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Cyprus resident holding companies may qualify for the reduced US tax rate on dividends from "qualified foreign corporations"

In September 2013 the office of Associate Chief Counsel of the US Internal Revenue Service announced that a Cyprus resident holding company qualified for benefits under the US-Cyprus double tax treaty ("Treaty") and the reduced tax rate on dividends from "qualified foreign corporations", despite not meeting the share ownership requirements stipulated in the Treaty.

Section 1(h)(1) of the Internal Revenue Code (the "Code") generally provides that a taxpayer's "net capital gain" for any taxable year will be subject to specific reduced rates. The 2003 Act added section 1(h)(11), which provides that net capital gain for purposes of section 1(h) means net capital gain (determined without regard to section 1(h)(11)) increased by "qualified dividend income." Section 1(h)(11)(B)(i) provides that qualified dividend income means dividends received during the taxable year from domestic corporations and "qualified foreign corporations." One of the requirements for this section to apply is that the dividends must have been received from a country whose treaty fulfils the "treaty test".

In order for the Cyprus company to meet the criteria of the "treaty test", it had to be ascertained whether all the requirements of the US-Cyprus treaty were met, and in particular whether the Limitation of Benefits (LOB) clause of the treaty was triggered. In order to qualify for the benefits of the treaty a Cyprus corporation must be more than 75 per cent owned by individual residents of Cyprus, and meet certain other requirements, unless it is demonstrated that the establishment, acquisition and maintenance of the Cyprus corporation and the conduct of its

operations are not principally aimed at obtaining benefits under the treaty.

In the case in question the IRS agreed that the Cyprus company could be considered as a "qualified foreign corporation" as its incorporation was not solely driven by tax reasons, particularly qualification for the benefits of the treaty. Although the reasoning behind it was not explained, the case highlights the existence of this relatively unusual and potentially valuable exemption.

For further information please contact [Philippos Aristotelous](#).

Proposed amendments to the Law Regulating Companies providing Administrative Services and Related Matters of 2012

The Cyprus Securities and Exchange Commission ("CySEC") has announced a number of proposed amendments to the Laws Regulating Companies providing Administrative Services and Related Matters of 2012 and 2013 ("the ASP Law"), following discussions between the Ministry of Finance, the "troika" of providers of international financial support to Cyprus, and the "competent authorities", namely the Cyprus Bar Association, the Institute of Certified Public Accountants of Cyprus and CySEC. The proposed amendments aim to address practical issues that have emerged, and to meet the requirements of the Memorandum of Understanding with the troika.

The main proposed amendments are as follows:

- ≡ Occupational retirement benefit funds which are under the supervision of the Registrar of Occupational Retirement Benefit Funds in accordance with the Establishment, Activities and Supervision of Occupational Retirement Benefit Funds Law of 2012 are explicitly excluded from the scope of the ASP Law.
- ≡ The role of protector of a trust is excluded from the scope of the ASP Law on the basis that the protector is a person who the settlor appoints to exercise oversight in a personal capacity and that since the trustee is regulated there is no real need for the protector to be regulated.
- ≡ An ambiguity in the ASP Law which might be interpreted as indicating that officers acting as signatories of bank accounts of certain companies must be authorised again under the ASP Law is removed.
- ≡ Cyprus companies offering administrative services only to fellow members of the group of companies of which they are a member and private trust companies belonging to the beneficiaries of the trust or their close relatives (spouses or relatives up to the fourth degree of kinship) are excluded from the scope of



the ASP Law provided that they have a representative in Cyprus who is accessible and accountable for anti-money laundering purposes.

- ≡ Foreign providers of custodian services that are appropriately regulated in their home jurisdiction are excluded from the scope of the ASP Law.
- ≡ The information to be contained in the registers maintained by the competent authorities is defined in greater detail.

The amendments will take effect once the amending law has been enacted and published in the official gazette.

For further information please contact [Elias Neocleous](#).

CySEC guidance to administrative and corporate services providers on reporting requirements

The Cyprus Securities and Exchange Commission ("CySEC") has issued a circular reminding providers of administrative and corporate services ("ASPs") that it supervises of their reporting obligations under the Law regulating Companies providing Administrative Services and Related Matters of 2012 ("the ASP Law").

It draws attention to article 11(1)(c) of the ASP Law, which provides that ASPs whose application for a licence is under consideration by CySEC must comply with the requirements of the ASP Law and CySEC Directive D1144-2007-08 of 2012 for the Prevention of Money Laundering and Terrorist Financing ("the AML Directive").

