



Cyprus Business Headlines

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PROTOCOL TO THE RUSSIA - CYPRUS DOUBLE TAXATION AGREEMENT

On 16 April 2009 representatives of the Russian and Cyprus governments signed a protocol to the 1998 double tax treaty between the two countries. Both governments intend to ratify the protocol during 2009 with the aim of it becoming effective from 1 January 2010.

The conclusion of the protocol is expected to bring about the removal of Cyprus from Russia's so-called blacklist, entitling Russian shareholders in Cyprus companies to benefit from the Russian participation exemption. The provisions of the protocol are very favourable to international business and the Russia – Cyprus treaty continues to be among the most favourable treaties the Russian Federation has concluded.

There will be no change to the current, extremely favourable withholding rates of zero on interest and royalties and 5% on dividends (10% for investments below €100,000) under the existing treaty. The protocol removes the uncertainty that previously existed concerning distributions from mutual funds and similar investments, making it clear that they will be subject to the normal withholding tax rates applying to dividends.

The most substantial change relates to disposals by a resident of one country of shares of companies which derive more than 50% of their value from immovable property situated in the other country, giving the country in which the immovable property is situated the right to tax any capital gain. However, the exclusive taxing right will remain with the country of residence of the seller if:

- ≡ the disposal is in connection with a qualifying corporate reorganisation; or
- ≡ the relevant shares are listed on a recognized stock exchange; or
- ≡ the seller is a pension fund, provident fund or the government of either of the two countries.

This change is in line with the OECD Model Tax Convention, and the Russian government has undertaken that, before it is implemented, the Russian Federation will have adopted similar provisions for capital gains in its tax treaties with all states which are major investors in Russia. Furthermore, it 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 2014 at the earliest, giving time to consider and implement measures to mitigate any negative impact of the change.

The protocol includes a new limitation of benefits provision disallowing treaty benefits that would otherwise provide a reduction or exemption in tax to an entity which was created with the main purpose of obtaining such benefits and which is not registered in either Russia or Cyprus. As only Russian companies qualify for tax residence in Russia, the limitation should only affect companies incorporated outside Cyprus but tax resident in Cyprus by virtue of the exercise of their management and control in Cyprus.

The exchange of information article reproduces the exact wording of article 26 of the OECD Model Tax Convention on Income and Capital and reflects the amendment to Cyprus's Assessment and Collection of Taxes Law which was made in 2008. More clarity has been introduced in relation to the powers and obligations of the tax authorities of the two countries: for example, the protocol makes clear that the fact that one country may not need a particular type of information for its own purposes does not relieve it from the obligation to collect it at the request of the other. The article on assistance in collection is almost identical to the OECD Model Tax Convention, and will require further legislation in Cyprus to put in place the necessary legal framework.

In summary, the new protocol maintains Cyprus's considerable advantages as a centre for doing business with Russia and the commitment by Russia to introduce similar amendments to its other treaties effectively gives Cyprus "most favoured nation" status.

The amendments introduced by the protocol are far-reaching, and it be some time before its practical impact is clear. We will keep you abreast of developments, both in this newsletter and by means of more detailed technical briefing notes from time to time.

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NEW DOUBLE TAX TREATY BETWEEN CYPRUS AND THE CZECH REPUBLIC

April was clearly a productive month for the Cyprus Ministry of Finance. In addition to concluding the Protocol to the double taxation treaty outlined earlier, the Ministry announced the signing of a new double taxation treaty between Cyprus and the Czech Republic. When ratified, the new agreement will replace the 1980 agreement between Cyprus and the former Czechoslovak Socialist Republic. We will include details of the provisions of the new treaty and the arrangements for its implementation in a future issue, when they are released.

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REMOVAL OF RESTRICTIONS ON ACQUISITION OF IMMOVABLE PROPERTY BY EU CITIZENS AND COMPANIES

The Acquisition of Immovable Property (Aliens) Law, which dates back to the time when Cyprus was under British rule, regulates the acquisition of real estate in Cyprus by non-Cypriots. For the purposes of this law, an "alien" is any person other than a citizen of the Republic of Cyprus and includes a local company controlled by non-residents, a foreign company and a trust in favour of a foreign person. The law requires such persons or companies to obtain the consent of the Council of Ministers before purchasing immovable property in Cyprus. This is generally routinely granted to bona fide purchasers to acquire a residence in Cyprus and the purchaser may live in the property pending formal granting of consent.

With effect from 1 May 2004, when Cyprus joined the EU, most restrictions on the acquisition of immovable property by citizens of other EU member states were lifted. Some limited restrictions, for example on the acquisition of secondary residences, continued to apply for a transitional period of five years. Following the expiry of this transitional period on 1 May 2009 citizens of EU member states and companies incorporated in other

member states (irrespective of the nationality or the identity of their shareholders) may now freely acquire immovable property in Cyprus.

