

# Cyprus Business Headlines

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## THE NEW DOUBLE TAX AGREEMENT BETWEEN CYPRUS AND RUSSIA MOVES CLOSER TO RATIFICATION

Following the visit of Russian President Medvedev to Cyprus and the signing of the Protocol to the double taxation agreement on behalf of the governments of both countries, it was expected that the amended treaty would be ratified by the Parliaments of the two countries before the end of 2010 and would become effective from 1 January 2011. This timetable was not realised and, assuming the amended treaty is ratified during 2011, it will take effect on 1 January 2012.

The new agreement retains the highly favourable tax provisions between the two countries and will strengthen Cyprus's position as the portal of choice for both inbound and outbound investment between the Russian Federation and the rest of the world.

The amendments introduced by the Protocol extend the information exchange arrangements between the two countries' respective tax authorities in line with the OECD Model Tax Convention, and include strong safeguards to protect taxpayers.

The Protocol also aligns the taxation of capital gains with the basis set out in the OECD Model Tax Convention. Under the new rules taxation of capital gains realised on the sale of shares in a property rich company will

be vested in the country where the property is located. The exclusive taxing right will remain with the country of residence of the seller if the disposal qualifies as a corporate reorganisation, or if the shares are listed on a recognised stock exchange or the seller is a pension fund, provident fund or the government of either country

The Protocol provides for a grace period of at least four years as regards the new arrangements regarding taxation of capital gains. The relevant amended article will not become effective until the first day of the calendar year following four years after the protocol as a whole takes effect. This will be 1 January 2016 at the earliest, giving time to consider and implement measures to mitigate any negative impact of the change. If you believe that this change may affect your interests, please get in touch with your usual contact at Andreas Neocleous & Co and we shall be pleased to advise you.

The Protocol clarifies the definition of dividends, regarding which there had previously been some uncertainty. Distributions from mutual funds and similar collective investment vehicles (other than those primarily investing in immovable property) will be subject to the normal withholding tax rates applying to dividends. Distributions from shares held in the form of Depositary Receipts will also be taxed as dividends.

The definition of interest has been aligned with the OECD definition and includes income from debt-claims of every kind.

One of the most important aspects of the Protocol is that there is no change to the extremely favourable withholding tax rates applying to cross-border payments of dividend, interest and royalties. Furthermore, the Russian Federation has undertaken that, by the time the new provisions regarding taxation of capital gains come into force, it will have adopted the OECD Model Tax Convention provision for capital gains in its tax treaties with all states which are significant investors in the Russian Federation.

The Russian authorities are expected to announce the removal of Cyprus from any Russian tax "blacklists" with effect from the date the Protocol takes effect, making dividends received by Russian shareholders from qualifying



equity participations in subsidiaries in Cyprus eligible for the Russian participation exemption.

Further information: [Olga Mikhailova](#)

### **CYPRUS- SLOVENIA DOUBLE TAXATION AGREEMENT**

Following its emergence as an independent state, Slovenia adopted the double taxation agreement dated 29 June 1985 between the former Yugoslavia and Cyprus. A new double taxation agreement has now been agreed between Cyprus and Slovenia. It was signed on 12 October 2010 and will take effect when it has been formally ratified by both countries. Until then the existing 1985 treaty will continue in effect.

#### ***Withholding tax rates***

The new treaty provides for a maximum rate of withholding tax of 5% on dividends, interest and royalties. While this is an improvement compared with the 1985 treaty, which provided for a 10% withholding tax on dividends, interest and royalties paid to Cyprus, it is not likely to have a major effect in practice since both Slovenia and Cyprus have implemented the EU Parent-Subsidiary Directive and the Interest and Royalties Directive, which means that a nil withholding tax rate will be available in most cases in any event.

#### ***Capital gains on disposal of shares in property-rich companies***

The new treaty provides that capital gains on the disposal of shares in property-rich companies (companies which derive the majority of their value from immovable property situated in one of the contracting states) may be subjected to tax in the state where the immovable property is situated. The new treaty restricts this provision to the disposal of shares, and does not mention the disposal of other instruments. Other treaties based on the OECD Model tax gains on shares "and other similar interests" in property-rich companies in the country where the property is located.

#### ***Profits from international shipping operations***

The new treaty gives exclusive taxing rights over profits derived by an enterprise of a contracting state from ships operating in international traffic to the state of the enterprise. Both the 1985 treaty and the current OECD Model Convention give the exclusive taxing rights to the state in which the place of effective management of the enterprise is situated.

