Cyprus

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TAX AUTHORITIES

1. What are the main authorities responsible for enforcing taxes on corporate transactions in your jurisdiction?

There are two relevant departments within the Ministry of Finance:

- The Inland Revenue Department (IRD) administers direct taxation (broadly, income tax, corporation tax, capital gains tax (CGT) and special defence contribution (SDC)) and stamp duty. Tax collection is organised through district offices.
- The Department of Customs and Excise administers VAT through the VAT Service. Day-to-day VAT collection and administration is organised through district offices.

2. Is it possible to apply for tax clearances or obtain guidance from the tax authorities before completing a corporate transaction? If yes, provide brief details, including whether clearance or guidance is binding.

There is no statutory or formal extra-statutory clearance procedure. However, by convention, the Director of the IRD will provide written replies on the interpretation of the taxation statutes and, provided the enquiry fully discloses all relevant facts, such replies are potentially binding on the IRD as a matter of public law.

MAIN TAXES ON CORPORATE TRANSACTIONS

3. What are the main transfer taxes and/or notaries' fees potentially payable on corporate transactions? In relation to each tax/fee identified, explain briefly:

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

Stamp duty

Stamp duty is a tax on documents similar to UK stamp duty. A stampable document (broadly, a contract, wherever created or executed, governing a transaction relating to property in Cyprus or anything done in Cyprus) which is not stamped with the correct amount of duty paid cannot be adduced in evidence in court without payment of the duty and appropriate penalty.

The stampable contracts most frequently encountered in corporate transactions include:

- Share purchase agreements.
- Asset purchase agreements.
- Joint venture agreements.
- Subscription and shareholder agreements.
- Debentures.

Stamp duty is levied at progressive rates on successive tranches of the consideration stated on the face of the contract as follows:

- Up to EUR170,860 (about US$237,000): 0.15%.
- Over EUR170,860: 0.2%.
- No fixed consideration stated: EUR34.17 (about US$48).

The total liability is capped at EUR17,086 (about US$24,000).

Stamp duty can be paid by any party wishing to enforce the relevant document but is most commonly borne by the buyer.

Stock transfer fees

Stock transfer fees are payable by corporate entities selling shares quoted on the Cyprus Stock Exchange (CSE) at a rate of 1% of sale proceeds.

Land transfer fees

Land transfer fees are payable by a corporate buyer or donee of real property in Cyprus when title deeds are issued by the Department of Land and Surveys.

Land transfer fees are charged at progressive rates on successive tranches of the acquisition price (or market value of gifts) as follows:

- Up to EUR85,430 (about US$118,000): 3%.
- EUR85,430 to EUR170,860: 5%.
- Over EUR170,860: 8%.

4. What are the main corporate and/or capital gains taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

Overview

In general, the taxation payable by companies in Cyprus on typical corporate transactions is confined to transfer and other indirect taxes.

Corporation tax may arise on the sale of goodwill and intellectual property rights (IPRs) and CGT may arise on the sale of Cyprus immovable property (whether directly or indirectly on the sale of shares in a property holding company).

An overview of the taxation of companies is provided below for completeness.

Corporation tax

A company is resident in Cyprus if it is managed and controlled in Cyprus.

Corporation tax is assessed by reference to the calendar year at a flat rate of 10%, on the worldwide taxable profit of a company resident in Cyprus and on the Cyprus-source profits of non-resident companies with a permanent establishment (PE) in Cyprus.

Taxable profits include:

- Trading profit, which includes profits from the sale of:
  - goodwill;
  - IPRs;
  - work in progress;
  - stock;
- Interest earned within the ordinary course of business.
- Rents from real estate.
- Royalties.

The major reliefs available are:

- Expenditure wholly and exclusively incurred in earning the taxable income.
- Capital allowances.
- Credits for foreign tax paid.
- Losses surrendered in the same year by other companies in a 75% group relationship.
- Unused losses brought forward from previous years.

No corporation tax is payable by a company in respect of:

- Profits or gains from the sale of securities (widely defined).
- Dividend income (which is generally exempt from all tax in Cyprus but may be subject to 15% SDC, *see below, SDC*).
- Interest received outside the ordinary course of business of the company (which is subject to SDC at 10% of the gross amount, *see below, SDC*).
- Capital gains (*but see below, CGT on disposals of immovable property*).

