NEOCLEOUS

Cyprus Business Headlines

SUMMER 2013 VOLUME 8 ISSUE 3

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Double tax treaty roundup

Since the last issue of Cyprus Business Headlines the new double tax agreement between Cyprus and Portugal has entered into force and the Cyprus-Spain and the Cyprus - Ukraine agreements have progressed towards ratification.

Entry into force of the Cyprus - Portugal double taxation agreement
The double taxation agreement between Cyprus and Portugal, which was signed on 19 November 2012, entered into force on 16 August 2013 following the completion of ratification procedures by the two countries. The new agreement applies to the 2014 and subsequent tax years. It mirrors the latest OECD Model agreement and provides for a maximum withholding tax rate of ten per cent on dividends, interest and royalties. It should be noted that Cyprus does not impose withholding taxes except on royalties arising from use of an intellectual property asset within Cyprus, and that withholding taxes may also be eliminated under EU directives. A Protocol to the agreement sets out robust safeguards for the taxpayer against official abuse of the exchange of information provisions.

The entry into force of the agreement fully normalises tax relations between Cyprus and Portugal, which still maintains a "blacklist" of more than 80 countries or territories, including the Channel Islands, Gibraltar, Hong Kong, the Isle of Man, Qatar, Seychelles and the British and US Virgin Islands, whose residents are denied certain benefits of the Portuguese tax system and are subject to the Portuguese CFC rules and to higher rates of certain taxes. Cyprus was removed from the list in 2011.

Progress in ratification of the Cyprus - Spain double taxation agreement
On 2 August the double taxation agreement between Cyprus and Spain, which was signed in Nicosia on 14 February 2013, took another step towards ratification when the Spanish cabinet approved the agreement and forwarded it to the Spanish parliament for consideration. It will enter into force three months after the two countries have exchanged formal notifications that their respective domestic ratification procedures have been completed and will apply to the tax year beginning on the following 1 January and subsequent tax years.

The agreement applies to taxes on income and capital and follows the latest OECD Model Tax Convention. It provides for a maximum withholding tax rate of 5% on dividends, provided the beneficial owner is a resident of the other contracting state. Dividends paid by a company resident in one state to a company resident in the other state are exempt from withholding tax provided the recipient company's capital is wholly or partly divided into shares and provided that it directly holds at least 10% of the capital of the company paying the dividends. Interest and royalties paid by a resident of one contracting state to another are taxable only in the state of residence of the recipient, provided the recipient is the beneficial owner.

Capital gains on disposals of immovable property and on unlisted shares in companies deriving more than 50% of their value from immovable property may be taxed in the country in which the immovable property is situated. Gains on disposals of ships and aircraft engaged in international traffic are taxable only in the country in which the place of effective management of the enterprise is situated. Other gains are taxable only in the country in which the alienator is resident. As Cyprus does not impose tax on such gains this gives rise to tax planning opportunities.

For several years until 2009 Cyprus-resident companies were ineligible for certain Spanish tax benefits and exemptions on account of Cyprus being included in the Spanish authorities' so-called black list of tax havens, despite complying with all relevant information exchange requirements. In 2009 the Spanish authorities removed the restrictions and progress in the negotiations regarding the double taxation agreement resumed. The conclusion of the agreement normalises tax relations between the two countries and has already led to a significant expansion of economic ties and reciprocal investment between them.

Progress in ratification of the Cyprus - Ukraine double taxation agreement
Following its approval on 4 July by Verkhovna Rada, the Ukrainian parliament, the law to ratify the new agreement was signed by the President of Ukraine on 23 July. The new agreement will enter into force when written notices of ratification have been exchanged and will have effect from the following 1 January. Until then the double tax agreement between the USSR and Cyprus will apply.

The new agreement provides for withholding tax of 5% on dividends if the beneficial owner is a resident of 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 is 2%. The agreement provides for a maximum rate of withholding tax of 5% on royalties in respect of copyright of scientific work, patents, trademarks, secret formulas, processes or industrial, commercial or scientific know-how; and 10% on royalties in respect of literary or artistic work, such as films.

The new agreement retains the highly favourable provisions of the Cyprus-USSR agreement regarding capital gains on disposal of shares in property-rich companies. Movable property including shares is taxable only in the country of residence of the owner, and since Cyprus imposes no tax on disposals of shares except and to the extent that the gain is derived from real estate in Cyprus, Cyprus companies have become an ideal means of holding real estate in Ukraine, effectively allowing property to be disposed of tax-free.

In summary, the new Cyprus-Ukraine agreement is very taxpayer-friendly and maintains Cyprus's place among the most beneficial of Ukraine's treaty partners.

For further information regarding these agreements please contact Philippos Aristotelous.

