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GLOBAL TAX WEEKLY
a closer look

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Global Tax Weekly – A Closer Look

Using the unrivalled worldwide multi-lingual research capabilities of leading law and tax publisher Wolters Kluwer and its new acquisition BSI (The Lowtax Network), CCH publishes Global Tax Weekly — A Closer Look (GTW) as an indispensable up-to-the-minute guide to today's shifting tax landscape for all tax practitioners and international finance executives.

Topicality, thoroughness and relevance are our watchwords: BSI's network of expert local researchers covers 130 countries and provides input to a US/UK team of editors outputting 100 tax news stories a week. GTW highlights 20 of these stories each week under a series of useful headings, including industry sectors (e.g. manufacturing), subjects (e.g. transfer pricing) and regions (e.g. asia-pacific).

Alongside the news analyses are a wealth of feature articles each week covering key current topics in depth, written by a team of senior international tax and legal experts and supplemented by commentative topical news analyses. Supporting features include a round-up of tax treaty developments, a report on important new judgments, a calendar of upcoming tax conferences, and "The Jester's Column," a light-hearted but merciless commentary on the week's tax events.

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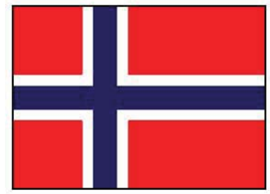
The New Cyprus–Norway Double Taxation Agreement

by Philippos Aristotelous and Stavros Supashis, Andreas Neocleous & Co LLC, Cyprus



On February 24, 2014, Cyprus and Norway signed a new double taxation agreement. Until now the avoidance of double taxation between the two countries has been regulated by the 1951 agreement between Norway and the United Kingdom, which was extended in 1955 to include several British colonies of the time, including Cyprus. On gaining independence, most of the newly independent countries negotiated new arrangements, but Cyprus has not done so until now. The existing arrangement will continue in effect until the new agreement enters into force.

The new agreement closely follows the 2010 OECD Model Convention, with only minor modifications. The most important are outlined in the following paragraphs.

Taxes covered

The agreement covers all taxes on income, including taxes on capital appreciation and on gains from the alienation of movable or immovable property. The specific taxes to which it applies are, in the case of Cyprus:

- income tax;
- corporate income tax;
- Special Contribution for Defence (commonly referred to as SDC tax); and
- capital gains tax.

The Norwegian taxes covered by the agreement are:

- the national tax on income (*inntektsskatt til staten*);
- the county municipal tax on income (*inntektsskatt til fylkeskommunen*);
- the municipal tax on income (*inntektsskatt til kommunen*);
- the national tax relating to income from exploration for and exploitation of submarine petroleum resources and activities and work relating thereto, including pipeline transport (*skatt til staten vedrørende inntekt i forbindelse med undersøkelse etter og utnyttelse avundersjøiske petroleumsforekomster og dertil knyttet virksomhet og arbeid, herunder rørledningstransport av utvunnet petroleum*); and
- the national tax on remuneration to non-resident artistes (*skatt til staten på honorar til utenlandske artister*).

The agreement will also apply to any identical or substantially similar taxes that are imposed in future in addition to, or in place of, the existing taxes.

Residence

The new agreement reproduces the provisions of the OECD Model regarding residence, and adds a further stipulation that if the competent authorities of the two countries cannot reach agreement on the country in which a person other than an individual is resident, then the person will not be entitled to claim any of the benefits provided under the agreement, apart from those set out in articles 22 (elimination of double taxation), 23 (non-discrimination) and 24 (access to the mutual agreement procedure).

Permanent Establishment

The new agreement contains the same list of ancillary activities that *prima facie* do not give rise to a permanent establishment as appears in the OECD Model, including storage and display of goods, maintenance of stocks for processing by a third party, a purchasing or information-gathering facility, or a facility for preparatory or auxiliary purposes.