A favourable tax regime is available to shipping and ship management companies under which tax liabilities are calculated by reference to revenues or tonnage of vessels, at the taxpayer's option.

SDC

SDC is imposed on Cyprus residents only and does not affect PEs of foreign residents.

Dividends. While dividend income of individual Cyprus residents is charged to SDC at 15%, companies are exempt from this charge unless either:

- The dividend income is paid by a non-resident company bearing a significantly lower tax burden than that imposed in Cyprus (in practice, 5% or below), more than 50% of the activities of which result directly or indirectly in passive investment income (the controlled foreign companies rules). Note that these rules can be triggered on the distribution to a Cyprus company of the proceeds of sale of a trading subsidiary by a subordinate holding company which has avoided tax on the disposal by means of a local participation exemption.
- A Cyprus-resident company fails to distribute at least 70% of its net distributable profits within two years of the end of the year in which this profit was earned. In this case, its Cyprus-resident shareholders are deemed to receive their proportionate share of the dividend, which is charged to SDC at 15% (or 3% in the case of collective investment schemes), withheld and accounted for by the company. This charge can be avoided by ensuring the company does distribute 70% of its income within the two year timeframe.

Interest outside the ordinary course of business. Interest received outside the ordinary course of business of the company is subject to SDC at 10% on the gross amount of interest received. It is therefore advisable to ensure that a company lends money only within the ordinary course of its business, which is accepted to include the capitalisation of subsidiaries by holding and finance companies.

CGT on disposals of immovable property

CGT is imposed at 20% on all gains (regardless of the residence of the disponor) from both:

- Disposals of immovable property situated in Cyprus.
- Disposals of shares of companies holding immovable property situated in Cyprus (charged on the appropriate portion of the gain).

Capital losses can be carried forward.

5. What are the main value added and/or sales taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

Value added tax (VAT)

Since accession to the EU, Cyprus has levied VAT on supplies of goods and services at a standard rate of 15% (the lowest standard rate in the EU except for Madeira). Zero and reduced rates are also applicable to certain transactions.

VAT is administered on broadly the same principles across the EU member states, and is consequently potentially chargeable on the sale of assets, subject to the exemption for transfers of a going concern.

Sales of shares are generally exempt supplies and, as such, no input tax incurred on related costs such as professional fees can be recovered. However, following the ECJ decision in *Kretztechnik AG v Finanzamt Linz* (*Case C-465/03*), input tax incurred in connection with the issue of shares is generally recoverable.

6. Are any other taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

Capital duty

Capital duty is payable at 0.6% of the authorised share capital of a Cyprus-registered company, both on incorporation and on any increase in authorised share capital.

Capital duty can be mitigated by creating shares at a lower nominal value and higher premium.

7. In what circumstances will the taxes identified in *Questions 3* to *6* be applicable to foreign companies (in other words, what "presence" is required to give rise to tax liability)?

Indirect taxes

Non-residents are generally liable for indirect taxes in Cyprus (*see Question 3, Stamp duty* and *Land transfer fees,* and *see Question 5*).

Direct taxes

A non-resident company is liable to corporation tax on:

- Rents from immovable property in Cyprus.
- Business profits attributable to a PE in Cyprus (*see below*).
- Profits on the sale of goodwill.

A non-resident company is generally treated as having a PE in Cyprus if it maintains a fixed place of business or management or has a dependent agent acting on its behalf in Cyprus.

No PE will be created by an independent agent acting within the ordinary course of its business or a representative office of a non-resident company.

A non-resident company is also liable to:

- CGT on gains arising from the disposal of immovable property in Cyprus.
- Capital duty in the case of a Cyprus-registered non-resident company.

A non-resident company is not liable to SDC.

DIVIDENDS

8. Is there a requirement to withhold tax on dividends or other distributions? If yes, provide brief details.

SDC (*see Question 4, SDC*) is withheld at 15% by Cyprus companies on dividends paid to Cyprus-resident shareholders.

There is no withholding requirement on dividends paid to non-residents.

SHARE ACQUISITIONS AND DISPOSALS

9. What taxes are potentially payable on a share acquisition/ share disposal?

Stamp duty

This is payable on a share purchase agreement or other contracts relating to the disposal of shares in a Cyprus company (*see Question 3, Stamp duty*).

Stock transfer fees

This is payable on the disposal of CSE-listed shares (*see Question 3, Stock transfer fees*).

