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## a closer look

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**COUNTRIES AND REGIONS** EUROPE AUSTRIA BELGIUM BULGARIA CYPRUS CZECH REPUBLIC DENMARK ESTONIA FINLAND FRANCE GERMANY GREECE HUNGARY IRELAND ITALY LATVIA LITHUANIA LUXEMBOURG MALTA NETHERLANDS POLAND PORTUGAL ROMANIA SLOVAKIA SLOVENIA SPAIN SWEDEN SWITZERLAND UNITED KINGDOM EMERGING MARKETS ARGENTINA BRAZIL CHILE CHINA INDIA ISRAEL MEXICO RUSSIA SOUTH AFRICA SOUTH KOREA TAIWAN VIETNAM CENTRAL AND EASTERN EUROPE ARMENIA AZERBAIJAN BOSNIA CROATIA FAROE ISLANDS GEORGIA KAZAKHSTAN MONTENEGRO NORWAY SERBIA TURKEY UKRAINE UZBEKISTAN ASIA-PAC AUSTRALIA BANGLADESH BRUNEI HONG KONG INDONESIA JAPAN MALAYSIA NEW ZEALAND PAKISTAN PHILIPPINES SINGAPORE THAILAND AMERICAS BOLIVIA CANADA COLOMBIA COSTA RICA ECUADOR EL SALVADOR GUATEMALA PANAMA PERU PUERTO RICO URUGUAY UNITED STATES VENEZUELA MIDDLE EAST ALGERIA BAHRAIN BOTSWANA DUBAI EGYPT ETHIOPIA EQUATORIAL GUINEA IRAQ KUWAIT MOROCCO NIGERIA OMAN QATAR SAUDI ARABIA TUNISIA LOW-TAX JURISDICTIONS ANDORRA ARUBA BAHAMAS BARBADOS BELIZE BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS COOK ISLANDS CURACAO GIBRALTAR GUERNSEY ISLE OF MAN JERSEY LABUAN LIECHTENSTEIN MAURITIUS MONACO TURKS AND CAICOS ISLANDS VANUATU

## The New Double Taxation Agreement Between Cyprus And Jersey

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### Introduction

On July 11, 2016, Cyprus and Jersey signed a new Double Taxation Agreement (DTA). The agreement is the first comprehensive DTA between the two, and will come into force once it has been ratified in accordance with their domestic legal procedures. The 2004 agreement on taxation of savings income between Cyprus and Jersey will continue in force, but the DTA will be more beneficial to taxpayers once it takes effect.

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. The key provisions of the DTA and Protocol are analyzed in the following paragraphs.

### Taxes Covered

The agreement covers all taxes on income levied by either party or by any of a party's 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 Jersey, income 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.

Since the DTA was signed, the Cyprus government has abolished immovable property tax with effect from the end of 2016, so the DTA will not apply to this tax in practice.

## **Residence**

Article 4 of the DTA reproduces the provisions of the OECD Model regarding residence *verbatim*, with the "tie-break" criteria for determining residence for individuals who are resident in both countries being permanent home and center of vital interests, country of habitual residence, and nationality, in descending order. If none of these is decisive, residence is to be settled by mutual agreement between the two countries' tax authorities.

For legal persons, the place of residence is the place in which the effective management of the enterprise is situated.

## **Permanent Establishment**

Article 5 of the DTA, which deals with permanent establishment, also reproduces the provisions of the OECD Model *verbatim*, with 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.

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 12 months.

If an enterprise has a representative in the territory of a party that has, and habitually exercises, authority to conclude contracts in the name of the enterprise, the enterprise concerned is deemed to have a permanent establishment in respect of any activities which the person undertakes for the enterprise. As in the OECD Model, the DTA provides that an independent broker or agent that represents the enterprise in the ordinary course of business will not be caught by this provision. Particular care needs to be taken regarding the issuing of general powers of attorney so as not to risk unintentionally creating a permanent establishment, with potential adverse consequences.

## **Income From Immovable Property**

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

## **Business profits**

Article 7 of the DTA reproduces the corresponding article of the OECD Model *verbatim*.

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

## **International Shipping And Transport**

Profits of an enterprise from the operation of ships or aircraft (including income from containers, trailers and related equipment) in international traffic are taxable only by the contracting party in whose territory the enterprise is resident.

## **Dividends**

Dividends paid by a resident of one contracting party to a resident of the other contracting party are taxable only by the contracting party in which the recipient is resident.

## **Interest**

Interest arising in one contracting party and paid to a resident of the other is taxable only by the contracting party in whose territory the recipient is resident.

Cyprus-resident natural persons receiving interest income from Jersey will be subject to a lower tax charge by disclosing the interest and opting for taxation in Cyprus, rather than imposition of withholding tax in Jersey under the 2004 taxation of savings income agreement.

## **Royalties**

Royalties arising in one contracting party and paid to a resident of the other are taxable only by the contracting party in whose territory the recipient is resident.

## **Capital Gains**

Gains derived by a resident of one contracting party 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

party in whose territory the immovable property or the permanent establishment is situated. There is no provision in the agreement for gains on disposal of shares in companies that derive more than half their value from immovable property to be taxed by the party in whose territory the immovable property is situated.

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

### **Offshore Activities**

Like other recent Cyprus DTAs, the Cyprus–Jersey agreement includes an article dealing specifically with offshore activities. It provides that a resident of one contracting party undertaking activities on the territory (including the territorial sea or exclusive economic zone) of the other will be treated as exercising a trade or business in the latter territory through a permanent establishment there in respect of the activities concerned, unless the aggregate duration of the activities is no more than 30 days in the fiscal year concerned. Associated companies are treated as one for the purpose of assessing the duration of their activities.

Profits from maritime or air transport, towing, mooring, refueling and similar activities in connection with offshore exploration and exploitation of resources are taxable only by the contracting party of which the enterprise concerned is a resident.

Salaries, wages and other similar remuneration derived by a resident of one contracting party in respect of employment in connection with exploration or exploitation of sub-sea resources of the other contracting party may be taxed by the second contracting party. However, if the employer is not a resident of the second contracting party and the employment amounts to less than 30 days in any 12-month period starting or ending in the fiscal year concerned, the remuneration is taxable only by the party in whose territory the employee is resident.

Remuneration in respect of employment aboard a ship or aircraft engaged in the transportation of supplies or personnel in connection with the exploration or exploitation of sub-sea resources is taxable by the contracting party in which the enterprise providing the services is resident.

Gains derived by a resident of one contracting party from the alienation of exploration or exploitation rights or property used in connection with the exploration or exploitation of the seabed situated in the territory of the other contracting party may be taxed by the contracting party in

whose territory the rights or the property are located. The same applies to shares deriving the greater part of their value directly or indirectly from such rights or property.

### **Elimination Of Double Taxation**

Elimination of double taxation is achieved by the credit method. The credit is limited to the amount of tax that would be payable on the income concerned in the country of residence.

### **Non-Discrimination**

The DTA reproduces the corresponding article of the OECD Model *verbatim*.

### **Mutual Agreement Procedure**

The DTA reproduces the corresponding provisions of the OECD Model, with a reference to arbitration 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, unusually, the exchange of information provisions will have effect eight taxable years prior to the entry into force of the agreement.

A Protocol to the DTA provides robust safeguards against abuse of the information exchange provisions by requiring the contracting party 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 party 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 party 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 party requesting it, that if the requested information was within its jurisdiction the requesting party 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 party 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 party 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**

Jersey is among the world's most important financial centers, 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.