In practice this should not make a difference, since tax residence in both countries is based on the place of management and control.

#### ***Independent personal services***

Since there is no longer an article dealing with independent personal services (it was removed from

the OECD Model Convention some years ago), income derived from such services is no longer dealt with separately, but instead is included under the article on business profits.

#### ***Other amendments***

The articles on mutual agreement procedures and exchange of information have been aligned with the equivalent provisions of the current OECD Model Convention and the obligations and powers of the contracting states have been clarified.

Further information: [Elias Neocleous](#)

### **CYPRUS- KUWAIT DOUBLE TAXATION AGREEMENT**

Details of the new double tax treaty between Cyprus and Kuwait have now been made public. The new treaty, signed on 5 October 2010, will take effect when it has been ratified by both countries. Until then the existing treaty, which dates back to 1984, will continue in effect.

#### ***Taxes covered***

The range of Kuwaiti taxes covered by the treaty has been significantly expanded and now explicitly includes the contribution to the Kuwait Foundation for Advancement of Science, the Zakat payable under Law 46 of 2006 and the tax payable under the national employee law.

#### ***Withholding tax rates***

A major benefit of the new treaty is the elimination of withholding tax on dividends and interest. The 1984 treaty provided for a withholding tax of 10%.

#### ***Permanent establishment***

Under the new treaty provision of consultancy or managerial services through employees or other personnel for a period of more than six months within any 12-month period gives rise to a permanent establishment.

#### ***Directors' fees***

Under the new treaty fees received by a resident of one contracting state in respect of services as a director of a company resident in the other contracting state are taxable in the state in which the director is resident. Under the 1984 treaty such fees were taxable in the country of residence of the company.

#### ***Profits from international shipping operations***

The new treaty confers exclusive taxing rights over profits derived by an enterprise of a contracting state from ships operating in international traffic on the state of the enterprise. Both the 1984 treaty and the current OECD Model Convention give the exclusive taxing rights to the state in which the place of effective management of the enterprise is situated.

In practice this should not make a difference, since tax residence in both countries is based on the place of



management and control.

### ***Independent personal services***

As in the Slovenia treaty (see above) income from independent personal services is dealt with under the article on business profits.

### ***Other amendments***

The articles on mutual agreement procedures and exchange of information have been aligned with the equivalent provisions of the current OECD Model Convention and the obligations and powers of the contracting states have been clarified.

Further information: [Philippos Aristotelous](#)

## **CYPRUS-DENMARK DOUBLE TAXATION AGREEMENT**

Details of the new double tax treaty between Cyprus and Denmark have also been released. The new treaty was signed on 11 October 2010 and will take effect when it has been ratified by both countries. Until then the existing 1981 treaty will continue in effect.

### ***Withholding tax rates***

The new treaty eliminates withholding tax on dividends where the beneficial owner is a company directly holding at least 10% of the capital of the distributing company for an uninterrupted period of at least 12 months; otherwise the rate is 15% (subject to certain exemptions granted to governmental bodies and qualifying pension funds). The new treaty also eliminates the 10% withholding tax rate on interest applied in the old treaty. The article on royalties continues to provide for a nil rate of withholding tax.

However, since both Denmark and Cyprus have implemented the EU Parent-Subsidiary Directive and the Interest and Royalties Directive, a nil withholding tax rate will be available in most cases in any event.

### ***Permanent establishment***

Under the new treaty a building site or construction or installation project must last for 12 months in order to give rise to a permanent establishment, compared with six months in the 1981 treaty.

### ***Profits from international shipping operations***

Article 8 of the new treaty gives exclusive taxing rights over profits derived by an enterprise of a contracting state from ships operating in international traffic to the state of the enterprise, in contrast to both the 1981 treaty and the current OECD Model Convention, which give the exclusive taxing rights to the state in which the place of effective management of the enterprise is situated.

In practice this should not make a difference, since tax residence in both countries is based on the place of management and control.

### ***Pensions and social security***

Under the 1981 treaty exclusive taxing rights over pensions, annuities and social security payments are given to the source country. The new treaty gives the exclusive taxing right over non-state pensions to the country in which the recipient is resident, unless tax relief was previously obtained in the source country or where the contributions by the employer made in the source country are tax free for the beneficiary in that country.

### ***Underlying tax credit on dividends***

The provision of the 1981 treaty which allowed an underlying tax credit on dividends paid by a company resident in Denmark to a Cyprus tax resident company with a direct shareholding of at least 25% has been eliminated. This should not have any adverse effect because the Cyprus tax authorities allow unilateral relief for foreign underlying tax.

