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Corporate Tax - Cyprus

New double taxation agreement between Cyprus and Estonia

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Introduction

The double taxation agreement between Cyprus and Estonia, which was signed on October 15 2012, took another step towards ratification with its approval by the Estonian Parliament on September 25 2013. The Cyprus government ratified the agreement in February 2013.

The agreement will enter into force when the Cyprus and Estonian governments have exchanged formal notifications that the relevant constitutional requirements have been complied with, and its provisions will take effect from the following January 1. Assuming that the final steps are completed before the end of 2013, this will be January 1 2014.

Until the agreement enters into force, the Cyprus tax authorities will normally allow unilateral relief for Estonian tax paid in accordance with their normal practice.

New agreement

Like all of Cyprus's recent double taxation agreements, the new agreement with Estonia follows the latest Organisation for Economic Cooperation and Development (OECD) Model Treaty, in this case the 2010 version. Its main provisions are as follows.

Dividends, interest and royalties
Dividends, interest or royalties paid by a company that is a resident of one country to a resident of the other will be taxable only in the latter country.

Capital gains
Capital gains derived by a resident of one country may be taxed in the country in which the property concerned is situated where it relates to:

- the disposal of immovable property situated in the other country;
- the disposal of shares or comparable interests deriving more than 50% of their value from immovable property situated in the other country; or
- movable property forming part of the business property of a permanent establishment which an enterprise of one country has in the other.

All other gains may be taxed only in the country of residence of the person or company making the disposal.

Elimination method
Double taxation will be eliminated in Cyprus by allowing credit against Cyprus tax payable for any Estonian tax paid. The credit cannot exceed the Cyprus tax payable in respect of the income concerned. In Estonia, double taxation will be eliminated by exemption from Estonian tax of any income which has been taxed in Cyprus. However, any such exempt income may be taken into account in calculating Estonian tax on the taxpayer's other income.

Exchange of information
The article of the Cyprus-Estonia agreement dealing with exchange of information reproduces the corresponding article of the OECD Model Treaty verbatim. It also permits the use of information received by a contracting state for purposes beyond the assessment of tax, subject to this being legal under the laws of both states and subject to the consent of the competent authority of the state providing the information.

A protocol to the agreement requires the country making the request for information to provide further particulars in order to demonstrate the foreseeable relevance of the information requested, including:

- 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 tax authorities to whom the request is addressed, or is in the possession or under the control of a person within their jurisdiction;
- the name and address of any person who may hold the information requested, if known;
- a declaration that the provision of such information is in accordance with the legislation and the administrative practices of the requesting state (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
- proof that the requesting state has exhausted all practical means available in its own territory to obtain the information.

These requirements effectively rule out fishing expeditions based merely on suspicion.

Comment

Since Estonia did not apply the 1982 double tax treaty between Cyprus and the former Soviet Union, this is the first double tax treaty ever concluded between the two countries. Estonia, like Cyprus, is among the world's smaller states, but it has a dynamic economy with a high number of start-ups and numerous businesses in the technology sector. The new agreement provides an opportunity to increase business and investment between the two countries.

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