will and testament. The consent of a mother is given by means of a declaration before a notary public. Declarations of acknowledgment and consent must be made personally

and unconditionally, cannot be subject to any terms, and are irrevocable.

A mother has the right to demand the acknowledgment of the paternity of her child born out of wedlock through legal action and directed against the father or his heirs, subject to a statute of limitations of five years starting from the child's date of birth. The right of a child to demand acknowledgement expires one year after adulthood commences, and the rights of a father or his parents two years after a mother's refusal to give her consent.

Paternity is presumed where it is established that the person in respect to whom paternity is alleged had intercourse with the mother during the time period in which the child was conceived. Where a child is born out of wedlock, a court may, at the request of the mother, order the father whose paternity has been judicially established, even if the child has been stillborn, to:

- pay expenses relating to the child's birth; or
- provide for the maintenance of the mother, insofar as she is unable to provide for herself for the two months preceding childbirth and four months thereafter or, in the event of special circumstances, for a maximum duration of one year.

Where paternity is voluntary or judicially acknowledged, a child is treated as having been born to married parents for the purposes of both parents and their relatives, including in relation to matters pertaining to the child's family name, support and rights of inheritance.

According to Article 1486, an underage child has the right to claim maintenance from its parents to the extent that the income deriving from any property the child owns or from the product of the child's work is not sufficient to cover maintenance expenses. The amount of the maintenance shall be determined having regard to the needs of the beneficiary such as they arise from their living conditions. Maintenance is paid monthly in advance and includes everything necessary for the child's upkeep and any further expenses required for their upbringing and professional and general education.

According to Article 1502 of the Greek Civil Code, where a child is born out of wedlock and its paternity is very probable, and to the extent that the mother has become impoverished, a court may order protection through the advance payment of a reasonable amount by the father to the child each month to be set off against maintenance payments, even before the lodging of a legal action for acknowledgement of paternity.

9.2 Recognition of Same-Sex Marriage

Same-sex marriages are not recognised in Greece, although same-sex civil partnerships have been recognised since 2015. The adoption of children by same-sex couples, however, is not recognised nor provided for.

9.3 Recognition of Domestic Partners

Domestic partnership is recognised in Greece, with partners enjoying the same rights available to married couples, with the exception of children adopted by same-sex partners, which is not recognised nor provided for.

10. Charitable Planning

10.1 Laws on Charitable Giving

In Greek tax law, as in other systems, there are special favourable provisions concerning the funding of charitable purposes systematically pursued by private or public institutions.

Tax Exemptions Applicable to Gifts/Donations by Virtue of Law 2961/2001

According to the Inheritance and Donation Code, the following gifts/donations are not subject to gift tax and do not need to be declared:

- gifts/donations of money or other movable property, whether made anonymously or not, organised at a national level and proven to be charitable in nature; and
- gifts/donations of any property to the church institutions listed in paragraph 3a of Article 25 (churches, Holy Monasteries, the Sacred Commons of the Most Holy Sepulchre, the Holy Monastery of Mount Sinai, the Ecumenical Patriarchate of Constantinople, the Patriarchate of Jerusalem, the Patriarchate of Alexandria, the Church of Cyprus and the Orthodox Church of Albania).

Acquisitions by the following legal persons and entities or individuals are also exempted from tax but not from the obligation to submit a declaration:

- the Greek State or accounts created in favour of the Greek State; and
- foreigners subject to the rule of reciprocity, on the condition that this tax exemption is provided for by international conventions; if the legislation of the foreign country does not provide for a full exemption but for lighter taxation subject to the rule of reciprocity, the inheritance or trust subject to taxation in Greece of a foreign national corporation or individual is subject to lighter taxation corresponding to the tax imposed by the foreign country in question.

Moreover, free transfers of movable or immovable assets belonging to the state, municipalities or communities and

public organisations are exempt from donation tax. By virtue of the Inheritance and Donation Code, an acquisition is also subject to independent taxation when the beneficiaries are:

- public organisations, prefectural administrations, municipalities, communities, churches, Holy Monasteries, the Sacred Commons of the Most Holy Sepulchre, the Holy Monastery of Mount Sinai, the Ecumenical Patriarchate of Constantinople, the Patriarchate of Jerusalem, the Patriarchate of Alexandria, the Church of Cyprus or the Orthodox Church of Albania; and
- non-profit corporations that exist or are lawfully constituted or are being constituted in Greece, as well as all corresponding foreign corporations subject to the rule of reciprocity and the Law for Charitable Foundations and Bequests, on the condition that they are proven to pursue purposes in favour of the nation or religion, or in a wider sense philanthropic, educational, artistic or charitable purposes within the meaning of the Law for Charitable Foundations and Bequests.