Article 22 of the ASP Law requires ASPs to prepare financial statements that show a true and fair view and comply with all applicable accounting standards and rules, and to have them audited by a registered auditor. The financial statements and auditor's report should be completed no later than four months after the end of the financial year. They should be kept at the head offices of the ASP and should be available to CySEC on request. ASPs whose authorisation is pending are required to comply with these obligations.

The AML Directive requires regulated entities to provide CySEC with a copy of their annual anti-money laundering compliance report, together with details of any measures to be taken to address any deficiencies, no later than three months after the end of each calendar year. Regulated entities must also submit their internal audit function's report on the effectiveness of anti-money laundering procedures, together with details of any measures to be taken to address any deficiencies, no later than four months after the end of each calendar year. ASPs whose authorisation is pending are required to comply with these obligations.

Regulated entities are also required to compile a "monthly prevention statement" in the prescribed form and submit it to CySEC within fifteen days after the end of each month. ASPs whose authorisation is pending are required to compile the monthly statement but not to submit it to CySEC until authorisation is granted.

For further information please contact [Kyriaki Stinga](#).

Reduction in SDC tax rate on dividends

The rate of SDC tax on dividends paid by Cyprus companies reverted to 17% with effect from 1 January 1 2014, after having been temporarily increased to 20% for 2012 and 2013.

SDC tax applies only to Cyprus-resident shareholders. Dividends paid to non-resident shareholders, whether corporate or individual, are exempt. In addition, dividends paid by one Cyprus-resident company to another are exempt from SDC tax unless the dividend is paid more than four years after the underlying profit was earned.

For further information please contact [Philippos Aristotelous](#).

Double taxation agreements round-up

Signing of new double tax agreement between Cyprus and Norway

The Cyprus government has announced the signature of a new double taxation agreement with Norway. Double taxation avoidance between Cyprus and Norway is currently regulated by the 1951 double tax agreement between Norway and the United Kingdom, which was extended in 1955 to include several British colonies, including Cyprus. On becoming independent, most of the newly independent countries negotiated new arrangements, but Cyprus has not done so until now.

The new agreement is based on the OECD Model and provides for the exchange of information in accordance with the relevant articles of the Model. It will take effect once it has been ratified by both countries.

The Cyprus government attaches great importance to maintaining, updating and expanding Cyprus's network of double tax treaties in order to attract foreign investment and promote Cyprus as an international business centre, and has expressed confidence that the new agreement will contribute to the further development of trade and economic relations between Cyprus and Norway.

The new Cyprus-Latvia double taxation agreement

Negotiations between the governments of Cyprus and Latvia on a new double taxation agreement, which

began in 2006, appear to be reaching the final stages. The Latvian authorities have now published the text of the final draft agreement, which requires the approval of the Latvian Cabinet of Ministers before signature. After signature it will need to be ratified by both countries before taking effect.

On independence Latvia did not adopt the Cyprus-USSR double taxation agreement of 1982, and there is currently no double taxation agreement in force between the two countries. The Latvian government announced the commencement of negotiations on an agreement with Cyprus in 2006 and it is hoped that the remaining steps in concluding the agreement and bringing it into effect can be achieved quickly. If it takes effect in its current form, the agreement will be Cyprus's first to include an article dealing with offshore activities, reflecting its newly-discovered energy resources. In the meantime, although there is no agreement in existence, the Cyprus tax authorities will doubtless follow their normal practice of allowing unilateral relief for Latvian taxes paid.

Imminent entry into force of the new double taxation agreement between Cyprus and Spain

Article 27 of the new double taxation agreement between Spain and Cyprus provides that the agreement will enter into force three months after the exchange of official notifications between the governments concerned that all ratification procedures have been completed. We understand that notifications were exchanged in March, which means that the new agreement should enter into force during June 2014.

The Cyprus tax authorities have indicated that they will allow the benefits included in the new agreement with effect from 1 January 2014.

Amendments to the Cyprus – India double taxation avoidance agreement to be finalised in the next few weeks

It is reported in the Indian financial press that Cyprus and India will finalise the amendments to their double taxation avoidance agreement in the next few weeks. This will resolve the differences between the two countries' tax authorities that led to Cyprus being declared a notified jurisdiction under Section 94A of the Indian Income Tax Act of 1961, making it more cumbersome for Indian taxpayers to claim deductions on transactions with entities based in Cyprus, and increasing reporting requirements. Both Cyprus and India have agreed that the classification of Cyprus as a notified jurisdictional area will be rescinded with retrospective effect from 1 November 2013, the date when the notification was first issued. The rescission will remove bureaucratic obstacles and reduce compliance costs.

