Cyprus

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General

1. What are recent tax developments in your country which are relevant for M&A deals?

Originally the Cyprus income tax law from 2002 had introduced major reforms and rearrangements to the Cyprus tax system at the time of Cyprus's accession to the EU in May 2004. The law had then been redesigned to modernise and harmonise the local tax regime with that of other European nations and to ascertain full range compliance with the European Community law, the EU code of conduct for business taxation and the Organisation for Economic Co-operation and Development (OECD) guidelines to eliminate preferential treatment for international businesses, and all EU Directives.

Consequently, the corporate reorganisation provisions were thus incorporated into the legislation of the Cyprus Income Tax. Thereupon, various other laws, such as the stamp duty and capital gains, were also amended to facilitate and allow the tax-free implementation of these provisions. Currently, the provisions for reorganisation concern: corporate mergers, corporate divisions, asset transfers, and shares exchange.

Further, the tax treatment of cross-border mergers and acquisitions, is remaining as is, although in more recent years the Cyprus Income Tax law has been amended to encompass amongst others the removal of restrictions on interest deductibility on equity acquisitions [trading], and the introduction of a time-limit to the carry forward of losses. Additionally, up to year 2014, Companies needed to be Cyprus tax residents, for the group loss relief to apply, and thus a Cyprus tax-resident entity could only surrender its losses to a fellow Cyprus tax-resident entity. As this condition could be regarded as irreconcilable to the EU freedom of establishment, the relevant law has been amended in December 2015, and is effective retroactively from 1 January 2015. Through this amendment, new parameters have been introduced which are aligned with the jurisprudence of recent decisions of the European Court of Justice (ECJ), and the law now provides that the ggroup loss relief provisions are extended to scenarios where the surrendering entity is registered-in and is a tax-resident of another EU Member State.

Furthermore, in an aim and effort by Cyprus to always treat transactions between related parties in a fair way, another December 2015 tax law amendment, which is effective retroactively as from 1 January 2015 again, was introduced in reference to the arm's length principle as codified in the tax law. As per this, a negative transfer pricing adjustment is now included within the provisions, while prior to that, the law only provided for upward adjustments in cases when transactions between related parties were not performed at arm's length.

Finally, reference to reorganisations, the relevant law has been further amended in December 2015, and effective as from 1 January 2016, introducing new anti-abuse and anti-avoidance provisions, while maintaining and safeguarding the tax neutrality for bona fide transactions. Specifically, should the Tax authorities evaluate that a re-organisation has been put in place for no valid commercial reason and reflects no economic reality. They are statutorily granted the right to refuse any tax exemptions which would have otherwise been allowed by the law in relation to re-organisations. In practice, the Commissioner can deny exemption from tax of any profits arising from a re-organisation, if he judges that the main purpose or one of the main purposes of the re-organisation was i) the avoidance, decrease, or postponement of the payment of tax, or ii) the direct or indirect allocation of an entity's assets to a person without settling the corresponding tax, or as a means of decreasing/postponing that corresponding tax.

2. What is the general approach of your jurisdiction regarding the implementation of OECD BEPS actions (action Plan 6 specifically) and, if applicable, the amendments to the EU Parent-Subsidiary Directive?

Cyprus holds a positive stand towards harmonising to the OECD BEPS actions. To date, there's one recent development in the era, through the 30 December 2015 press release by the Cyprus Ministry of Finance announcing plans to amend the existing Intellectual Property regime, so that this will correspond to the

recommendations of the final report of the OECD on Action 5 'Countering Harmful Tax Practices More Effectively Taking into Account Transparency and Substance' [the Report] under its Action Plan against Base Erosion and Profit Shifting. In line to this, the prospective changes are expected to adopt the 'modified nexus approach', while the amendments will also be inclusive of transitional arrangements like the grandfathering provisions for existing IP as these are provided in the Report and the applicable European Union (EU) framework. The exact parameters of Action 5 to be adopted by the Cyprus authorities will soon be announced, although it is already clear that the upcoming legislative changes are to have a considerable effect on the tax methodology of IP relevant activities.