In accordance with Article 29, paragraph 5 referred to above, “the acquisition through inheritance of sums of money by corporations or individuals mentioned in paragraph 3 of Article 25 is subject to tax, which is independently calculated at a rate of zero point five per cent (0.5%). The acquisition through inheritance of other assets by such individuals or corporations is subject to a tax calculated independently at a rate of 0.5%.”

The amount of the resulting tax also includes 3% in favour of municipalities and communities by virtue of the provisions of Article 50, Royal Decree 24/9-20.10.1958.

All gifts/donations of money in favour of corporations listed under paragraph 3 of Article 25 are subject to an independent tax of 0.5% with a tax-free bracket of EUR1,000 annually, as provided for under paragraph 5 of Article 29.

10.2 Structures Most Commonly Used for Charitable Planning

The Greek Civil Code regulates the establishment, operation and dissolution of Civil Law Companies (CLC).

A minimum of two partners are required for the establishment of a not-for-profit Civil Law Company (NPCLC), which is managed by its partners, who have joint and unlimited liability, and may appoint one or more managers. A general meeting of the partners is the supreme governing body of an NPCLC and may decide on all issues relating to its operation, including the admission of new members, its management, the election of the management and its powers, its activities, the amendment of its Articles of Association, and its dissolution.

An NPCLC is not permitted to distribute profits, dividends or liquidation proceeds to its members without being considered a profit-seeking Civil Law Company, and upon its dissolution any liquidation proceeds will be transferred to organisations with similar purposes in accordance with the provisions of its Articles of Association or the decision of a general meeting.

Following the entry into force of Law 4072/2012, the provisions regarding the liability of the partners of a registered NPCLC were confirmed, and it was clarified that they are held jointly and severally liable with the NPCLC for its tax liabilities. NPCLCs are subject to 29% income tax for any income received or gained if double entry records are kept, or 26–33% income tax if revenues-expenses records are kept. This Article, as initially interpreted by the Ministry of Finance, provides for the taxation of all income and resources of NPCLCs, irrespective of the source of the funds. Following the issuance of supplementary Interpretative Guidelines by the Ministry of Finance, NPCLCs are subject to taxation at the rates stated above only in respect of income deriving from commercial activities. Partners' contributions and subscription fees, donations and aid received from enterprises and third parties are not included in the calculation of gross income and therefore are not taken into consideration for the NPCLC's taxable basis. The same rules apply with regard to income from activities pursued within the framework of non-governmental organisation (NGO) activities pursuant to Law 2731/1999. In the event that an NPCLC sells donated goods, any revenues will be subject to income tax, since the tax authorities do not assess whether cash inflow is channelled to charitable activities. A thorough review of the current cash inflow structure of a Société Anonyme is therefore recommended.

Another form regulated by the Greek Civil Code is the not-for-profit association (Somatio), which is defined as a group pursuing non-profit activities made up of a minimum of 20 individuals or legal entities that has acquired a legal personality.

A Somatio is established following the issuance of a court decision, and the registration of its Articles of Association with the competent registry are kept by the court. Its provisional directors are included in the Articles of Association and, unless they provide otherwise, new members may always join, subject to the terms and conditions set out therein. Members may also be excluded from a Somatio according to the provisions of its Articles of Association on serious grounds following a resolution of a members' general meeting. The general meeting is the Somatio's supreme governing body and may decide on all issues relating to its operation, the entrance or exclusion of members, the election, supervision and revocation of management, the approval of financial re-

sults, amendments to the Articles of Association, change of scope and dissolution.

Unless the Articles of Association provide otherwise, management is exercised by a board, the members of which are elected by a general meeting of members. According to the general provisions of the Greek Civil Code, a Somatio is liable for any acts or omissions of the persons representing it, to the extent that such acts or omissions take place in the course of the duties assigned to its representatives and have given rise to an obligation for compensation. The person held responsible is also liable jointly and severally with the Somatio.