CGT

If the target company owns immovable property in Cyprus, CGT will be payable on any gain attributable to the property (*see Question 4, CGT on disposals of immovable property*) unless reorganisation relief is available (*see Question 26*).

10. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

The CGT potentially payable on the sale of shares in a target company holding immovable property in Cyprus, as well as stamp duty charges, are relieved in full if the transfer takes place as part of a reorganisation (*see Question 26*).

11. Please set out the tax advantages and disadvantages of a share acquisition for the buyer.

Advantages

Historic losses are carried forward in the target company to reduce future taxable profits.

No VAT arises on the sale of shares.

Disadvantages

Among the liabilities of the target company acquired, the buyer may inherit undisclosed tax liabilities.

12. Please set out the tax advantages and disadvantages of a share disposal for the seller.

Advantages

The exemption from corporation tax in respect of transactions in securities (*see Question 4, Corporation tax*) shields the seller from tax on the profit arising on the sale of goodwill and IPR.

Disadvantages

Capital losses incurred on the disposal of shares cannot be used.

13. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

The Cyprus tax code is intentionally straightforward and the approach of the tax authorities is generally favourable to taxpayers.

Consequently, structuring in transactions involving Cyprus companies (which almost invariably feature a cross-border element) typically focuses on the tax codes of other relevant jurisdictions.

ASSET ACQUISITIONS AND DISPOSALS

14. What taxes are potentially payable on an asset acquisition/ asset disposal?

Stamp duty

This is payable on asset purchase agreements and other relevant documents (*see Question 3, Stamp duty*).

Land transfer fees

This is payable on the acquisition of immovable property in Cyprus (*see Question 3, Land transfer fees*).

Corporation tax

Intangible assets. A seller is potentially subject to corporation tax on gains from the disposal of goodwill and intellectual property. The gain on goodwill is computed by deducting the cost from the disposal proceeds. Profits from the disposal of intellectual property are treated as trading income for corporation tax purposes.

Capital allowances balancing charge. If the consideration attributed to an asset on the disposal of a business exceeds its tax written down value after deduction of capital allowances (*see Question 15*), the excess is subject to corporation tax in the hands of the corporate seller.

Stock and work in progress. Sums from the disposal of trading stock or work in progress are treated as trading income for corporation tax purposes, in the hands of the corporate seller.

Trade debtors. If the amounts subsequently collected from trade debts exceed the price paid for those debts, the excess is treated as profit chargeable to corporation tax in the hands of the buyer of the debts.

Foreign company PE. A foreign company PE is liable to pay corporation tax on gains arising on the disposal of assets used in carrying out its trade.

Transfer pricing. Cyprus operates a basic transfer pricing regime, which adjusts the profits of a business to include profits which would otherwise have accrued to it had arrangements with its connected parties been made at arm's length.

CGT

This is payable on any gain arising from the disposal of immovable property in Cyprus or shares in companies holding such property (*see Question 4, CGT on disposals of immovable property*).

VAT

VAT is generally chargeable on a supply of business assets, unless the disposal is a transfer of a business as a going concern (*see Question 5*).

Other taxes

Capital duty is chargeable on any increase in authorised share capital to allow the issue of consideration shares (*see Question 6*).

15. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

Corporation tax

Reorganisation relief. Taxes arising on a sale of assets to a company in exchange for the issue of shares can potentially be relieved in full (*see Question 26*).

Capital allowances. A buyer of business assets is entitled to annual capital allowances of:

- 10% or up to 25% on qualifying expenditure on certain IT equipment, plant and machinery.
- 4% for industrial buildings from first use of the building.
- 3% for commercial buildings.

Capital allowances are claimed on a straight-line basis.

Accounting amortisation tax relief. A buyer who is within the charge to Cyprus corporation tax (including a foreign company PE) can claim relief on the acquisition cost of second-hand cargo and passenger ships.

Capital allowances balancing allowance. If the consideration attributed to an asset on the disposal of a business is less than its tax written down value (*see above*), the shortfall can be offset against the seller's trading income to reduce its corporation tax.

Trading stock. A tax deduction may be available to a buyer for sums paid for stock, provided such stock is appropriated to its trading stock.

Allowable losses. Current year, surrendered and carried-forward losses can be offset against income arising on the sale of a business, provided neither the ownership of the company nor the nature of the trade have significantly changed. Current year and brought-forward CGT losses can be offset against a capital gain from the disposal of real estate in Cyprus as part of the business.