Moreover, as an additional step for the Cyprus income tax law to be harmonised with the EU Parent - subsidiary directive including the two amending directives subsequently issued, a change has been voted into law in December 2015, and is applicable as from 1 January 2016 altering the pre-existing situation where dividend income was altogether and unconditionally exempt from corporate income tax. As the directive is referencing to the common tax regime applicable to parent and subsidiary companies of different EU member states, and since the amendment is obligatory for all EU member states as it involves the introduction of anti-hybrid and general anti-avoidance measures in regard to the distribution of profits from a subsidiary to a parent company within the EU, in the situation when a Cyprus tax-resident entity or a Cyprus located P.E. of a foreign tax-resident entity, receives dividend income from another company, the corporate income tax exemption will not apply to the extent that the relevant dividend is allowed as a tax deduction in the jurisdiction of the foreign paying company.

Subsequently, when the dividend corporate income tax exemption is no longer available due to the above, it should be subject to the rate of Corporate Income Tax of 12.5%. In this situation though, the dividend will not be liable to the Cyprus Special Defence Contribution (SDC) taxation scheme, and will not be considered dividend for SDC purposes.

3. What are the main differences among acquisitions made through a share deal versus an asset deal in your country?

a. Share deals

In an acquisition of shares, no direct taxes are triggered for the buyer. In situations where the relevant share purchase agreement is found to be subject to stamp duty in Cyprus, the tax obligation rests with the buyer, unless the contract provides otherwise. Of course a contract is exempt from stamp duty when the acquisition is effected as a result of company re-organisation.

The stamp duty varies from nil to 0.20% and is capped at €20,000.

b. Asset deals

In an acquisition of immovable property, the buyer is liable for a transfer fee. Transfer taxes range from 3% to 8%, depending on the value of the property. The tax is:

- 3% on amounts up to €85,000 of the sale price or market value
- 5% on amounts between €85,001 and €170,000
- 8% on any amount exceeding €170,000

There is a 50% exemption to the above fees applicable to immovable property transfers taking place between 16 July 2015 and 31 December 2016, irrespective of the date of the signing of the relevant contract or its submission to the Land Registry or to contracts signed and submitted to the Land Registry between 2 December 2011 to 31 December 2016 irrespective of the transfer date.

The law is applicable in the situations where VAT is not applicable. In these cases the bill provides that transfer duties shall be reduced by 50%, and in particular this applies in transactions where:

- transfer fees either apply or are due; and
- the transfer is in regard to land, buildings or interests in land or indivisible interests that are sold for the first time from the issue date of the building permit; and
- the contract is submitted for the first time to the local District Land Registry during the period of application of the law i.e. between 2 December 2011 to 31 December 2016.

On the other hand, for the period 2 December 2011 to 31 December 2016, there is a 100% exemption to the above transfer fees if the transfer relates to a transaction that is subject to VAT.

Immovable property situated in Cyprus is taxed on an annual basis on the market value of the property as at 1 January 1980, and applies to such property owned by the taxpayers [physical and legal persons] as at 1 January of each year. As of 1 January 2013 the bands and rates are as follows, and apply per owner and not per property.

- 0.6% on property up to value of €40,000, yet for owners of property with value up to €12,500, a 100% exemption applies. For owners with property above €12,500 tax is payable on the entire value including the first €12,500.
- 0.8% on property of value of €40,001 to € 120,000
- 0.9% on property of value of €120,001 to € 170,000
- 1.1% on property of value of €170,001 to € 300,000
- 1.3% on property of value of €300,001 to € 500,000
- 1.5% on property of value of €500,001 to € 800,000
- 1.7% on property of value of €800,001 to € 3,000,000
- 1.9% on property of value above €3,000,000

Again the agreement for the acquisition of immovable property or any other asset may also be subject to stamp duty in Cyprus. Stamp duty is imposed on contracts relating to things located or to be done in Cyprus. If the provisions of a reorganisation are applied, as defined under Cypriot law (which is in line with the provisions of the EU Merger Directive) such a purchase would be tax neutral. Depending on the nature of the assets transfer fees may apply.

The purchase of company's assets — unlike the purchase of shares — may be subject to VAT, which is currently rated at 19%.

