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SUBJECTS TRANSFER PRICING INTELLECTUAL PROPERTY VAT, GST AND SALES TAX CORPORATE TAXATION INDIVIDUAL TAXATION REAL ESTATE AND PROPERTY TAXES INTERNATIONAL FISCAL GOVERNANCE BUDGETS COMPLIANCE OFFSHORE

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COUNTRIES AND REGIONS EUROPE AUSTRIA BELGIUM BULGARIA CYPRUS CZECH REPUBLIC DENMARK ESTONIA FINLAND FRANCE GERMANY GREECE HUNGARY IRELAND ITALY LATVIA LITHUANIA LUXEMBOURG MALTA NETHERLANDS POLAND PORTUGAL ROMANIA SLOVAKIA SLOVENIA SPAIN SWEDEN SWITZERLAND UNITED KINGDOM EMERGING MARKETS ARGENTINA BRAZIL CHILE CHINA INDIA ISRAEL MEXICO RUSSIA SOUTH AFRICA SOUTH KOREA TAIWAN VIETNAM CENTRAL AND EASTERN EUROPE ARMENIA AZERBAIJAN BOSNIA CROATIA FAROE ISLANDS GEORGIA KAZAKHSTAN MONTENEGRO NORWAY SERBIA TURKEY UKRAINE UZBEKISTAN ASIA-PAC AUSTRALIA BANGLADESH BRUNEI HONG KONG INDONESIA JAPAN MALAYSIA NEW ZEALAND PAKISTAN PHILIPPINES SINGAPORE THAILAND AMERICAS BOLIVIA CANADA COLOMBIA COSTA RICA ECUADOR EL SALVADOR GUATEMALA PANAMA PERU PUERTO RICO URUGUAY UNITED STATES VENEZUELA MIDDLE EAST ALGERIA BAHRAIN BOTSWANA DUBAI EGYPT ETHIOPIA EQUATORIAL GUINEA IRAQ KUWAIT MOROCCO NIGERIA OMAN QATAR SAUDI ARABIA TUNISIA LOW-TAX JURISDICTIONS ANDORRA ARUBA BAHAMAS BARBADOS BELIZE BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS COOK ISLANDS CURACAO GIBRALTAR GUERNSEY ISLE OF MAN JERSEY LABUAN LIECHTENSTEIN MAURITIUS MONACO TURKS AND CAICOS ISLANDS VANUATU

Cyprus's New Double Taxation Agreements

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On January 1, 2015, Cyprus's new double tax agreements (DTAs) with Iceland and Lithuania, which had entered into force during 2014, became effective, bringing the number of countries with which Cyprus has DTAs in effect to 53. This article summarizes the main provisions of the newly effective agreements and of other agreements that have recently been signed and that are in the process of being ratified. Like all of Cyprus's recent DTAs they closely follow the 2010 OECD Model Tax Convention, with additional provisions in some cases regarding exchange of information and offshore activities.

Additions To The OECD Model

Exchange Of Information

All the new agreements provide for full exchange of information, usually by replicating the relevant clause of the OECD Model Convention verbatim. However, in many cases the information exchange provisions are supplemented by a protocol to the agreement providing protection against the tax authorities misusing their powers. This protocol is similar in all the agreements in which it appears, and it introduces the safeguards for taxpayers set out in Cyprus's Assessment and Collection of Taxes Law.

In order to protect against "fishing expeditions", the country making the request for information is required to provide further particulars so as to demonstrate the foreseeable relevance of the information requested. These include the identity of the person under examination, details of the information requested and the form and manner in which the requesting state wishes to receive it, the tax purpose for requesting the information, the reason for believing that the requested information is held by the Cyprus tax authorities or is in the possession or under the control of a person within the jurisdiction of Cyprus, and the name and address of any person who may hold the information requested, if known.

In addition, the authority requesting the information must formally confirm that the provision of such information is in accordance with the legislation and the administrative practices of the requesting state and that where the requested information is found within the jurisdiction of the state in question, the relevant authority may obtain the information according to its laws and according to the terms of its ordinary administrative practices, and that the requesting state has exhausted all practical means available in its own territory to obtain the information.