Changes to the "economic citizenship" programme

A number of refinements have been made to the "economic citizenship" programme described in the last edition of our newsletter. The main changes are as follows:

- The minimum amount to be invested in government funds has been reduced from €3 million to €2.5 million and the requirement that the investments should remain blocked for at least five years has been dropped. However, €0.5 million of the amount to be paid now takes the form of a donation rather than an investment;
- Qualification by acquisition of shares of Cyprus-registered companies is no longer limited to shares in public companies;
- Applicants may now qualify by holding deposits in Cyprus banks, or by a combination of bank deposits, investments in government funds and other assets in Cyprus;
- Additional flexibility has been introduced to the requirements regarding business activities in Cyprus; in particular the requirement to employ at least 10 Cypriot citizens has been dropped. Business activities not satisfying the minimum criteria may be supplemented by other qualifying investments.
- Individuals who suffered losses in Bank of Cyprus and Laiki Bank of less than the previous qualification threshold of €3 million may make good the shortfall by other investments.

The complete, up to date terms of the programme may be found on our website by following this link. We should be delighted to advise on eligibility and to assist with applications.

For further details please contact Christos Vezouvios, head of our immigration law department.

Establishment of registers for trusts established in Cyprus

On 5 September 2013 the Cyprus parliament passed laws amending the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 ("the Fiduciaries Law") and the International Trusts Law of 1992 to 2012 ("the International Trusts Law") to create a register of trusts established in Cyprus. The changes reflect the Cyprus authorities' commitment to transparency and sound regulation.

The main provisions of the new laws are summarised below.

Each of the supervisory bodies for the purposes of the Fiduciaries Law (CySEC, the Cyprus Bar Association and the Institute of Certified Public Accountants of Cyprus (the "Competent Authorities")) will maintain a register of trusts established by service providers they regulate containing the following information:

- the name of the trust;
- the name and full address of every trustee at all relevant times;
- the date of establishment of the trust;
- the date of any change in the law governing the trust to or from Cyprus law; and
- the date of termination of the trust.

Any Cyprus-resident trustee of a trust governed by Cyprus law will be obliged to notify the relevant Competent Authority of the relevant information within fifteen days from the creation of the trust or the adoption of Cyprus law as the law governing the trust, as applicable. Subsequent changes in any relevant information, including termination of the trust or a change in the governing law from Cyprus law, must similarly be notified within fifteen days. In the event of termination of the trust or a change in the governing law from Cyprus law the register will indicate that the trust has been terminated and the information on the trust will be kept for five years.

Trustees subject to the Fiduciaries Law will be required to provide the relevant information regarding existing trusts within six months after the new law enters into force.

Service providers establishing trusts will be required to obtain documentary evidence of identity of the settlor, the trustees, the beneficiaries (or information on the class of beneficiaries including the beneficiaries to whom any distributions have been made pursuant to the trust) and others associated with the trust, as well as information on the activities of the trust, and keep this information available for inspection by the relevant Competent Authority on request.

The only change made to the International Trusts Law is to align it with the changes in the Fiduciaries Law.

These changes will enhance Cyprus's reputation and position as a fully transparent and attractive trust jurisdiction with a legal infrastructure which entrenches jurisdictional and asset protection for trusts whilst fully complying with all applicable EU and domestic anti-money laundering laws and regulations. Since trustees and fiduciaries are required to maintain proper records on trusts under existing anti-money laundering legislation, the proposed amendments should not create any additional administrative burden or reporting obligation.

For further information please contact Philippos Aristotelous.

Cyprus Investment Firms and providers of fiduciary services – new anti-money laundering requirements

The Cyprus Securities and Exchange Commission (CySEC) has issued a circular to Cyprus Investment Firms and providers of fiduciary services supervised by CySEC setting out their reporting obligations under anti-money laundering legislation.

The supervised entities are required to submit Form 144-08-11 "Monthly Prevention Statement for the Prevention of Money Laundering and Terrorist Financing" to CySEC no later than fifteen days after the end of each month. Form 144-08-11 is available for download on the CySEC website. It includes information on amounts over €10,000 received from clients in cash and on reports submitted regarding money laundering and terrorist financing. A "nil return" must be submitted even where no client funds are held, no cash receipts above €10,000 occur and no reports on money laundering or terrorist financing are submitted.

For further information please contact Elias Neocleous.

Interest on late refunds of VAT by the VAT authorities

In October 2012 the Cyprus VAT Law was amended to provide for the payment of interest on VAT refunds in accordance with the provisions of Council Directive 2008/9/EC of 12 February 2008. A taxable person who submits a claim for a refund of VAT which is not paid within four months of submission of the claim is entitled to interest at the statutory rate (currently 5% per year) from the date the four-month period expires, provided that the delay in repayment is not due to any fault, action or omission on the part of the taxable person.

The amendment took effect on 19 February 2013, and affects tax periods commencing after that date. The first such period is 1 March- 31 May 2013, in respect which of the due date for submission of returns was 10 July 2013. If refunds due for the period are not paid within four months of submission of the return, the taxpayer will be entitled to interest.

For further information please contact Elias Neocleous.

Extra time for settlement of taxes

A number of changes to tax deadlines have been made following the disruption to the economy that took place earlier in the year in order to reflect the current economic situation and allow extra time for payment of taxes.