In terms of utilisation of tax losses, tax losses are not allowed in the case of a share deal and given that profits from the sale of shares are generally exempt from tax.

In the case of a taxable sale of immovable property, any losses realised may be set off against similar profits that may arise in the future. The same principle applies to gains and losses resulting from the sale of other assets – where gains are taxable, the deductibility of losses may be allowed.

Buy-side

4. What strategies are in place, if any, to step up the value of the tangible and intangible assets in case of share deals?

A re-evaluation of assets can be effected via an independent valuator. Any increase or decrease in the value of assets is reflected accordingly.

The increase in value is recorded as a capital reserve. Generally, there is no tax obligation with respect to that reserve. However depending on the nature of the assets, corporation tax or capital gains tax may be imposed in the case of sale.

5. What are the particular rules of depreciation of goodwill in your country?

Goodwill is not subject to depreciation or amortisation. Since Cyprus applies International Financial Reporting Standards (IFRS), goodwill is tested for impairment (comparing recoverability with the carrying amounts) annually or whenever there is an indication of a possible reduction in value.

For impairment testing, goodwill is allocated to the relevant cash-generating unit (the lowest level within the entity for internal management purposes) and this cash-generating unit is tested for impairment.

Impairment loss on goodwill cannot be carried back.

Goodwill does not appear on individual statutory statements, it only appears in consolidated financial statements. The goodwill is treated as a fixed asset and, as such, gains are excluded from tax.

6. Are there any limitations to the deductibility of interest on borrowings?

According to Cypriot tax law, expenses may be deducted if they have been incurred wholly and exclusively for the production of income. In line with this, interest paid on a loan that has been used or will be used by the company for trading purposes or for the acquisition of trading fixed assets is fully deductible.

Also, following an amendment to the Cyprus Law in 2012, any interest expense relating to the acquisitions of shares after 1 January 2012, may be deducted from taxable income on the provision that the acquired company is directly or indirectly wholly acquired, i,e. 100% shareholding, and the acquired company holds assets which are all used for business purposes. While other interest expense relating to non-business assets is not deductible.Thus, interest paid on borrowings used by a holding company to acquire a fully owned subsidiary is treated as interest used for the acquisition of trading fixed assets.

On the other hand, any other interest income not classified as part of trading or related to company's trading activities may not be treated as a deductible expense. Non-trading assets, for which interest may not be deductible, include:

- Investments in shares that do not represent stock (as stocks are considered shares used for trading purposes)
- Passenger cars not used for trading
- Land that does not represent stock (as stock is considered land used for trading purposes)
- Buildings that do not generate income

Overall, under the Cyprus tax law, it is not permitted to deduct any interest expenses relating to the acquisition of a non-business asset.

Additionally, after the lapse of seven years from the date of purchase of an asset, the Cyprus Tax Office stops disallowing any interest as it considers the debt on the acquisition of the asset as paid.

It is worth noting that since the rules above provide only a general overview, proper advice should be sought on a case-by-case basis.

Also, non-trading assets are considered those that are not readily convertible into cash.

Further, no withholding taxes are imposed on interest paid out of Cyprus to non-resident creditors.

7. What are usual strategies to push-down the debt on acquisitions?

With a properly designed tax structure, debt push-down can be easily achieved.

Cypriot law has an absolute prohibition on financial assistance given by a company whether directly or indirectly, for the acquisition of its own shares. It also prohibits the shares of the holding company in the case of a subsidiary company. In line with this, in a transaction with multiple dealings, share acquisition financing may not be linked to debt push-down, given that this may be treated as an indirect financial assistance. However, express exclusions from the scope of this provision are included in the law.

The application of the provisions of EU Merger Directive incorporated into Cypriot law may prove to be beneficial in achieving debt push-down. An intermediary company may be incorporated in order to acquire the target. The intermediary company can subsequently be merged with the target company. To implement this plan, proper advice should be sought. Generally, if the structure and the transaction have sufficient underlying substance, any risks of avoiding taxation are effectively minimised.

Deferment of the debt (i.e. debt to be carried forward by postponing the payment of liability for the future) is also possible, allowing allocation of obligations according to annual profits.

