

## Corporate Tax - Cyprus

### New Cyprus-Ukraine double tax agreement moves closer to ratification

Contributed by **Andreas Neocleous & Co LLC**

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On May 16 2013 the Ukrainian government submitted a draft law to Parliament to ratify the new double tax agreement and protocol between Cyprus and Ukraine, which was signed on November 8 2012. The draft law was registered on May 17 2013.

The new agreement will enter into force once Ukraine and Cyprus have exchanged formal notices of completion of the ratification procedures, and its provisions will take effect from the following January 1. For example, if notices of completion of the ratification procedures are exchanged during 2013, the new agreement will apply from January 1 2014. Until the new agreement takes effect, the 1982 double taxation agreement between Cyprus and the Union of Soviet Socialist Republics (USSR) will continue to apply.

The new agreement provides for higher rates of withholding tax than the Cyprus-USSR agreement in relation to dividends, interest and royalties. The maximum rate of withholding tax on dividends will be 5% if the beneficial owner is a resident in the other contracting state and holds at least 20% of the capital of the company paying the dividend or has invested at least €100,000 in it. For investments not satisfying these criteria, the maximum rate of withholding tax will be 15%. The maximum rate of withholding tax on interest under the new agreement is 2%. The maximum rate of withholding tax on royalties in respect of:

- copyright of scientific work, patents, trademarks, secret formulas, processes or industrial, commercial or scientific know-how is 5%; and
- literary or artistic work (eg, films) is 10%.

Any Ukrainian withholding tax paid can be offset against Cyprus tax attributable to the relevant income.

One of the major benefits of the new agreement is that it retains the highly beneficial arrangements regarding capital gains that apply at present. Capital gains realised by a Cyprus-resident company derived from disposal of shares in a Ukrainian company will continue to be exempt from taxation in Ukraine, even for 'property-rich' companies. Since Cyprus imposes no tax on disposals of shares except where (and to the extent that) the gain is derived from real estate in Cyprus, Cyprus companies will continue to be an ideal means of holding real estate in Ukraine, effectively allowing property there to be disposed of tax-free.

Unlike the Cyprus-USSR agreement, the new agreement generally follows the Organisation of Economic Cooperation and Development Model Convention. Among other things, the new agreement:

- introduces a beneficial ownership concept, defines associated enterprises;
- updates the definition of permanent establishment; and
- facilitates the exchange of information between the two countries' tax authorities, subject to the strong taxpayer safeguards contained in the Cyprus Assessment and Collection of Taxes Law.

The withholding tax rates on payments from Ukraine to Cyprus under the new agreement are highly competitive with Ukraine's other double tax agreements, and the capital gains tax benefits will ensure that Cyprus retains its favoured position as a portal for investment in Ukraine. While this is only the first step along the road to ratification, the rest of the process is expected to move relatively quickly, given the pressure that there has been in Ukraine to replace the Cyprus-USSR agreement.

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