According to Indian government estimates, Cyprus is the seventh largest investor in India with cumulative investments of US\$7.2 billion between April 2000 and December 2013.

For further information please contact [Philippos Aristotelous](#).

CySEC guidance on tax evasion by clients of investment firms and administrative service providers

The Cyprus Securities and Exchange Commission ("CySEC") has issued a statement drawing the attention of the businesses it regulates, including Cyprus Investment Firms, management companies and administrative service providers, to their obligations under the anti-money laundering legislation regarding tax offences committed by clients.

CySEC considers that fraudulent tax evasion constitutes a predicate offence under the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 – 2013 and requires the entities it regulates to implement adequate and appropriate systems and processes to discourage, prevent and detect money laundering arising from serious tax offences. While regulated entities are not responsible for assessing their clients' compliance with their worldwide tax obligations they should nevertheless exercise oversight over whether there are reasonable grounds to suspect that client accounts contain proceeds derived from serious tax offences and should immediately report any concerns.

For further information please contact [Kyriaki Stinga](#).

News about our firm

Further ratings success

In their newly published ratings of law firms both Legal 500 and Chambers Guide place Andreas Neocleous & Co LLC at the top of their Cyprus ratings, ranking our firm in the top tier of Cyprus firms in every practice area they cover. An across-the-board top tier ranking is a distinction achieved by only a handful of firms worldwide, and no other firm in Cyprus comes near to it. For a third successive year we are ranked in the highest possible category in all five areas (corporate and commercial, dispute resolution, construction and real estate, shipping and taxation) assessed by Chambers & Partners, and for Legal 500 ranks this is the seventh successive year that we have achieved this distinction.

New partners and senior associates

We are delighted to announce that Christos Vezouvios, Efosini Monou and Elena Michail were admitted to partnership in the firm with effect from 1 January 2014. In addition, Demetris Roti, Katia Papadopoulou, Lisa Garner, Marina Joud and Motaher Chowdhury were promoted to senior associate at the same time. These promotions reflect our commitment to providing clients with the best possible advice and service by developing

lawyers of the highest standards of professionalism, to build a firm based on merit and quality.

Launch of the Cyprus branch of the International Business Structuring Association

Our firm has joined forces with Roy Saunders, the Chairman and founder of the International Business Structuring Association (IBSA), to establish a branch of the association in Cyprus. The new international realities of global business require an unprecedented breadth of disciplines and specific local knowledge with advisors increasingly needing to work in concert with groups of trusted fellow professionals worldwide and the IBSA addresses this need by providing international advisers and their clients with the facility to access and exchange knowledge.

Roy Saunders will be in Limassol on 10 June to launch the Cyprus branch of the IBSA at an inaugural seminar at the Solon Amphitheatre of Neocleous House, followed by a cocktail reception on the seventh floor of Neocleous House.

India Business Law Journal names Andreas Neocleous and Co LLC as one of the top international law firms for India work.

Andreas Neocleous & Co has been singled out by India Business Law Journal as one of the top international law firms for India work in its latest annual survey, to be published with the June edition of the magazine. India Business Law Journal is a market-leading monthly magazine, read by in-house counsel and private practice lawyers around the world, that provides in-depth analysis of the legal and regulatory challenges facing domestic and international businesses in India and practical advice on key business-law issues. It also provides vital intelligence on the country's law firms, legal process outsourcers and judiciary.

This is the eighth year that India Business Law Journal has conducted its survey of the top foreign firms for India-related work. As in previous years, the findings are based on extensive consultation with India-focused corporate counsel around the world, submissions received from hundreds of different law firms and interviews and research carried out the magazine's own editorial team.

For further information please contact [Andreas Neocleous](#).

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, which is constantly updated and contains a wealth of useful information on recent developments in Cyprus law.

- ≡ [Cyprus chapter of "International Protection of Foreign Investment - 2nd Edition"](#)
- ≡ [Cyprus chapter of "Getting the Deal Through - Anti-Corruption Regulation"](#)
- ≡ [Laws of Cyprus with Commentary in "World Intellectual Property Rights and Remedies"](#)
- ≡ [Cyprus chapter of "Merger Control, Jurisdictional comparisons, second edition"](#)
- ≡ [Cyprus chapter of "International Comparative Legal Guide to Lending & Secured Finance 2014"](#)
- ≡ [Cyprus chapter of "Labour & Employment 2014"](#)



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