

# Greece

## Background

Employee share schemes are not common in Greece. Some relevant legislation was introduced approximately 10 years ago but this deals primarily with employee participation in the profits of their employing company rather than with share-based incentive schemes.

In general, Greek company and tax legislation governing employee share schemes is at a fairly early stage of development and, as a consequence, it is difficult to address practical issues with certainty.

## Securities law

An offer of shares, or the grant of an option over shares, to Greek employees by their Greek employing company or by its foreign parent company can be made under Greek law. No regulatory consents are required, and no notifications need be given.

## Exchange control

There are no restrictions on the transfer of funds out of Greece by Greek employees in order to acquire shares in the foreign parent company of their Greek employing company. However, such a payment must be routed through a commercial bank in Greece, which is obliged to keep records of all foreign exchange transactions.

## Financial assistance

Under Greek company law, a company is generally prohibited from providing financial assistance, making loans or giving guarantees to aid an acquisition of its own shares. This prohibition also applies to loans made by affiliated companies. However, a company may acquire its own shares (up to a maximum of 10% of its issued share capital) for the purposes of distribution of these shares to employees.

There is no prohibition against a Greek company giving financial assistance to its Greek employees to enable them to acquire shares in its foreign parent company.

## 5 Taxation of share acquisitions

### 5.1 General comments

The tax treatment of employee share schemes is not clearly established under Greek law. In theory, the discount element (i.e. the difference between the market value of the shares on the date of acquisition and the amount, if any, paid by the employee for the shares) could be taxed as a gift given by a third party. However, the Ministry of Finance has expressed an unofficial opinion characterising the benefit as "income from salaried services". In any event, if the gift tax regime is to apply, the local Greek subsidiary must not be involved in the relevant scheme in any way (e.g. the costs of operating the scheme must not be re-charged to the local Greek employing company). Social security contributions (employee's and employer's) are not payable under the gift tax regime and any gift tax due must be accounted for by the employee through a gift tax return (i.e. there is no tax withholding obligation on the Greek employing company). However, significant penalties may be imposed on the Greek employing company if the Ministry of Finance concludes that, in fact, the discount element should have been taxed as salary and so subject to withholding tax.

The information provided below assumes that the discount element will be taxed as salary.

### 5.2 Taxation of the employee

An employee who acquires shares in his employing company or in its foreign parent company as a free bonus or at a discount to market value, will normally be liable to income tax and social security contributions. The income tax and social security contributions will be payable on the amount of the discount, i.e. the market value of the shares at the date of acquisition less the amount, if any, paid by the employee for those shares.

Any income tax and social security contributions due must be withheld by the Greek employing company.

### 5.3 Taxation of the employer

Employer's social security contributions will be payable in respect of allocations of shares to employees as a free bonus or at a discount, on the market value of the shares less the amount, if any, paid by the employee.

If the costs incurred by the foreign parent company in issuing new shares to employees at a discount to market value or as a free bonus are re-charged to the Greek subsidiary (pursuant to a written chargeback agreement), the Greek subsidiary may be able to claim a corporation tax deduction in respect of those costs. However, the re-charged amount may constitute a taxable benefit for the employees.

## 6 Taxation of share options

### 6.1 General comments

The tax treatment of employee share option schemes is not clearly established under Greek law. In theory, the difference between the option exercise price and the market value of the shares at the date of exercise ("the option gain"), could be taxed as a gift or as salary. The gift tax regime is discussed under "Taxation of Share Acquisitions" above.

The information provided below assumes that the option gain will be taxed as salary.

### 5.2 Taxation of the employee

#### 6.2.1 Tax on grant

There should be no tax charge on the grant of a share option to an employee.

#### 6.2.2 Tax on exercise

A tax charge will arise on the exercise of a share option. The employee will be taxed on the difference between the price he pays for the shares and the market value of the shares at the time of exercise ("the option gain"). Tax will be charged at progressive rates between 5% and 45%. Social security contributions and stamp duty will also be payable. Any income tax and social security contributions due must be withheld by the Greek employing company.

### 6.3 Taxation of the employer

Employer's social security contributions will be payable, on the option gain, at the time of exercise of share options by employees.

A foreign parent company may be able to charge back to its Greek employing subsidiary any costs it incurs in connection with the issue of shares at an undervalue to employees on the exercise of their share options. The charge back should be accounted for "as salary" (and so may constitute a taxable benefit for the employees). The recharged sum should, in principle, be tax deductible for the Greek employing subsidiary.

#### Taxation of share disposals

On the sale of shares (either in an employee's employing company or in its foreign parent) acquired as a free bonus, at a discount to market value, or through an employee share option scheme, an employee will be subject to capital gains tax on the sale proceeds (less any amount on which the employee has already paid in income tax). Capital gains tax is payable at a rate of 0.6% on foreign listed shares.

### Approved employee share schemes

There are no approved employee share schemes in Greece.

### Employee benefit trusts

Employee benefit trusts are not recognised under Greek law. In practice, contributions to such trusts would be treated for tax purposes as non-deductible expenses of the company making the contributions.

A Greek employee who is a discretionary beneficiary of an Employee Benefit Trust will not be taxable for that reason alone, unless and until he actually receives any benefits, at which point he may be taxed on the receipt of those benefits.

## 10 Data protection

Greek Law 2472/1997 implemented the European Directive (95/46) on personal data protection. Under Law 2472/1997, a person's personal data is fully protected. This means that employees must consent to the disclosure of their personal data to a third party and may specify how the data is to be used.