Members are liable towards a Somatio for the payment of their contribution. A Somatio is wound up in accordance with the relevant terms of its Articles of Association and in any case if the number of its members becomes less than ten. It may not distribute profits, dividends or liquidation proceeds to its members, and upon its dissolution any liquidation proceeds will be transferred to other institutions with a similar purpose, according to the provisions of its Articles of Association or a decision of the general meeting. In the event that no such provision or decision exists, liquidation proceeds will be transferred to the State.

According to the ITC, a Somatio is subject to 29% income tax only in respect of income deriving from commercial activities, and is exempted from tax on income arising from the pursuits that fulfil its scope of activities. In interpreting the provisions of the above law, the Ministry of Finance recognises this definition to include income deriving from members' contributions, subscription fees, state grants, fundraising activities, donations and grants made by enterprises and third parties. Any income realised from the carrying out of other activities that may qualify as commercial activities is not tax-exempt.

The third charitable form is the Religious Legal Entity (RLE), which is defined as a union of at least 300 individuals belonging to the same religious community (ie, a sufficient number of individuals who openly follow the dogmatic principles of a known religion, permanently residing in a specific geographical area with a view to exercising common worship and performing the duties required by their religion's dogmatic principles) and pursuing the systematic and organised exercise of worship and collective expression of religious beliefs of its members. It acquires legal personality upon registration with the Registry held at the Court of First Instance, and at least one of its members must be a minister, priest or pastor who is either a Greek or EU citizen or a non-Greek residing permanently in Greece.

An RLE is established following the issuance of a court decision, the publication of its dogmatic principles and a

summary of its Articles of Association or Charter, and the registration of its Articles of Association or Charter with the Registry kept at the Court and the RLE Registry maintained by the Ministry of Education and Religious Affairs.

An application is submitted to the court, along with an act of constitution signed by the founders or members (with full identity and residence information), its dogmatic principles, the names of its administrator(s), including the community's minister and their curriculum vitae, a list of any places of worship and its Articles of Association or Charter. Upon establishment, its members (at least 300) must sign an act of constitution and provide identity and residence information to the court, together with the application.

An RLE is managed by its minister according to its Articles of Association or Charter, or by a collective administrative body in which the minister must participate. There is no obligation to hold a general meeting of members and an RLE is wound up according to its Articles of Association or Charter and in any case if the number of its members becomes less than 100.

The competent authority (currently the Ministry of Education) may judicially request an RLE's dissolution if:

- there is no minister for a period exceeding six months;
- its scope is different from the scope provided for in the law; and
- its operation has become illegal or immoral, or is against public order.

The property of an RLE may come from ordinary or extraordinary voluntary contributions of its members, donations or inheritance, aid from affiliated Greek legal entities of the same church or religion, and income from property.

An RLE may receive loans from banking institutions operating legally in Greece or abroad, and may organise fundraising for specific charitable purposes. It may not acquire participation in partnerships, but may hold listed or non-listed shares in capital-based companies (*kefalaiouchikes*), up to a percentage that does not exceed the minority threshold, without the right to appoint or control the members of the management of such companies.

According to the ITC, RLEs are subject to income tax at a rate of 29% only in relation to income deriving from commercial activities, and are exempted from tax on income arising from the pursuit of their scope of activities. In interpreting the provisions of the above law, the Ministry of Finance recognises any income deriving from members' contributions, subscription fees, State grants, fund-raising activities, donations and grants made by enterprises and

third parties as "income arising from the pursuit of fulfilling their scope".

Personal Liability of Members/BoD Members

The members of a Civil Company are held jointly and severally liable with the company for both its corporate and tax liabilities. Such joint and several liability is not provided for by law for the members of a Somatio or an RLE. The corporate and tax liabilities of RLEs and Somatia do not impact its members but they are liable for any acts or omissions of the persons representing it, to the extent that such act or omission takes place in the course of duties assigned to them and creates an obligation for compensation. Only the board of directors (BoD) or management are held responsible for such act or omission, or liable jointly and severally with the entity.

The tax status of these structures may be summarised as follows:

- In principle, NPCLCs are subject to tax on their income, irrespective of its source. The rate is flat at 29%, as stated above. However, it has been ruled that contributions from members, donations or other offerings are prima facie exempted from income tax. The general assumption applicable to the income of not-for-profit legal entities is reversed with regard to NPCLCs.
- Not-for-profit legal entities, such as a Somatio and an RLE, are tax-exempt in principle. They are subject to taxation only for income deriving from activities that may be treated as falling outside the core scope of activities stated in their Articles of Association and considered as commercial activities. Not-for-profit legal entities are subject to a flat income tax rate of 29%. Contributions from members, donations or other offerings are exempted from Greek income tax.