Immovable property tax
Immovable property tax is calculated on the taxpayer's aggregate property holding at 1 January each year on the basis of an assessed valuation as at 1 January 1980. It is generally payable no later than 30 September each year. For 2013 the payment date has been extended to 15 November 2013, and if the tax is paid by 15 October 2013 a 10% discount will be allowed.

Waiver of penalties for late payment of VAT
No interest or penalties will be charged in respect of late submission of VAT returns for quarters ended 28 February 2013, 31 March 2013, 30 April 2013 and 31 May 2013 as long as the return is submitted and the liability is paid no later than 10 December 2013. For VAT returns for quarters ending 30 June 2013, 31 July 2013, 31 August 2013 and 30 September 2013 the penalty for late payment will be reduced to 5% as long as the return is submitted and the liability is paid no later than 10 December 2013. In addition to the 5% penalty, interest will be payable at the rate of 4.75% per annum.

For further information please contact Philippos Aristotelous.

News about our firm

Nicolas Ktenas joins the board of the American Chamber of Commerce in Cyprus
At the recent annual general meeting of the American Chamber of Commerce in Cyprus Nicolas Ktenas, a partner in our Nicosia office, was elected to the board of directors of the Chamber. The American Chamber of Commerce in Cyprus promotes, expands and encourages business, economic, trade and cultural relations between Cyprus and the United States of America, and works in cooperation with the Cyprus Chamber of Commerce & Industry and the American embassy in Cyprus to advocate a business friendly environment in Cyprus with a focus on the ease and cost of doing business.

Japanese Members of Parliament visit Cyprus

A delegation of about fifteen Japanese Members of Parliament visited Cyprus on August 21 and 22, as part of an official visit to countries of the Mediterranean. They were accompanied by HE Mr Hiroshi Toda, Ambassador of Japan in Athens, and other senior officials as well as Andreas Neocleous, Chairman of our firm and Honorary Consul-General of Japan in Limassol. Members of the delegation took the opportunity to learn about recent developments in Cyprus including the use of Cyprus as an investment gateway to various other countries, the potential energy reserves in the Cyprus Exclusive Economic Zone and the current situation following the Eurogroup decision of 25 March 2013. This is the first time that such a large official delegation from Japan has visited Cyprus and it is hoped that this will be the start of a fruitful, long term business relationship between the two countries. Andreas Neocleous later hosted a lunch in the visitors' honour at our firm's premises.

Asset recovery accolades for Panayiotis Neocleous and Costas Stamatiou

Panayiotis Neocleous and Costas Stamatiou have been identified as leaders in asset recovery in the latest directory of asset recovery lawyers issued by Who's Who Legal. It is not possible to buy entry into any Who's Who Legal publication, and candidates are selected for inclusion on the basis of comprehensive, independent survey work with both general counsel and private practice lawyers worldwide.

Panayiotis is the Cyprus representative of ICC FraudNet, a highly-select network of independent, world-class asset recovery lawyers in 54 countries around the world. In recognition of fraud's increasing sophistication, speed and global dimensions, the International Chamber of Commerce (ICC), the world business organization headquartered in Paris with offices in 70 countries, founded the FraudNet network to help victims of fraud trace and recover their stolen assets. Since its formation in 2004 its members have recovered billions of dollars for victims of some of the world's largest and most sophisticated frauds.

Andreas Neocleous features in the International Bar Association's IBA Global Insight magazine

Andreas Neocleous, chairman of our firm, was extensively quoted in an article titled "Bailout or down and out?" in the current edition of IBA Global Insight, the International Bar Association's flagship magazine, which is distributed to all members of the Association.

Pointing out that, "The Cyprus bailout is an extremely blunt instrument that tars every credit holder with the same brush" Mr Neocleous draws attention to the fact that institutions in the Netherlands, Germany, Malta and Switzerland, are now advertising themselves as a "safe haven" for Russian funds that were being condemned by Dutch and German politicians as tainted during the course of the bail-out negotiations just a few weeks previously.

To view "Bailout or down and out?" please click on this link.

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 "Global Legal Insights - Corporate Tax"
- Cyprus chapter of "Getting the Deal Through Labour and Employment"
- Cyprus chapter of "International Secured Transactions"
- Cyprus chapter of "Getting the Deal Through Dispute Resolution"
- Cyprus chapter of "International Agency and Distribution Law"
- Cyprus chapter of "Manual for the Handling of Applications for Patents, Designs and Trademarks throughout the World"
- Cyprus chapter of "The Merger Control Review - Fourth Edition"

Andreas Neocleous & Co LLC

Neocleous House, 195 Archbishop Makarios III Avenue, PO Box 50613, CY-3608, Limassol, Cyprus
Tel.: +357 25 110000 Fax: +357 25 110001
E-mail: info@neocleous.com Website: www.neocleous.com

Admiralty and shipping, banking and finance, corporate and commercial, e-business, EU Law, intellectual property, litigation and arbitration, real estate, tax law and international tax planning

Other local and international offices: Nicosia; Paphos; Moscow; Brussels; Budapest; Kiev; Prague; Sevastopol