### ***Directors' fees***

As with the 1981 treaty directors' fees may be taxed in the country of residence of the company paying them.

### ***Independent personal services***

As with the Slovenia and Kuwait treaties, income from independent personal services is dealt with under the article on business profits.

### ***Other amendments***

The articles on mutual agreement procedures and exchange of information have been aligned with the equivalent provisions of the current OECD Model Convention and the obligations and powers of the contracting states have been clarified.

Further information: [Elias Neocleous](#)

## **NOTIFICATIONS UNDER THE MERCHANT SHIPPING (FEES AND TAXING PROVISIONS) LAW OF 2010**

The Merchant Shipping (Fees and Taxing Provisions) Law of 2010 (the Tonnage Tax Law) left certain issues of detail to be determined by the Cyprus Department of Merchant Shipping ("DMS"). The DMS has now issued Notifications setting out requirements for qualifying shipmanagers and prescribing the arrangements for calculation and payment of tax by owners and charterers of foreign ships and shipmanagers. A summary of their main provisions is given below.

### ***The Tonnage Tax for Ship Managers (Special Provisions and Requirements) Notification of 2010***

This Notification sets out the prescribed procedures for shipmanagers to demonstrate their entitlement to taxation under the tonnage tax system. Shipmanagers are required to complete a special form, which may be either the application form to enter the tonnage tax

system, or the tax declaration form, listing details of all vessels under management and evidencing compliance with section 33(2) of the Tonnage Tax Law. Where a shipmanager provides only partial management services such as crew management or technical management, details of other shipmanagers providing services to the same ship must be given. The form must be submitted to the DMS in paper form with an electronic copy.

The DMS may request further information or documentation such as copies of ISM certificates and copies of management agreements.

Where their responsibilities include crew management shipmanagers are required to demonstrate compliance with the obligation to insure against liability for claims in the event of death or long-term disability of seafarers under the 2006 Maritime Labour Convention of the International Labour Organization. They must also ensure that the provisions of the Maritime Labour Convention concerning the seafarer's employment agreement, compensation in the case of a ship's loss or foundering, provision of medical care, shipowner's liability including payment of wages in case of accident or sickness and repatriation are properly applied, and provide any necessary financial security. They must make declarations of compliance in the form specified in Schedule I and Schedule II of the Notification and submit them to the DMS no later than two months after the end of the fiscal year concerned, together with their tax declaration. The DMS may require the shipmanager to produce additional documentary evidence to support the declarations, such as certificates of insurance, copies of crew management agreements and copies of seafarers' employment contracts.

#### ***The Tonnage Tax (Special Provisions on the Levy and Collection) Notification of 2010***

This provides that tonnage tax is to be calculated by the taxpayer and is payable to the DMS annually, for as long as the ship was operative or the ship management contract was in force during the fiscal year or part of it. Fractions of a month are considered as a whole month for purposes of calculating the tax. The taxpayer is required to submit a declaration of tax payable and to pay the calculated amount according to the declaration within two months after the end of the fiscal year.

The declaration must be submitted to the DMS in paper form, signed by a director and certified by an independent accountant authorised to practise in Cyprus. In addition a copy of the declaration should be submitted to the Department electronically. Owners and charterers may produce supporting documents with regard to the declaration instead of having it certified. This option is not available to shipmanagers.

The DMS will examine the declaration and may

request further information, which the taxpayer has 30 days to provide. The DMS may accept the taxpayer's self-assessment or, if it considers that it is inaccurate or incomplete, impose its own assessment. The assessment must be made in writing and delivered to the taxpayer within 120 days of the date of submission of the declaration or of any further information requested. Any balance of tax payable must be paid within 60 days.

In addition, where no declaration has been submitted and the DMS is of the reasoned opinion that tax is payable, an assessment may be issued up to 6 years after the end of the fiscal year concerned. The tax assessed, together with interest for late payment, is payable within 30 days. The interest rate is set by the Minister of Finance under the Uniform Public Interest of Late Payment Law of 2006.

Objections to assessments imposed by the DMS must be submitted in writing, stating the grounds of objection, within 30 days of receipt of the assessment. In the case of an assessment raised because no declaration had been submitted the objection will not be considered until the tax and interest for late payment have been paid and a declaration has been submitted for the relevant year. The DMS will consider the objection and may request further information or documentation.

