

Tax Flash

Ministerial Circular 1032/2015

February 2015

Ministerial Circular 1032/2015 provides important clarifications on the application of article 42 of the ITC and regulates related practical issues, such as:

Warrants

- It is clarified that capital gains tax applies also to warrants acquired in the context of participation in the share capital increase of the banks “National Bank”, “Alpha Bank” and “Piraeus Bank”.

UCITS

- It is clarified that the capital gain arising for individuals from the sale of units of EU or EEA / EFTA UCITS is exempt from income tax whilst the capital gain deriving from the sale of units of UCITS having their seat in third countries is subject to tax.

Bonds

- It is clarified that the capital gain arising for individuals from the transfer of domestic or foreign corporate bonds issued by EU or EEA / EFTA companies are exempt from income tax based on the specific provisions of Law 3156/2003.

Derivatives

- It is clarified that the capital gain arising from the closing of the investor’s position at or prior to the expiration of the agreement falls within the scope of capital gains arising from the transfer of derivatives.

FIFO as acquisition cost

- Reference to the FIFO method for determination of acquisition cost of listed shares where the tax applies.

Preference right

- It is clarified that the non-participation of a shareholder / partner in the share capital increase of any type of company does not constitute a taxable transfer of securities.

Contribution of securities

- It is provided that in case of contribution of Greek or foreign securities to a foreign legal person or entity, the sale price will be determined based on the nominal value of the securities received in exchange by the contributor.

At this point, the administrative jurisprudence established under the previous regime is followed – however, it must be carefully considered on a case-by-case basis and depending on the legislation of the respective country.

Foreigners

- It is clarified that the tax payer who is not a Greek tax resident and transfers the securities issued by a Greek resident company is obliged to obtain a Greek VAT number and file an annual income tax return with respect to the income derived from such transfer unless the said tax payer is resident to a State with which

Greece has signed a Double Taxation Treaty (DTT) and submits a tax residence certificate to the custodian.

Especially when these individuals are residents in non-cooperative states (article 65 ITC), the income tax return is submitted and the respective tax is paid once off prior to the transfer of the aforementioned securities.

- It is clarified that foreign legal entities that are not Greek tax residents and do not have a permanent establishment in Greece are exempt from income tax on the gain realized by the transfer of securities in Greece, while the submission of a zero tax return is not required.
- It is clarified that as regards the transfers of securities acquired before 31.12.2013 taking place from 1.1.2015 onwards by domestic legal entities or by foreign legal entities with a permanent establishment in Greece that maintains double entry books, the acquisition value of the securities shall be the book of such securities as at 31.12.2013, since any loss arising from the valuation of securities is not deductible as from 1.1.2014 onwards.

Cost for legal entities

Distribution in kind

- It is further clarified that the distribution in kind of securities to shareholders / partners during the liquidation of legal entities is considered as a sale and the capital gains arising therefrom is taxed in the name of the liquidated legal entities.

Deferred payment of the acquisition price

- It is clarified that in the case of an agreement for deferred payment of the acquisition price in the subsequent tax years, the capital gains is taxable during the tax year that the transfer takes place, irrespective of when the corresponding payment is received.

Shares of shipping entities

- It is clarified that the capital gains arising from the transfer of shares in a ship owning company is exempt from income tax.

The rationale followed is that such income is associated with the ship's exploitation and therefore the tax liability from income tax is exhausted by imposing the tax under Law 27/1975 at the level of the ship owning company.

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*This information is intended only as a general update for interested persons and should not be used as a basis for decision making. For further details please contact PwC:
268, Kifissias Avenue
15232 Halandri
tel. +30 210 6874400*



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