From a Cypriot perspective, any losses that would have been subject to tax if they were to be gains may be off-set against other sources of income in the same tax year. When the income is not sufficient, the losses may be carried

forward and off-set against profits in subsequent years. In the case of change of ownership of a company, as well as change in the nature of the activities of a company, previous losses may not be carried forward and used by the new owners.

A company may also surrender tax losses to another company from the same group. On the claim by the group company (claimant company) group losses may be offset provided certain following conditions are met:

- Two companies are considered to belong to the same group for group relief purposes if one is controlled directly or indirectly by the other by at least 75% or both are controlled directly or indirectly by a third party, also by at least 75%
- A company will be considered a subsidiary of another company if and so long as not less than 75% of its ordinary share capital with voting rights is owned directly by that other company and that other company is entitled to not less than 75% of (i) any profits available for distribution to the equity shareholders and (ii) any assets of the subsidiary company that would be available for distribution to its equity holders on a winding-up
- Both companies must be members of the same group for the entire year of assessment
- It is only possible to off-set the loss of one company against the profit of another where the loss and profit are attributable to the same year of assessment
- Any payment for off-setting the tax losses of a group will not be taken into account in the tax computation of the surrendering or claimant company, nor will it be considered to be a dividend or an allowable expense
- Also, up to year 2014, both Companies needed to be Cyprus tax residents, for the group loss relief to apply, and thus a Cyprus tax-resident entity could only surrender its losses to a fellow Cyprus tax-resident entity. As this condition though might have been regarded as irreconcilable to the EU freedom of establishment though, the relevant law has been amended in December 2015, and is effective retroactively from 1 January 2015. Through this amendment new parameters have been introduced which are aligned with the jurisprudence of recent decisions of the European Court of Justice [ECJ], and the amended law now provides that the group loss relief provisions are extended to scenarios where the surrendering entity is registered-in and is a tax-resident of another EU Member State. Yet, this will be on the condition that this surrendering entity has exhausted all other possibilities available to it in carrying forward or surrendering its losses in its resident state or in another EU Member State where its intermediary holding company maybe be based and has legal seat. Additionally, in such circumstances, the tax losses need be calculated based on the Cyprus tax law provisions. Another clause of this amending law, also provides that in deciding if two Cyprus tax resident entities are eligible to group relief, given a situation that also involves interpositioning of a non-Cyprus tax resident entity as well, the interposed entity will not affect the Cyprus tax resident companies' group relief eligibility as long as the interposed is: i) a tax resident in an EU member state, or ii) a tax resident in any other country with which Cyprus has a signed DTT [either bilateral or a multilaterall], or an exchange of information (EoI) agreement.

In the case of reorganisation, any of the transferring company's accumulated losses are transferred to the receiving company and the provisions of the Cypriot law relating to the off-set and the carry forward of losses apply.

8. Are losses of the target company(ies) available after an acquisition is made?

Tax losses incurred in any one year that cannot be wholly offset against other income may be carried forward for five years and set off against profits resulting in subsequent years.

However, according to the law, losses incurred by a company cannot be carried forward if:

- Within any three-year period, there is a change in the ownership of the shares of a company and a substantial change in the nature of the business of the company (a significant change can be interpreted as a drastic change in the types of activities offered by a company - ie originally sells computers and then stops to commence trading in pharmaceuticals)
- At any time since, the scale of the company's activities has diminished or has become negligible and before any substantial reactivation of the business there is a change in the ownership of the company's shares

Losses can be carried forward provided that the process of reorganisation complies with all legal requirements.

9. Is there any indirect tax on transfer of shares (stamp duty, transfer tax, etc.)?

Stamp duty at nominal rates is payable on a variety of legal documents and may apply in the case of a transfer of shares. Specifically, stamp duty is governed by the Stamp duty Law (19/1963), within which article 4 (1) provides that the documents specifically presented in its first schedule are subject to stamp duty if these documents concern property situated in the Republic of Cyprus, as well as matters or things to be performed or done in Cyprus, irrespective of the place of execution of such documents. As of 1 March 2013, the applicable rates that are payable on contracts are nil on sums up to €5,000, and €1.50 for every amount of €1,000, or part of the amount of €1,000 on contracts with value between €5,001- €170,000. On contracts in excess of €170,000 the levy is €2 for every amount of €1000 or part of the amount of €1000, with a maximum amount of €20.000. In practice, it is advisable the agreement to be sent to the stamp duty authority of Cyprus before their execution in order to receive a written confirmation on whether it shall need to be stamped or not. Contracts are exempt from stamp duty in cases where the transaction falls within the provisions of a corporate reorganisation or it relates to transfer of securities quoted on a recognised stock exchange.