Asset base cost step up. As the buyer effectively acquires a market value base cost in the taxable assets, the profits from a subsequent disposal of the asset are computed by reference to the increase in value after the business acquisition.

VAT

If a corporate seller transfers its business or part of it as a going concern to a buyer intending to use the assets to carry on the same kind of business, the supply generally falls outside the scope of VAT. Further, the land and building element of such a sale is outside the scope of VAT (*see Question 3*).

16. Please set out the tax advantages and disadvantages of an asset acquisition for the buyer.

Advantages

Key advantages of an asset purchase arise when significant allowances are available as follows:

- Capital allowances and depreciation relief for the cost of assets purchased.
- The immediate tax deduction of any amount paid for stock.
- The potential acquisition of a market value base cost.

Disadvantages

Trading losses are not automatically transferred with the business and assets.

17. Please set out the tax advantages and disadvantages of an asset disposal for the seller.

Advantages

An asset sale may allow a seller to:

- Use carried forward corporation tax and CGT losses.
- Trigger balancing allowances.
- Take advantage of a dividend exemption on extraction of the profits of sale.

Disadvantages

An asset sale can trigger several tax charges in the hands of the seller (*see Question 14*) which do not typically arise on a share sale.

18. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

Where the commercial rationale for an asset sale is the need to sell a branch or discrete profit centre, the potential tax charges on an asset sale (*see Question 14*) can often be avoided, by hiving the relevant assets down to a newly formed subsidiary in exchange for the issue of consideration shares which are then sold.

Careful planning is required to ensure the hive-down qualifies for reorganisation relief (*see Question 26*) and general anti-avoidance rules are not used to recharacterise the transaction as an asset sale.

LEGAL MERGERS

19. What taxes are potentially payable on a legal merger?

Stamp duty

This is payable on contracts documenting a merger (*see Question 3, Stamp duty*).

Land transfer fees

These are payable on transfer of immovable property in Cyprus (*see Question 3, Land transfer fees*).

Corporation tax

This is potentially payable in relation to transfers of assets (*see Question 14*).

CGT

This is payable on any gain arising from the disposal of immovable property in Cyprus or shares in companies holding such property (*see Question 4, CGT on disposals of immovable property*).

VAT

VAT is generally chargeable on a supply of business assets, unless the disposal is a transfer of a business as a going concern (*see Question 5*).

Other taxes

Capital duty is chargeable on any increase in authorised share capital to allow the issue of consideration shares (*see Question 6*).

20. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

Reorganisation relief from CGT, corporation tax and stamp duty is available, provided the merger falls within the statutory definition of reorganisation (*see Question 26*).

21. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

Structures should be carefully planned to take advantage of reorganisation relief (*see Question 26*).

JOINT VENTURES

22. What taxes are potentially payable on establishing a joint venture company (JVC)?

Stamp duty

This is payable on the joint venture agreement (*see Question 3, Stamp duty*).

Land transfer fees

These are payable on transfer of immovable property in Cyprus (*see Question 3, Land transfer fees*).

Corporation tax

This is potentially payable in relation to transfers of assets (*see Question 14*). Transfer pricing adjustments may be made (*see Question 14*).

CGT

This is payable on any gain arising from the disposal of immovable property in Cyprus or shares in companies holding such property (*see Question 4, CGT on disposals of immovable property*).

VAT

VAT is generally chargeable on a supply of business assets, unless the disposal is a transfer of a business as a going concern (*see Question 5*).

Other taxes

Capital duty is chargeable on any increase in authorised share capital to allow the issue of consideration shares (*see Question 6*).

23. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

The scope for reducing taxation on the formation of the JV is limited. However, if part of the transaction can be structured to fall within a defined reorganisation, reorganisation relief from CGT, corporation tax and stamp duty will be available (*see Question 26*).

VAT will not be chargeable on transfer of a business as a going concern.

Capital duty can be mitigated by creating shares at a lower nominal value and higher premium.

24. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

See *Question 23*.

COMPANY REORGANISATIONS

25. What taxes are potentially payable on a company reorganisation?

Stamp duty

This is payable on contracts documenting the transaction (*see Question 3, Stamp duty*).

Land transfer fees

This is payable on the transfer of immovable property in Cyprus (*see Question 3, Land transfer fees*).

