

## Corporate Tax - Cyprus

### New double tax agreement between Cyprus and Guernsey

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#### **Introduction**

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

The new agreement closely follows the 2010 Organisation for Economic Cooperation and Development (OECD) Model Convention, with only minor modifications, and the protocol to the agreement clarifies the information exchange provisions. The key provisions of the double tax agreement and protocol are summarised below.

#### **Taxes covered**

The agreement covers all taxes on income and capital levied by either party or any of its sub-divisions or local authorities, including taxes on capital appreciation and on gains from the alienation of movable or immovable property.

#### **Business profits**

The profits of an enterprise are taxable only by the contracting party in whose territory it is resident, unless it carries on business in the territory of the other party through a permanent establishment there, in which case the profit attributable to the permanent establishment may be taxed by the contracting party in whose territory it is located.

#### **International shipping and transport**

Profits of an enterprise from the operation of ships or aircraft (including income from containers, trailers and related equipment) in international traffic are taxable only by the contracting party in whose territory the enterprise is resident. If the place of effective management of a shipping enterprise is aboard a ship, it will be deemed to be situated in the contracting party in whose territory the home harbour of the ship is situated or, if there is no such home harbour, in the party in whose territory the operator of the ship is a resident.

#### **Dividends**

Dividends paid by a resident of one contracting party to a resident of the other are taxable only by the second contracting party.

## **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 the imposition of retention tax in Guernsey under the 2004 agreement on the taxation of savings income.

## **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 permanent establishment is situated.

Gains derived from the disposal of all other property are taxable only by the contracting party of residence of the disponor.

## **Offshore activities**

Like other recent Cyprus double tax agreements, the Cyprus-Guernsey agreement includes an article dealing specifically with offshore activities. It provides that a resident of one contracting party undertaking activities in the territory (including the territorial sea or exclusive economic zone) of the other will be treated as exercising a trade or business in the latter territory through a permanent establishment there in respect of the activities concerned, unless the aggregate duration of the activities is no more than 30 days in the fiscal year concerned. Associated companies are treated as one for the purpose of assessing the duration of their activities.

Gains derived by a resident of one contracting party from the alienation of exploration or exploitation rights or property used in connection with the exploration or exploitation of the seabed situated in the territory of the other contracting party may be taxed by the contracting party in whose territory the rights or property are located. The same applies to shares that derive the greater part of their value directly or indirectly from such rights or property.

## **Elimination of double taxation**

Elimination of double taxation is achieved by the credit method. In relation to income or capital that is exempt pursuant to other provisions of the agreement, the contracting party in which the recipient is resident may take into account the exempt income or capital when calculating the tax liability of the recipient (exemption with progression).

## **Mutual agreement procedure**

The double tax agreement reproduces the corresponding provisions of the OECD Model Convention, except that it does not include any arbitration procedure to settle issues that cannot otherwise be resolved.

## **Exchange of information**

The exchange of information article reproduces Article 26 of the OECD Model Convention verbatim.

However, the protocol to the double tax agreement provides robust safeguards against abuse of the information exchange provisions by requiring the contracting party that requests information to fulfil specified procedures to demonstrate the foreseeable relevance of the information to the request. No request is to be submitted unless the party making the request has reciprocal procedures and means of obtaining similar information, and every request must be accompanied by the following details in writing:

- the identity of the person under examination or investigation;
- the period covered by the request;
- the nature of the information sought and the form in which the requesting party wishes to receive it;
- the tax purpose for which the information is sought;
- the reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the party requesting it, with respect to the named person;
- the grounds to believe that the information requested is held or in the possession or control of, or obtainable by, a person within the jurisdiction of the recipient of the request;

- to the extent known, the name and address of anyone believed to be in possession of or able to obtain the requested information;
- a statement that:
  - the request conforms with the law and administrative practices of the party requesting it;
  - if the requested information were within its jurisdiction, the requesting party would be able to obtain it under its laws or in the normal course of administrative practice; and
  - the request conforms with the double tax agreement; and
- a statement that the contracting party requesting the information has pursued all reasonable means available in its own territory to obtain the information.

In effect, this means that the authorities requesting the information must already have a *prima facie* case before they request the information and must make a reasoned request for disclosure.

These provisions are in line with the robust safeguards against abuse of exchange of information provisions contained in Cyprus's Assessment and Collection of Taxes Law. Requests for exchange of information are dealt with by a specialist unit and informal exchange of information by tax officers bypassing the competent authority is prohibited. A request must be much more than a brief email containing the name and identifying information of the individual concerned. Rather, a detailed case must be made, with the criteria set out in a formal reasoned document. In effect, this means that the authorities requesting the information must have a strong case even before they request the information. As a final safeguard, the written consent of the attorney general must be obtained before any information is released to an overseas tax authority.

### Entry into force and termination

The agreement will enter into force when the two governments inform one another that the requisite constitutional procedures have been completed. Its provisions will have effect in the territory of both contracting parties from the beginning of the following year.

Termination of the agreement will require written notice by either party at least six months before the end of any calendar year, whereupon the agreement will cease to have effect from the beginning of the following year. Notice may be given only once the agreement has been in force for five years.

### Comment

Guernsey is among the world's most important financial centres and the double tax agreement will be a valuable addition to Cyprus's extensive treaty network. It is hoped that the remaining steps required to bring the new agreement will be completed soon.

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