Also, agreements for the purchase of shares in a Cypriot company, which are executed in Cyprus, are not required to be stamped in Cyprus, and it is also the actual practice of the Stamp Duty Commissioner to exclude and exempt such documents from stamp duty. Further, not required to be stamped in Cyprus are: i) instruments of transfer of shares in a Cypriot company which are executed in Cyprus ii) agreements for the purchase of the shares in a foreign company which are executed in Cyprus, and iii) instrument for the transfer of shares in a foreign company which are executed in Cyprus.

10. Are there any restrictions on the deductibility of acquisition costs?

A purchaser making use of a Cyprus acquisition vehicle in order to execute an acquisition for cash can fund the vehicle with debt, equity, or hybrid instruments that combine the characteristics of debt and equity together. Further after, as a general rule, in order to ascertain a physical or legal person's chargeable income, only the outgoings and expenses which are wholly and exclusively incurred by such a person in the production of taxable income can be allowed to be deducted.

11. Can VAT (if applicable) be recovered on acquisition costs?

As of 1 February 2002, the Cyprus value added tax law is fully harmonised with the EU Sixth Directive, and VAT is levied at the rate of 19% as from 13 January 2014 onwards on a wide range of goods and services. Further, goods exported from Cyprus to non-EU destinations are subject to a zero VAT rate.

In particular, the transfer of a business as a going concern is outside the scope of VAT, provided certain conditions are met. The actual end-result of such transfer needs to be that a new owner is established who will be operating the business as such. Therefore, the mere sale of assets does not constitute in itself a transfer of a business as a going concern. While in the case that land and buildings are sold, it is advised that professional consultancy is requested.

As for the sale of shares, it is specifically listed as an exempt transaction in the Cyprus VAT law via Schedule Seven, Table B of the relevant legislation.

On this note, as sales of shares is categorised as 'exempt', no [input] VAT tax incurred on related costs, such as professional fees, is eligible to be recovered.

Yet, following the European Court of Justice [ECJ] decision to Kretztechnik AG v Finanzamt Linz (Case C-465/03), input VAT tax incurred in relation to the issue of shares instead, can be generally recoverable. Specifically, if a buyer issues shares in consideration of an acquisition, some or even all of the VAT attributable to the corresponding share issue can be considered recoverable.

12. Are there any particular issues to consider in the acquisition by foreign companies? *(for example non-resident taxation rules/substance rules and tax efficient exit routes)*

Cyprus is renowned as a jurisdiction for holding companies. In the majority of cases, its domestic legislation allows a tax-free treatment of incoming dividends from foreign subsidiaries. It also allows the distribution of dividends to the non-resident shareholders free from withholding taxes.

Equally, from a financing perspective, any interest payments to non-residents can also effectively be free from withholding taxes.

In any case, transactions between the Cypriot company and other group companies should follow transfer pricing regulations. In Cyprus, transfer pricing regulations are fairly limited: the arm's length principle applies in line with the provisions of the OECD. Further, in an aim and effort by Cyprus to always treat transactions between related parties in a fair way, a December 2015 tax law amendment, which is effective retroactively from 1 January 2015, was introduced in reference to the arm's length principle as codified in the tax law. As per this, a negative transfer pricing adjustment is now included within the provisions, while prior to that, the law only provided for upward adjustments in cases when transactions between related parties were not performed at arm's length.

Further on, to mitigate tax effects, in the cases of acquisitions, an important parameter that should be taken into consideration is the provisions of the relevant agreement for avoidance of double taxation (if any) between Cyprus and the country in which the subsidiary and / or parent will be located.

