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Amendments to tax laws to promote restructuring



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In December 2015 Cyprus's tax laws were amended to temporarily exempt loan restructurings from tax in order to facilitate and encourage the restructuring of non-performing loans. The amendments affect:

- the Income Tax Law;
- the Capital Gains Tax Law;
- the Special Defence Contribution Law;
- the Stamp Duty Law;
- the VAT Law;
- the Collection of Taxes Law; and
- the Department of Lands and Surveys (Fees and Charges) Law.⁽¹⁾

A new definition of the term 'restructuring' has been introduced to all of the laws affected. It refers to the direct or indirect sale and transfer of immovable property and the transfer of rights under a sale contract deposited with the Department of Lands and Surveys between one or more borrowers, debtors or guarantors (regarding the same credit facility or debt) and one or more creditors in 2016 or 2017 in order to reduce or repay credit facilities, loans or debts granted to borrowers with one or more licensed credit institution operating in Cyprus.

Following the amendments, any benefit, profit or gain arising in the context of restructuring is exempt from income tax and any gain arising from the disposal of property in the context of a restructuring is exempt from capital gains tax. In the context of restructuring, a lender disposing of a property or taking possession of it for the lender's own use is deemed to acquire the property at the value attributed to it for the purpose of the restructuring. The lender's disposal proceeds are reduced by any amount returned to the borrower. In the event of part of the proceeds being returned to the borrower, any tax exemption granted to the borrower may be liable to clawback. In this event, the lender is responsible for withholding the appropriate amount and paying it to the tax authorities.

The amendment to the Special Contribution for Defence Law provides that accounting profits arising in the context of restructuring are not subject to the deemed distribution provisions of the law. However, in the event of any part of the disposal value being refunded to the borrower, this amount is included in the borrower's accounting profit in the tax year in which it was refunded and is subject to the deemed distribution provisions.

The amendments to the Stamp Duty Law provide that any contracts, mortgages or other documents used within the context of a restructuring are exempt from stamp duty.

The amendments to the VAT Law and the Collection of Taxes Law provide that any property acquired by a lender in the context of a restructuring remains subject to existing charges or encumbrances, and that the tax authorities may require the borrower to replace them with equivalent security over another property. The tax authorities are given discretion to enter into a negotiated agreement with the borrower to settle any outstanding taxes in order to allow the discharge of any security.

The Department of Lands and Surveys (Fees and Charges) Law already provides that no fees or charges should be levied for the transfer or registration of immovable property in the context of a restructuring. The only change to that law is the introduction of the new definition.

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Endnotes

(1) Laws 208(I) and 209(I) of 2015 amending the Special Defence Contribution Law 117(I) of 2002; Law 210(I) of 2015 amending the Department of Lands and Surveys (Fees and Charges) Law Cap 219; Law 211(I) of 2015 amending the Stamp Duty Law 19 of 1963; Law 212(I) of 2015 amending the Income Tax Law 118(I) of 2002; Law 213(I) of 2015 amending the Capital Gains Tax Law 52 of 1980; Law 214(I) of 2015 amending the Collection of Taxes Laws 31 of 1962 and 80(I) of 2014; and Law 215(I) of 2015 amending the Value Added Tax Law 95(I) of 2000.

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