These requirements mean that a request for information must be much more than a casual enquiry. A detailed case must be made, with the criteria set out in a lengthy legal document. Requests for exchange of information are dealt with solely by the International Tax Relations Unit ("ITRU") of the Department of Inland Revenue. Exchange of information may take place only *via* the ITRU; direct informal exchange of information between tax officers bypassing the competent authority is prohibited. As a final safeguard, Cyprus's Assessment and Collection of Taxes Law requires the written consent of the Attorney General to be obtained before any information is released to an overseas tax authority.

To some extent the protocol is a "belt and braces" provision, because even if it is absent, the Assessment and Collection of Taxes Law provides the same safeguards.

Offshore Activities

Large gas deposits were discovered in Cyprus's exclusive economic zone in 2011, and the Government aims to develop Cyprus as an energy center. In order to regulate the nascent energy industry, several of Cyprus's most recent DTAs also include comprehensive provisions regulating the taxation of offshore hydrocarbon exploration and exploitation activities, intended to ensure that each state's taxation rights in respect of offshore activities are preserved in circumstances where they might otherwise be limited by other provisions of the agreement. Special rules are required because of the short duration of some of these activities. The standard provisions adopted in these agreements are as follows.

An enterprise of one contracting state carrying on offshore exploration or exploitation activities in the other is deemed to be carrying on business through a permanent establishment (PE) if the activities are carried out for an aggregate of 30 days or more in any 12 months. Rules are also provided for determining when the 30-day threshold is exceeded where offshore activities are carried out by associated enterprises. This provision overrides the articles regarding permanent establishment and business profits.

Similarly, the normal provisions regarding income from employment are modified so that remuneration derived by a resident of one contracting state employed in offshore activities in the other may be taxed in the second state.

The "standard" article also provides that gains derived by a resident of a contracting state from the alienation of assets (either tangible or intangible) relating to exploration or exploitation activities in the second contracting state or its exclusive economic zone may be taxed in the second state.

Agreements Effective From The Beginning Of 2015

Iceland

The new DTA completed the ratification process in record time. It was signed on November 13, 2014, and entered into force on December 22, 2014. It is the first DTA between the two countries and its main provisions are as follows:

Dividends: Withholding tax on dividends paid by a company resident in Iceland to a company (but not a partnership) resident in Cyprus is limited to 5 percent of the gross dividend provided that the recipient is the beneficial owner of at least 10 percent of the shares in the company paying the dividend. Otherwise the maximum rate of withholding tax is 10 percent. There are no withholding taxes in Cyprus on dividends paid to non-residents.

Interest: Interest paid by a resident of one state to a resident of the other is taxable only in the state of residence of the recipient, subject to safeguards against abuse (*e.g.*, the exemption does not apply to any excessive interest above interest on an arm's length basis).

Royalties: The maximum withholding tax on royalties is limited to 5 percent.

Capital Gains: Gains derived by a resident of one contracting state from the alienation of immovable property situated in the other may be taxed in the contracting state in which the property is situated. Gains on disposal of shares or similar interests in a company or other entity deriving more than 50 percent of its value from immovable property may also be taxed in the contracting state in which the immovable property is situated.

Gains arising from the disposal of immovable or movable property associated with a permanent establishment, or from the disposal of movable property used in connection with the performance of independent personal services, may be taxed in the contracting state in which the permanent establishment is located or the services are performed.

Gains derived from the alienation of all other property (including ships or aircraft operated in international traffic) are taxable only in the contracting state in which the alienator is resident. However, gains from the disposal of shares in a company resident in one contracting state derived by an individual who is resident in the other contracting state, but who was a resident of the first-mentioned state in the course of the five years preceding the disposal, may be taxed in the first state (the state in which the individual was previously resident).

Exchange Of Information: The information exchange article follows the corresponding article of the OECD Model and the protocol described above is not included. However, Cyprus's Assessment and Collection of Taxes Law provides Cyprus residents with the same safeguards as the protocol.

