



Participation exemption for capital gains from share transfers clarified

The Greek Tax Administration issued Circular E.2057/12.03.2021 on 12 March 2021, clarifying issues regarding the Greek participation exemption for capital gains from the transfer of shares.

Conditions for application of the exemption

Which type of transferor is eligible?	Legal entity incorporated in Greece or considered a Greek tax resident
Transferred shares/participation criteria	<p>All of the following conditions should be met:</p> <ul style="list-style-type: none"> • The shares transferred should be in a Greek legal entity (corporation (SA), limited liability company (Ltd), private company (PC), general partnership, or limited partnership) or an EU-based legal entity; • The transferor must be a Greek legal entity that holds a greater than 10% shareholding participation in the transferee; and • The holding period in the transferee must be greater than 24-months prior to the transfer.

What is considered a “transfer of shares” for purposes of the participation exemption?	<ul style="list-style-type: none"> • Sale; • Contribution in kind; • Distribution of dividend in kind; or • Share capital decrease in kind.
What is the accounting treatment of the exempt capital gains?	Gains must be booked as a special reserve, irrespective of any losses incurred, which is not subject to corporate income tax when distributed or capitalized; note that withholding tax may apply if the conditions for the application of the EU Parent-Subsidiary Directive are not met.
Are the expenses related to the participation tax deductible?	Any expenses that directly and closely relate to the acquisition of the shareholding (e.g., interest, notarial fees, etc.) are not tax deductible.

Interrelationship between participation exemption provisions and EU Merger Directive provisions regulating the exchange of shares

The Tax Administration also clarified the following regarding the interrelationship between the participation exemption provisions (article 48A of the Greek Income Tax Code) and the exchange of shares provisions in the [EU Merger Directive](#):

The exchange of shares occurred before 1 July 2020	The exchange of shares provisions only apply to the capital gain generated, which is subject to deferred taxation.	If additional capital gains are realized upon a subsequent transfer of the shares, they will be tax exempt provided that the conditions for the participation exemption are met when the shares that have been acquired through the initial exchange are further transferred.
The exchange of shares occurred after 1 July 2020	The capital gains tax exemption is applicable, while the provisions for the exchange of shares do not apply in relation to the legal entity that owns shares in the acquired entity.	

Losses incurred from the transfer of qualifying participations

The tax-deductible amount of losses related to the transfer of qualifying participations will be recognized for tax purposes to the extent that:

- The transfer occurs between 1 January 2020 and 31 December 2022;
- The relevant participation has been valued in the financial statements through 31 December 2019; and
- In practice, the tax-deductible loss amount will be limited to the amount realized (actual) or the valuation loss, whichever is lower.

It should be noted that losses incurred as a result of a transfer of shares occurring after 31 December 2022 will not be tax deductible.

Losses incurred from liquidation

The circular highlights the fact that liquidation losses are, in principle, tax deductible, since the above provisions are not applicable; similarly, liquidation gains are subject to corporate income tax as they are outside the scope of the participation exemption for dividend income.



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