Corporation tax

This is potentially payable in relation to transfers of assets (*see Question 14*).

CGT

This is payable on any gain arising from the disposal of immovable property in Cyprus or shares in companies holding such property (*see Question 4, CGT on disposals of immovable property*).

VAT

VAT is generally chargeable on a supply of business assets, unless the disposal is a transfer of a business as a going concern (*see Question 5*).

Other taxes

Capital duty is chargeable on any increase in authorised share capital to allow the issue of consideration shares (*see Question 6*).

26. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

Reorganisation relief is available to allow the following transactions to take place in a broadly tax-neutral manner, with exemption from corporation tax and stamp duty:

- **Merger.** This involves:
  - transfer on dissolution of all assets and liabilities from one company to another;
  - transfer by two companies to a third company, in exchange for the issue of shares (and limited cash amount); or
  - transfer on dissolution of all assets and liabilities to a 100% parent, without the transferring company or companies going into liquidation.
- **Demergers.** Transfer on dissolution of all assets and liabilities by a company to two or more companies, in exchange for the pro-rata issue of shares to the members of the transferring company.
- **Transfer of assets.** Transfer of any number of discrete branches, divisions or other profit centres to another company, in exchange for the issue of shares to the transferring company.

- **Exchange of shares.** Acquisition of a majority voting stake in a company, in exchange for the issue of shares in the acquiring company.

A disposal of shares or conversion of securities is generally exempt from corporation tax.

27. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

See *Question 26*.

RESTRUCTURING AND INSOLVENCY

28. What are the key tax implications of the business insolvency and restructuring procedures in your jurisdiction?

Business insolvency and restructuring procedures have relatively few tax implications.

On dissolution of a Cyprus-resident company, other than as part of a reorganisation (*see Question 26*), its Cyprus-resident shareholders are liable to account for SDC at 15% on a deemed distribution, consisting of the cumulative profits of the previous five years which have neither been distributed nor previously deemed distributed. For collective investment schemes the SDC rate is reduced from 15% to 3%.

SHARE BUYBACKS

29. What taxes are potentially payable on a share buyback?

SDC

Cyprus corporate law allows public companies to redeem preference shares and repurchase up to 10% of their own issued shares out of distributable profits, or to return capital to shareholders under a court approved capital reduction.

When capital is returned to a Cyprus-resident shareholder in a capital reduction, this gives rise to a deemed distribution chargeable to SDC at 15%, relating to amounts returned or due to shareholders up to the amount of undistributed taxable income of any previous or current tax year (before carried forward losses but net of previous deemed distributions) (*see Question 4*). (For redemption of units in collective investment schemes the SDC rate is reduced from 15% to 3%.)

30. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

Not applicable.

31. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

Not applicable.

PRIVATE EQUITY FINANCED TRANSACTIONS: MBOs

32. What taxes are potentially payable on a management buyout (MBO)?

The taxes payable on a standard share or asset sale apply equally to MBOs (*see Questions 9 to 18*).

The personal income tax position of managers receiving equity incentives requires careful planning.

33. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.

Cyprus has no thin capitalisation rules. Although there is scope for challenging excessive interest deductions under the transfer pricing regime (*see Question 14*), in practice adjustments are made only to artificially high interest rates on debt finance.

There is significant scope in Cyprus to reduce or eliminate tax in the MBO vehicle and potentially to surrender losses to the target company by group relief.

34. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.

As MBOs using Cyprus companies typically feature a cross-border element, structuring in transactions involving Cyprus companies focuses on the tax codes of other relevant jurisdictions.

REFORM

35. Please summarise any proposals for reform that will impact on the taxation of corporate transactions.

There are no current reform proposals that will impact on the taxation of corporate transactions.

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Corporate Q&A

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With more than one hundred and twenty professionals in Cyprus and mainland Europe, our mission is to provide international clients with service of the highest international standards. We value diversity and our staff speak most major European languages. All are fluent in English.

We specialise in cross-border work and have the scale and depth of resources required to handle complex international assignments in demanding timescales. Our international tax planning specialists have unrivalled expertise and experience in devising optimal finance and holding structures in connection with international tax planning exercises and cross-border investments.

We recognise that each of our clients is unique, with particular business concerns, and we exercise a personal commitment to all our clients to understand their objectives rapidly and effectively and to expedite solutions by means of clear and practical legal advice and action.

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