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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 Double Taxation Agreement Between Cyprus And The United Arab Emirates

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

On February 27, 2011, Cyprus and the United Arab Emirates (UAE) signed a double taxation agreement, the first between the two countries. The agreement took effect from January 1, 2014.

In the following paragraphs we summarize and analyze its key provisions. For the most part the agreement follows the latest OECD Model Convention verbatim and so our main focus is on departures from that standard.

Scope Of The Agreement

The agreement applies to persons who are residents of one or both of the contracting states and to taxes on income imposed on behalf of a contracting state or of its political subdivisions or local authorities.

In the case of the UAE, the taxes covered are the income tax and the corporate tax. In the case of Cyprus, the agreement covers income tax, corporate tax, Special Contribution for the Defence of the Republic (SDC tax) and capital gains tax.

Hydrocarbons

Cyprus's latest double taxation agreements, including those with Norway and Latvia, have included comprehensive provisions regarding revenues from offshore hydrocarbon activities based on the OECD Model. The Cyprus-UAE agreement merely provides that the contracting states' freedom to apply their domestic laws and regulations related to the taxation of income and profits derived from hydrocarbons and associated activities is not affected by the agreement.

Residence

The provisions on residence reproduce those of the OECD Model verbatim, with residence being determined in accordance with the place of effective management, apart from specifying that companies that are incorporated in the UAE are defined as being resident there, and that the term "resident" extends to any central or local government body or institution of either contracting state.

Permanent Establishment

Article 5 of the agreement reproduces the OECD Model apart from making clear for the avoidance of doubt that an offshore drilling site may constitute a permanent establishment. Activities must have a duration of 12 months (as in the OECD Model) to constitute a permanent establishment.

Business Profits

Article 8 of the agreement elaborates the corresponding provisions of the OECD Model regarding taxation of profits and determination of the profits of a permanent establishment (*e.g.*, providing that profits may be determined by a formula and that the method of determination should be consistent from year to year), but otherwise the article follows the OECD Model.

Shipping And Air Transport

The OECD Model provides that profits from international shipping or air transport are taxable only in the contracting state in which the place of effective management of the enterprise is situated. Article 9 of the Cyprus–UAE agreement provides that such profits are taxable only in the contracting state of the enterprise concerned, which is defined in Article 4 as the contracting state in which the enterprise is resident. Since, as noted above, companies incorporated in the UAE are considered to be resident there, profits of a UAE-incorporated company would generally be taxable in the UAE, regardless of the locus of management and control.

Dividends, Interest And Royalties

Dividends, interest and royalties are taxable only in the contracting state in which the recipient is resident. There is no requirement for the recipient to be the beneficial owner of the income. However, any excess interest or royalties paid between associated persons above a normal arm's-length commercial amount do not qualify for exemption from tax in the source contracting state.

The only other exception to the general rule arises where the beneficial owner of the income is a resident of a contracting state and carries on business through a permanent establishment in the other contracting state in which the income arises, and the income concerned is effectively connected with the permanent establishment.

Capital Gains

Article 14 of the agreement provides that gains derived by a resident of a contracting state from the alienation of immovable property situated in the other contracting state, or from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a contracting state has in the other contracting state, may be taxed in the contracting state in which the property concerned is located.

Gains derived by an enterprise of a contracting state from the alienation of ships or aircraft operated in international traffic, together with ancillary equipment, are taxable only in that contracting state.

All other gains are taxable only in the contracting state of which the alienator is a resident.

Elimination Of Double Taxation

The credit method is used to eliminate double taxation, following the OECD Model provisions. The tax credit cannot exceed the tax payable in the state of residence on the income concerned.

Non-Discrimination

Apart from some minor modifications excluding the benefits of customs unions and the like from challenge, the agreement closely follows the OECD Model as regards non-discrimination.

Mutual Agreement Procedure

The agreement follows the OECD Model except that it does not allow for arbitration to deal with unresolved issues.

Exchange Of Information

Apart from making it clear that exchange of information covers only the taxes dealt with by the agreement, the exchange of information clause in the main body of the agreement reproduces the wording of the OECD Model verbatim.

However, a Protocol to the agreement provides a number of safeguards against abuse of the information exchange provisions by requiring the contracting state that requests information to fulfill specified procedures to demonstrate the foreseeable relevance of the information to the request. In particular, any request must be accompanied by the following:

- the identity of the person under examination or investigation;
- a statement of the information sought, including its nature and the form in which the requesting contracting state wishes to receive the information;
- the tax purpose for which the information is sought;
- grounds for believing that the information requested is held in the requested contracting state or is in the possession or control of a person within the jurisdiction of the requested contracting state;
- to the extent known, the name and address of any person believed to be in possession of the requested information;
- a statement that the request is in conformity with the law and administrative practices of the requesting contracting state, that if the requested information was within the jurisdiction of the requesting contracting state then the competent authority of the requesting contracting state would be able to obtain the information under the laws of the requesting contracting state or in the normal course of administrative practice and that it is in conformity with the agreement;
- a statement that the contracting state making the request has exhausted all reasonable means available in its own territory to obtain the information.

In addition, information will be provided only to the extent that the contracting state making the request has reciprocal provisions.

In effect, this means that the authorities requesting the information must already have a *prima facie* case even before they request the information, and it will not be possible to undertake "fishing expeditions" without first gathering significant evidence.

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 between tax officers bypassing the competent authority is prohibited. 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 provides that it will enter into force when both Cyprus and the UAE have notified each other that the ratification procedures prescribed by their respective domestic legislation have been completed and that its provisions will take effect on the following January 1. The Cyprus tax authorities have announced that the agreement entered into force on April 2, 2013, and took effect from January 1, 2014.

The agreement will remain in force until terminated by either contracting state. If notice of termination is given before June 30, the agreement will cease to apply at the end of the year in which notice is given. However, notice cannot be given until the agreement has been in force for at least five years.

Conclusions

Given the importance of the UAE economy, the new agreement is a valuable addition to Cyprus's network of more than 50 double taxation agreements.