11. Elder Law

In Greece, the main institution by which families and individuals prepare financially for longer lives is the Public Welfare System, which provides essential and supplementary or auxiliary protection. It is comprised of a great number of insurance funds and a large variety of schemes, although all social security institutions fall under the authority and supervision of the Ministry of Health, Welfare and Social Security.

Some local authorities also provide home care services, although not uniformly throughout the country, and the entitlement to and availability of these services is not clear. The majority of elderly people continue to live at home, either with their families or alone, and families play a pivotal role in providing care, for which they receive no direct support from the State.

However, in the last two decades, the State has taken measures to increase community care services for the elderly so that they can remain in their own homes for as long as possible, thereby enabling them to maintain their independence and enhance their quality of life. These measures include a help at home programme and the creation of open care community centres for older people or KAPIs (these are centres in an open environment, within the neighbourhood or community, providing services to the elderly, including nursing, meal distribution, physiotherapy, social services, etc).

The Constitution and Civil Law states that the family is responsible for the care of dependent relatives of all ages, and that the state will care for the health of its citizens and adopt special measures for the protection of young people, the elderly and invalids, as well as provide assistance to the disadvantaged members of society. Consequently, the social security system does make certain provisions if a family is unable to care for a dependent relative.

There is no insurance covering long-term care in Greece. Financial assistance is mainly in the form of discretionary tax rebates to family caregivers, some of whom use supplementary pensions for incapacity or dependency to help towards the costs of caring.

Some local authorities provide home help services to elderly dependent people, most of whom are poor and isolated, although they are not obliged to do so. Discretionary grants and benefits are also available in some areas, but are dependent on the financial resources of individual local authorities and are not based on an official policy.

Open care community centres for the elderly were set up by voluntary organisations funded by the State under a pilot scheme. In 1982, local authorities assumed responsibility for the KAPIs, and the State continues to be the main financial contributor. A Help at Home programme for the elderly was started in 1992 under the auspices of the Ministry of Health and Welfare, involving a number of KAPIs and local authorities. In some areas, the Help at Home programme supports

family caregivers (mainly women) by providing home care during part of the day so that the carer can take up or maintain paid employment.

Where community care services exist, they are free at the point of use and are currently funded through central government, with some services partly funded by special EU programmes, for example some of the KAPI home care services.

KAPI centres aim to provide the necessary support to enable people to live independently in their own homes for as long as possible. Most offer the following services:

- preventive medical services;
- physiotherapy programmes;
- ergotherapy programmes;
- health education; and
- recreational activities.

Many KAPI centres collaborate with the Help at Home project, which offers a range of services to elderly people who are unable to manage on their own, such as:

- social services (counselling and psychosocial support, information on rights and health issues);
- healthcare services; and
- family assistance (assistance with housework, personal care and meal preparation and feeding, as well as activities and socialisation).

A few community centres are run by voluntary bodies or directly by local authorities (eg, centres for love and friendship in Athens) and are fairly similar to the KAPI centres but do not offer healthcare services. A number of day care centres have been set up since the establishment of the National Social Care System in 1998, and these are closely linked to the KAPIs.

In some areas, local authorities and many parishes of the Orthodox Church provide free meals at home to people in need, and neighbours, friends and volunteers offer home care services, but the main source of respite care is still through acute admissions to hospitals. In Thessaloniki and Athens, there is a 24-hour tele-alarm system linked to family, neighbours, the police or the ambulance service.

Apart from the Public Care System, the Greek State does not provide for other means that may help families and individuals prepare financially for longer lives. As a result, the contribution of the private sector is essential for efficient financial planning.

In this framework, one may plan for how one's money should be handled in the event of illness or death. Good planning

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ensures that the family will meet any cost that may arise in the future. To this end, health insurance or pension plans may contribute to a better quality of life in case of illness, or in old age.

12. Digital Assets

The IGTL does not regulate the taxation of digital assets for the purposes of succession. Nevertheless, it appears that cryptocurrencies like Bitcoin may be treated as deposits in foreign currency subject to inheritance tax, or as investments in foreign currency. Their value will be assessed by the applicable F/X rate at the date the inheritance tax liability arose. Moreover, websites or domain names may be treated as movable assets subject to inheritance tax, and their market value may be assessed by independent valuers in order to provide supportive documentation to the tax authorities for their tax base.