Offshore Activities: The agreement does not include the additional provisions outlined above regarding income and earnings from offshore hydrocarbon exploration and exploitation activities, and gains derived from associated assets.

Lithuania

On the dissolution of the USSR, Lithuania was one of the few former members of the USSR that did not adopt the 1982 DTA between Cyprus and the USSR, and the new DTA is the first between the two countries. In summary, its main provisions are as follows:

Dividends: There is no withholding tax on dividends paid by a company resident in Lithuania to a company (but not a partnership) resident in Cyprus provided that the recipient is the beneficial owner of at least 10 percent of the shares in the company paying the dividend. Otherwise the maximum rate of withholding tax is 5 percent. There are no withholding taxes in Cyprus on dividends paid to non-residents.

Interest: Interest paid by a resident of one state to a resident of the other is taxable only in the state of residence of the recipient.

Royalties: The maximum withholding tax on royalties is limited to 5 percent.

Capital Gains: Gains derived by a resident of one contracting state from the alienation of immovable property situated in the other contracting state, or from the disposal of immovable or movable property associated with a permanent establishment situated in the other contracting state, may be taxed in the contracting state in which the immovable property or the permanent establishment is situated. All other gains, including gains on disposal of shares in "property-rich" companies, are taxable only in the country of residence of the disponor.

Exchange Of Information: The information exchange article follows the corresponding article of the OECD Model and the protocol described above is not included. However, Cyprus's Assessment and Collection of Taxes Law provides Cyprus residents with the same safeguards as the protocol.

Offshore Activities: The DTA includes the "standard" article outlined above regarding income and earnings from offshore hydrocarbon exploration and exploitation activities, and gains derived from associated assets.

Agreements Awaiting Ratification

Guernsey

Cyprus signed the new DTA with the States of Guernsey on July 15, 2014, and the Guernsey authorities signed the agreement on July 29. The agreement is the first comprehensive DTA between the two, and will come into force once it has been ratified in accordance with their domestic legal procedures. The 2004 agreement on taxation of savings income between Cyprus and Guernsey will continue in force, but the DTA will be much more beneficial to taxpayers once it takes effect.

The new agreement closely follows the 2010 OECD Model Convention, with only minor modifications, and the Protocol to the agreement clarifies the information exchange provisions. The key provisions are as follows:

Dividends: Dividends paid by a resident of one contracting party to a resident of the other are taxable only by the contracting party in whose territory the recipient is resident.

Interest: Interest arising in one contracting party and paid to a resident of the other is taxable only by the contracting party in whose territory the recipient is resident. Cyprus-resident natural persons receiving interest income from Guernsey will be subject to a lower tax charge by disclosing the interest and opting for taxation in Cyprus, rather than imposition of retention tax in Guernsey under the 2004 taxation of savings income agreement.

Royalties: Royalties arising in one contracting party and paid to a resident of the other are taxable only by the contracting party in whose territory the recipient is resident, provided that the recipient is the beneficial owner.

Capital Gains: Gains derived by a resident of one contracting party from the alienation of immovable property situated in the territory of the other, or from the disposal of immovable or movable property associated with a permanent establishment situated in the other, may be taxed by the contracting party in whose territory the immovable property or the permanent establishment is situated. Gains derived from the disposal of all other property are taxable only by the contracting party in which the disponor is resident.

Exchange Of Information: The usual Protocol is included, setting out the information that must be provided to accompany requests for information, thus ruling out "fishing expeditions" on the part of the tax authorities.

Offshore Activities: The DTA includes the standard article outlined above regarding income and earnings from offshore hydrocarbon exploration and exploitation activities, and gains derived from associated assets.

Latvia

Like Lithuania, Latvia did not adopt the 1982 Cyprus–USSR DTA when it became independent, and there is currently no DTA in force between Cyprus and Latvia. Negotiations on a DTA began in 2006 and now appear to be in the final stages, as the Latvian authorities have recently published the text of the final draft agreement.