If agreement can be reached between the taxpayer and the DMS an amended assessment will be issued and any balance of tax payable or refundable must be settled within 30 days. If no agreement can be reached the DMS determines the tax on the basis of the information in its possession and notifies the taxpayer. Any balance of tax payable or refundable must be settled within 30 days. If the DMS has not determined an objection and issued a decision within 3 months of the objection having been submitted the objection is automatically determined in the taxpayer's favour. This 3 month period may be extended by the time taken for the taxpayer to produce any additional information or documents requested by the DMS.

If the taxpayer is dissatisfied with the decision of the DMS he may apply to the Supreme Court under Article 146 of the Constitution for a review of the decision or he may file an "hierarchical recourse" to the Minister of Communications and Works against the decision. Any hierarchical recourse must be filed within 45 days and must be accompanied by all relevant evidence. The Minister has 6 months to determine the issue. If the taxpayer is dissatisfied with the Minister's decision he may apply to the Supreme Court under Article 146 of the Constitution for a review of the decision.

Further information: [Costas Stamatou](#)

### FURTHER SUSPENSION OF LIMITATION PERIODS

Limitation periods in Cyprus are set out in the Limitation of Actions Law (Cap 15), which dates back to the time when Cyprus was a British colony. The Limitations Law was suspended in 1964 following inter-communal disturbances and it has effectively remained suspended ever since.

The Suspension of Limitation Period (Provisional Provisions) Law (Law 110(I) of 2002) provided that the Limitations Law would re-enter into force with effect from 1 June 2005, except in relation to any immovable or movable property situated in areas now occupied by Turkish troops (or property which was situated there at the time of the Turkish invasion), but its entry into force has been postponed by a succession of laws passed in the interim, each temporarily extending the suspension. The latest of these, Law 111(I) of 2010, enacted in November 2010, extends the suspension until 31 March 2011.

Further information: [Chrysanthos Christoforou](#)

### NEWS ABOUT OUR FIRM

#### **Andreas Neocleous & Co LLC approved by Cyprus Stock Exchange as a nominated advisor**

We are pleased to announce that our firm has been approved by the Cyprus Stock Exchange (CSE) as a nominated advisor. Nominated advisors are authorised to undertake the listing of companies on the Emerging Companies Market (ECM), a recently-established market aimed at providing finance for emerging companies. The ECM has a simplified regulatory regime and is not subject to the more rigorous listing requirements and ongoing obligations on issuers of securities imposed by regulated markets.

The nominated advisor evaluates and presents the issuer to the CSE, ensuring that the ECM listing requirements are fulfilled, and supports the issuer through the listing procedure and afterwards.

Nominated advisors must have the necessary resources and experience to satisfy the CSE that they can carry out the role effectively. Having secured the necessary approval we are now in a position to help companies benefit from the new facilities which the ECM provides.

Further information: [Kyriacos Xenophontos](#)

#### **Cyprus Chamber of Commerce Honour Award**

At the Annual General Assembly of the Cyprus Chamber of Commerce and Industry held on 16 November Mr Marios Karoyian, President of the House of Representatives, presented Andreas Neocleous, chairman of our firm, with the Chamber's Honour Award. The award is the Cyprus Chamber of Commerce and Industry's highest award, and is made to prominent businessmen for their business activity

abroad and their sustained contribution to the promotion of the economic development of Cyprus. This is the first time that a lawyer has been honoured in this way.

Mr Neocleous expressed his pride and honour at receiving the award, and said that he did so on behalf of all his fellow-professionals, to whom the accolade belongs.

### RECENT PUBLICATIONS

The following are a selection of our publications since the previous edition of this newsletter. They may be viewed by following the links below or by visiting the publications section of our website.

- ≡ ["Cyprus's Tax Regime - Benefits for International Business"](#)
- ≡ [Cyprus chapter of "Private Client Tax"](#)
- ≡ [Cyprus chapter of "Corporate Real Estate Handbook 2010/11"](#)
- ≡ ["Mareva injunctions and freezing orders pending determination of derivative action"](#)
- ≡ ["Details and analysis of the 2009 Protocol to the Russia-Cyprus double taxation agreement"](#)



Neocleous House,  
195 Archbishop Makarios III Avenue  
P.O. Box 50613, CY-3608, Limassol, Cyprus  
Tel.: +357 25 110000 Fax: +357 25 110001  
E-mail: [info@neocleous.com](mailto:info@neocleous.com)  
Website: [www.neocleous.com](http://www.neocleous.com)

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