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INCREASE IN BANK DEPOSIT GUARANTEE

Draft legislation guaranteeing bank deposits up to €100,000 has been approved by the Cabinet and is now before the Cyprus Parliament for final review.

The draft law increases the guarantee on deposits with Cyprus banks from €20,000 to €100,000 for an indefinite period, going beyond an EU summit requirement requiring member states to raise the guarantee to €50,000.

The proposed new law provides for the setting up of a guarantee fund contributed jointly by the government and banks and guaranteeing deposits up to €100,000 per account per bank, in any currency. The guarantee also applies to the Cooperative Credit Societies, as well as non-resident deposits in foreign currency. The new law is expected to be in force by the end of May. The new law will give formal reassurance to depositors, but both the government and the banks have made it clear that Cyprus banks are unlikely to be adversely affected by the global credit crisis, having adopted conservative business practices and having avoided investing in toxic assets.

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CYPRUS TOPS INTERNATIONAL POLL OF BUSINESS-FRIENDLY TAX REGIMES

Cyprus is the top country in a league table of European tax systems, compiled by KPMG International, in which major business organizations across Europe were asked to assess the attractiveness of their domestic tax regimes.

The survey of more than 400 tax professionals in multinational companies across Europe explored participants' attitudes to particular aspects of their home tax regime, including consistency, stability over time, volume of legislation, the tax rate and relations with the tax authorities. A net attractiveness score for each country was calculated by taking the percentage of respondents who considered that key aspects of their domestic systems were attractive and subtracting those who considered them unattractive.

Cyprus emerged as the most attractive tax regime on account of its combination of consistency in interpreting tax legislation, stability in resisting frequent changes to tax laws, and comparatively low tax rate.

The survey also showed that being in a country with an unattractive tax regime is more than just an

inconvenience. More than two-thirds of respondents who thought their country's tax regime was unattractive also believed that this put their companies at a competitive disadvantage when competing with foreign companies.

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SHIPPING - NEW DMS CIRCULARS

The Cyprus Department of Merchant Shipping has recently issued the following circulars:

- ≡ 4/2009 Revised Maritime Security Instructions on Piracy and Response to SSAS
- ≡ 5/2009 Implementation of IMO Unique Company and Registered Owner Identification Number Scheme and CSR documents
- ≡ 6/2009 2001 Bunkers Convention: Administrative fines and certification of special vessels such as barges, pontoons etc.
- ≡ 7/2009 International Maritime Solid Bulk Cargoes Code (IMSBC Code)

Copies are available at the Department's website.

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NEWS ABOUT OUR FIRM

Two recently-published independent guides to the legal profession worldwide place Andreas Neocleous & Co firmly at the forefront of Cyprus law firms.

Published for over twenty years, the Legal 500 series provides the most comprehensive worldwide coverage currently available on legal services providers, and is widely regarded as offering the definitive assessment of law firm capabilities. The latest Legal 500 guide to law firms in Europe, the Middle East and Africa, published in April 2009, places Andreas Neocleous & Co in the top tier in all the practice areas it assesses. This is the second successive year we have achieved this unique distinction, attained by very few firms worldwide.

We also continue to lead the field in the recently published eleventh edition of Chambers Global Guide to the World's Leading Lawyers for Business, being ranked in the top tier for commercial work and singled out on account of our "depth of knowledge, accomplishment and speed of response."

Both publications' rankings of law firms are based on extensive independent research and consultation with clients and rival law firms. The research process is completely independent, and the only way a firm can get into the recommendations is on merit.

Acknowledgement by clients and competitors is the

truest form of recognition and we should like to thank you, our clients, for your support, and to assure you that we do not intend to rest on our laurels, but rather to continue to strive to improve our performance.

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RECENT PUBLICATIONS

- ≡ Cyprus section of "European Holding Regimes 2009" and "Holding Regimes New EU Countries 2009", both published by Loyens & Loeff
- ≡ Cyprus chapter of Rödl & Partner's "Handbuch internationale Produkthaftung" (International Product Liability Handbook) by Chrysanthos Christoforou, published by Bundesanzeiger Verlag
- ≡ Cyprus chapter of "Getting the Deal Through – Public Procurement" by Chrysanthos Christoforou, published by Law Business Research
- ≡ Cyprus chapter of "Cross-border Restructuring and Insolvency Handbook 2009" by Elias Neocleous and Maria Kyriacou, published by Practical Law Company
- ≡ Cyprus chapter of "International Joint Ventures" by Elias Neocleous, Panos Labropoulos and Philippos Aristotelous, published by Kluwer Law International
- ≡ "The New Era of EC Competition Law in the Shipping Industry", by Costas Stamatiou and Panayiotis Neocleous, in International Company and Commercial Law Review 2009, issue 1

These publications may be viewed by following the links above or by visiting the publications section of our website.



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