The agreement closely follows the latest OECD Model Convention but also includes provisions from the 2011 United Nations Model Double Taxation Convention between Developed and Developing Countries. The key features are as follows:

Dividends, Interest And Royalties: Dividends, interest and royalties paid by a company resident in one contracting state to a resident of the other are subject to zero tax in the contracting state from which they originate as long as the beneficial owner of the dividend, interest or royalty (as the case may be) is a company (but not a partnership) resident in the second contracting state. If this is not the case, tax payable in the first contracting state is limited to 10 percent of the gross amount in the case of dividends and interest and 5 percent of the gross amount in the case of royalties. As both countries are EU members, the Interest and Royalties Directive and the Parent Subsidiary Directive will also be relevant.

Capital Gains: Gains derived by a resident of one contracting state from the alienation of immovable property situated in the other may be taxed in the contracting state in which the property is situated. Gains on disposal of shares or similar interests in a company or other entity deriving more than 50 percent of its value from immovable property may also be taxed in the contracting state in which the immovable property is situated.

Gains arising from the disposal of immovable or movable property associated with a permanent establishment, or from the disposal of movable property used in connection with the performance of independent personal services, may be taxed in the contracting state in which the permanent establishment is located or the services are performed. Gains derived from the alienation of all other property (including ships or aircraft operated in international traffic) are taxable only in the contracting state in which the alienator is resident.

Offshore Activities: The DTA includes the standard article outlined above regarding income and earnings from offshore hydrocarbon exploration and exploitation activities, and gains derived from associated assets.

Exchange Of Information: The exchange of information article reproduces Article 26 of the OECD Model Convention verbatim, and adds a proviso allowing information received by a contracting state to be used for wider purposes than the determination of tax liabilities if this is allowed under the laws of both states and the competent authority of the state that supplied the information authorizes such wider use. The usual Protocol regarding exchange of information does not appear in the agreement.

Norway

For almost 60 years double taxation avoidance between Cyprus and Norway has been regulated by the 1951 DTA between Norway and the United Kingdom, which was extended in 1955 to include several British colonies, including Cyprus. On becoming independent, most of the newly independent countries negotiated new arrangements, but Cyprus has not done so until now. On February 24, 2014, Cyprus and Norway signed a new DTA, the main provisions of which are as follows:

Dividends: Cyprus does not impose withholding taxes on dividends paid to non-residents. In Norway, dividends paid to non-resident shareholders are generally subject to withholding tax at a rate of 25 percent. The DTA provides for exemption as long as the beneficial owner of the dividend is a company (but not a partnership) resident in the second contracting state holding at least 10 percent of the capital of the company paying the dividend. Otherwise the dividend may be taxed at up to 15 percent. Under the participation exemption in the Norwegian Tax Act, corporate shareholders resident in the EEA may be entitled to a full refund of withholding tax. Cyprus-resident corporate shareholders that do not meet the 10 percent minimum shareholding threshold may therefore be able to obtain repayment by submitting the appropriate application.

Interest And Royalties: Interest and royalties are taxable only in the country in which the recipient is resident, as long as the recipient is the beneficial owner.

Capital Gains: Gains derived by a resident of one contracting state from the alienation of immovable property situated in the other, or from the disposal of immovable or movable property associated with a permanent establishment situated in the other, may be taxed in the contracting state in which the immovable property or the permanent establishment is situated. Gains from the disposal of ships and aircraft used for international traffic are taxable only in the country of residence of the disponor. The same applies to gains on disposal of containers, trailers and related equipment, except insofar as they are used for transporting goods solely within the second contracting state. Gains derived from the disposal of all other property are taxable only in the contracting state in which the disponor is resident. This includes gains on shares in property-rich companies, which may give rise to planning opportunities.

Offshore Activities: The DTA includes the standard article outlined above regarding income and earnings from offshore hydrocarbon exploration and exploitation activities, and gains derived from associated assets.

Exchange Of Information: The exchange of information article reproduces Article 26 of the OECD Model Convention verbatim, and adds a proviso allowing information received by a contracting state to be used for wider purposes than the determination of tax liabilities if this is allowed under the laws of both states and the competent authority of the state that supplied the information authorizes such wider use. The usual Protocol regarding exchange of information does not appear in the agreement.

