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a closer look

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The New Double Taxation Agreement Between Cyprus And Georgia

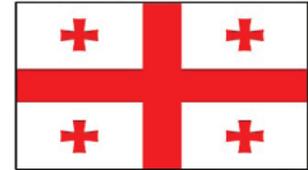
by Philippos Aristotelous,
Andreas Neocleous & Co. LLC

On May 13, 2015, Cyprus and Georgia signed a new double taxation agreement (DTA). Unlike many former members of the USSR, Georgia did not adopt the 1982 Cyprus–USSR DTA when it became independent, and the new agreement is the first between the two countries. It will come into force once it has been ratified in accordance with both countries' domestic legal procedures.

The new agreement closely follows the 2010 OECD Model Convention, with only minor modifications, and the Protocol to the agreement clarifies the information exchange provisions. Details of the DTA and Protocol are now available, and they are analyzed in the following paragraphs.

Taxes Covered

The agreement covers all taxes on income and capital levied by either state or by any of its subdivisions or local authorities, 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 Georgia, income tax, profit tax, and property tax; and, in the case of Cyprus, income tax, corporate income tax, Special Contribution for



Defence (commonly referred to as SDC tax), capital gains tax, and immovable property tax.

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

Residence

Article 4 of the DTA reproduces the provisions of the 2010 OECD Model regarding residence verbatim.

Permanent Establishment

Article 5 of the DTA, which deals with permanent establishment, also reproduces the provisions of the OECD Model almost verbatim, with the same definition of a permanent establishment and 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.

As in the OECD Model, a place of management, a branch, an office, a factory, a workshop or a mine, an oil or gas well, a quarry or any other place of extraction, exploration or exploitation of natural resources will give rise to a permanent establishment. 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 nine months (rather than the 12 months required in the OECD Model).

As in the OECD Model, the DTA provides that an independent broker or agent that represents the enterprise in the ordinary course of their business will not be caught by this provision. However, paragraph 5 of Article 5 introduces a reservation. In the event that a person other than an agent of an independent status is acting on behalf of an enterprise in a contracting state and has, and habitually exercises, an authority to conclude contracts in the name of the enterprise, the enterprise concerned will be deemed to have a permanent establishment in that state in respect of any activities which that person undertakes for the enterprise, unless the activities concerned are limited to those that do not give rise to a permanent establishment, listed in the preceding paragraph of the article. This means that particular caution needs to be exercised regarding the issuing of general powers of attorney, so as not to risk inadvertently creating a permanent establishment, with potential adverse consequences.

Offshore Activities

Many of the DTAs that Cyprus has concluded since gas reserves were discovered in its exclusive economic zone in 2008 have included an article dealing with offshore hydrocarbon exploration and exploitation activities. The Cyprus–Georgia agreement does not include any specific provision regarding offshore hydrocarbon exploration and exploitation activities, but instead relies on the provision that an oil or gas well, a quarry or any other place of extraction, exploration or exploitation of natural resources gives rise to a permanent establishment.

Income From Immovable Property

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

Business Profits

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

from containers, trailers and related equipment, and profits from participation in a pool, a joint business or an international operating agency) are taxable only by the contracting state in whose territory the enterprise is resident.

Associated Enterprises

The provisions for adjusting profits of associated enterprises operating other than on an arm's length basis reproduce the corresponding article of the OECD Model verbatim.

Dividends

Dividends paid by a resident of one contracting state to a resident of the other contracting state are taxable only by the second contracting state, with the usual reservation regarding dividends arising from a permanent establishment in the first contracting state. There is no stipulation regarding beneficial ownership.

Interest

Interest arising in one contracting state and paid to a resident of the other is taxable only in the contracting state in which the recipient is resident, subject to the usual reservations regarding interest arising from a permanent establishment in the first contracting state, and any excess above the amount that would be payable on an arm's length basis.

Royalties

Royalties arising in one contracting state and paid to a resident of the other are taxable only by the contracting state 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 state 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 state in whose territory the immovable property or the permanent establishment is situated.

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

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 state 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).

Non-Discrimination And Mutual Agreement Procedure

The DTA reproduces the corresponding provisions of the OECD Model, 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 DTA provides robust 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. 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 state 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 state requesting it, with respect to the named person;
- Grounds for believing that the information requested is held or is 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 any person believed to be in possession of or able to obtain the requested information;
- A statement that the request is in conformity with the law and administrative practices of the state requesting it, that if the requested information was within its jurisdiction the requesting state

would be able to obtain the information under its laws or in the normal course of administrative practice and that the request is in conformity with the DTA;

- A statement that the contracting state 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 even 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 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. As a final safeguard, the written consent of the Attorney General must be obtained before any information is released to an overseas tax authority.

Assistance In The Collection Of Taxes

The DTA does not include any provisions regarding assistance in the collection of taxes.

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 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 may only be given after the agreement has been in force for five years.

Conclusion

Georgia is turning towards the west in economics and trade and the DTA will be a valuable addition to Cyprus's extensive treaty network. It is hoped that the remaining steps required to bring the new agreement into effect can be achieved quickly.