A building site, a construction, assembly or installation project, or a supervisory or consultancy activity connected with it will be deemed to be a permanent establishment if it lasts for more than 12 months. However, if an enterprise of one country performs services in the second country for more than 183 days in any 12 month period through an individual or a group of individuals who are present in the second country, and who are in its employment or are under its control or supervision, the activities will be deemed to be carried on through a permanent establishment in the second country, unless they qualify for exclusion due to being solely of an ancillary nature (*e.g.*, storage or display facilities, information-gathering facility).

If an enterprise has a representative in a contracting state, that has, and habitually exercises, authority to conclude contracts in the name of the enterprise, the enterprise concerned is deemed to have a permanent establishment in respect of any activities which the person undertakes for the enterprise. As in the OECD Model, the draft provides that an independent broker or agent that represents the enterprise in the ordinary course of business will not be caught by this provision. Particular care needs to be taken regarding the issuing of general powers of attorney so as not to risk unintentionally creating a permanent establishment, with potential adverse consequences.

Income From Immovable Property

As in the OECD Model, income from immovable property may be taxed in the contracting state where the property is situated.

Business Profits

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

The agreement follows the OECD Model as regards the apportionment of profits to permanent establishments.

International Shipping And Transport

Profits of an enterprise from the operation of ships or aircraft in international traffic are taxable only in the contracting state in which the enterprise is resident. The same applies to income from containers, trailers and related equipment, except insofar as they are used for transporting goods solely within the other contracting state.

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. Under the new agreement, dividends 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 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 of 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, provided that 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 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.

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 agreement includes an article dealing specifically with offshore activities. It provides that a resident of one contracting state undertaking activities offshore (either on its own account or with associated enterprises) in the other contracting state for more than 30 days in any 12 month period in connection with the exploration or exploitation of the seabed or subsoil or their natural resources is deemed to be carrying on business in that other contracting state through a permanent establishment.

Profits from offshore supply and transport operations in connection with the exploration or exploitation of the seabed or subsoil or their natural resources of a contracting state are taxable only in the contracting state in which the enterprise providing the services is resident.

Salaries, wages and the like earned by a resident of one contracting state from employment in the offshore zone of the other contracting state are taxable in the contracting state in which the activities are carried out. However, if the employer is not resident in the contracting state in which the activities take place, and the employment is for less than 30 days in any 12 month period, the remuneration is taxable only in the contracting state in which the individual is resident.

Salaries, wages and similar remuneration derived from employment aboard ships or aircraft engaged in offshore supply and similar activities may be taxed in the contracting state in which the enterprise providing the services is resident.

Gains derived by a resident of one contracting state from:

- the alienation of exploration or exploitation rights (the term is defined in the article); or
- property situated in the other contracting state and used in connection with the exploration or exploitation of the seabed or subsoil or their natural resources situated in the second contracting state; or
- shares deriving their value or the greater part of their value directly or indirectly from such rights or such property,

may be taxed in the second contracting state.

Elimination Of Double Taxation

Elimination of double taxation is achieved by the credit method. The credit against tax is limited to that part of the income tax as computed before the deduction is given that is attributable to income that is subject to tax in the other contracting state.

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 (i) this is allowed under the laws of both states, and (ii) the competent authority of the state that supplied the information authorizes such wider use.

Cyprus's Assessment and Collection of Taxes Law provides robust safeguards against abuse of any exchange of information provisions. Requests for exchange of information are dealt with exclusively 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. 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 already have a strong case even before they request the information, and it will not be possible to undertake "fishing expeditions" without first gathering significant evidence. 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, apart from those relating to assistance in collection of taxes, will have effect in both contracting states from the beginning of the following year. The provisions relating to assistance in collection of taxes will only take effect once Cyprus confirms to Norway that Cyprus is able to provide assistance in collection of taxes.

Termination of the agreement will require written notice by either contracting state given 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 cannot be given until the agreement has been in force for at least five complete calendar years.

Conclusions

The current double taxation agreement with Norway is Cyprus's oldest by far, and was long overdue for revision. Its replacement with a modern agreement that specifically deals with offshore hydrocarbon activities will create clarity and remove uncertainty, and it is hoped that the remaining steps required to bring the new agreement into effect can be achieved quickly.