Switzerland

On July 25, 2014, Switzerland and Cyprus signed the first DTA between the two countries. It closely follows the 2010 OECD Model Convention, with only minor modifications, which are outlined below:

Dividends: The DTA exempts dividends paid by a company resident in one contracting state to a resident of the other from withholding taxes in the contracting state from which they originate as long as the beneficial owner of the dividend is a company (but not a partnership) resident in the second contracting state that has held at least 10 percent of the capital of the company paying the dividend for at least a year without interruption. Article 2 of the Protocol to the agreement makes clear that the shares need not have been held for a year before the dividend is paid, but that the minimum holding period may be completed after the payment of the dividend. Dividends paid to pension funds or to government bodies (including a central bank) in the other contracting state are also exempt. Otherwise the dividend may be taxed at up to 15 percent.

A Swiss-resident company receiving dividends from a Cyprus-resident company is entitled to the same advantages for Swiss tax purposes as if the company paying the dividends were a resident of Switzerland.

Interest And Royalties: Interest and royalties are taxable only in the country in which the recipient is resident, as long as the recipient is the beneficial owner. Cyprus-resident natural persons receiving interest income from Switzerland will be subject to a lower tax charge by disclosing the interest and opting for taxation in Cyprus, rather than imposition of withholding tax in Switzerland under the taxation of savings income agreement between Switzerland and the EU. In any event, the current renegotiation of the taxation of savings income agreement is expected to result in automatic information exchange.

Capital Gains: Gains derived by a resident of one contracting state from the alienation of immovable property situated in the other, or from the disposal of immovable or movable property associated with a permanent establishment situated in the other, may be taxed in the contracting state in which the immovable property or the permanent establishment is situated. Gains from the disposal of ships and aircraft used for international traffic are taxable only in the country of residence of the disponor.

Gains made by a resident of one contracting state from the disposal of shares that directly or indirectly derive more than 50 percent of their value from immovable property situated in the other contracting state may be taxed in that other contracting state, with certain exemptions (for instance for listed shares and group reorganizations). Gains derived from the disposal of all other property are taxable only in the contracting state in which the disponor is resident.

Offshore Activities: The article in the Cyprus–Switzerland DTA dealing with offshore activities is slightly different from the standard article described earlier. It provides that a Swiss-resident enterprise or individual undertaking activities on the continental shelf of Cyprus will be treated as exercising a trade or business in Cyprus through a permanent establishment in Cyprus in respect of the activities concerned, unless the aggregate duration of the activities is no more than 30 days in any 12-month period. The article does not specifically refer to gains on associated assets, but the outcome would be the same, as such assets would fall within the scope of the permanent establishment in Cyprus.

Exchange Of Information: The exchange of information article reproduces Article 26 of the OECD

Model Convention verbatim, and adds a proviso allowing information received by a contracting state to be used for wider purposes than the determination of tax liabilities if this is allowed under the laws of both states and the competent authority of the state that supplied the information authorizes such wider use. The usual Protocol specifying the procedures to be followed is included.

Anti-abuse: As well as the detailed clarifications to various provisions of the agreement outlined in earlier paragraphs, the Protocol introduces an explicit anti-abuse clause, stipulating that the DTA will not apply in cases of abuse.

Conclusion

The new agreements are a valuable updating and extension of Cyprus's network of DTAs. While Iceland's population is small, the country's economic importance is much greater and it is among the highest-developed economies in the world. The Lithuanian and Latvian economies are among the fastest-growing in the EU and the new agreements should help develop economic ties between Cyprus and them. The DTA with Norway was long overdue for revision and its replacement by a modern agreement that specifically deals with offshore hydrocarbon activities will create clarity. Both Switzerland and Guernsey are important financial centers, and Switzerland is the base for many ultra-high net worth individuals with business and personal interests in Cyprus.

It is therefore to be hoped that the remaining steps required to bring all the agreements into effect can be achieved quickly. In the meantime, the Cyprus tax authorities will doubtless follow their normal practice of allowing unilateral relief for taxes paid overseas.