Any additional specific issues to be considered in the case of acquisitions of Cyprus companies by foreign investors, will need to be also examined on a case by case basis, depending on industry sector involved and investor's jurisdictional origin.

13. Can the group reorganise after the acquisition in a tax neutral environment through mergers or a tax group?

Cyprus has implemented the provisions of the EU Merger Directive in its national income tax legislation, enabling tax-neutral reorganisations.

According to Cypriot law, the transfer of assets and liabilities in the course of reorganisation does not give rise to any taxable profits at the level of the transferring company. Accumulated losses of the transferring company moved to the receiving company may be off-set and the relevant provisions for the consolidation of losses are applied.

Equally profits derived at the level of the receiving company as a result of the cancellation of its participation in the transferring company do not give rise to any taxable obligations. The issue of shares in the receiving company to the shareholder of the transferring company in consideration of shares in the transferring company does not give rise to any taxation on the gains or losses at the level of the shareholder.

Corporate reorganisations include mergers, divisions, partial divisions, transfers of assets, exchange of shares and transfer of registered seat. In order to qualify for tax exemption, the corporate reorganisation should not involve a cash payment exceeding 10% of the nominal value of the shares.

Stamp duty exemption on relevant contracts is also allowed.

In the reorganisation process, losses generated at the level of the transferring company can be carried forward to the receiving company subject to the provisions of the Cypriot law relating to the off-set and carrying forward of losses. Any losses of the receiving company are in turn transferable.

Moreover, reference to reorganisations, the relevant law has been further amended in December 2015, and effective 1 January 2016, there is an introduction of new anti-abuse and anti-avoidance provisions, while maintaining and safeguarding the tax neutrality for bona fide transactions.

As per these amendments, if the Tax authorities evaluate that a re-organisation has been put in place for no valid commercial reason and reflects no economic reality, they are statutorily granted the right to refuse any tax exemptions which would have otherwise been allowed by the law in relation to re-organisations. In practice, the

Commissioner can deny exemption from tax of any profits arising from a re-organisation, if he judges that the main purpose or one of the main purposes of the re-organisation was i) the avoidance, decrease, or postponement of the payment of tax, or ii) the direct or indirect allocation of an entity's assets to a person without settling the corresponding tax, or as a means of decreasing/postponing that corresponding tax.

Yet, such decision by the tax office of not allowing re-organisation exemptions must be adequately supported and fully substantiated, and thus the Commissioner will have to proceed to requesting evidential documentation if that is considered necessary, in order for the purpose of the re-organisation to be properly determined. Thereafter in every case the decisions by the tax office need to be completely justified, while at the same time the affected taxpayers maintain the right to proceed to objection and appeal against such a decision in line with the relevant provisions of the Assessment and Collection of Taxes Law.

In a different scenario, the Tax Authorities may approve the relevant tax exemptions available due to a re-organisation, yet at the same time they might need to request the enforcement of some conditions in order to safeguard the bona fide nature of the re-organisation.

The conditions relate to: i) the number of shares to be issued as a result of the re-organisation by the receiving company and, ii) the period of time that the shares issued in the course of re-organisation are to be kept by the receiving company which may not exceed three years, unless these shares are quoted in a recognised and approved stock exchange or they are shares which were transferred due to hereditary succession and are thus exempt from the holding time period restriction.

In the case that the above two conditions as set by the Tax authorities, are not met by the affected Companies, then the re-organisation will be considered non-qualifying for the tax-free re-organisation provisions of the Cyprus Income Tax Law and any tax that was initially deemed not to be due will become payable either by the transferring or the receiving or the acquiring company.

14. Is there any particular issue to consider in case of companies of which main assets are real estate?

According to Cypriot tax legislation, a capital gains tax at the rate of 20% may be triggered by the sale of shares in companies that derive their value from real estate situated in Cyprus, unless these are first acquired between 16 July 2015 to 31st December 2016.

In the case though that capital gains tax is imposable, possible application of a Double Taxation Treaty (DTT) should be considered, especially when the treaty includes favourable provisions for the taxation of capital gains. Capital gains tax will be triggered only when such shares derive their value from real estate situated in Cyprus.

The capital gains tax is not extended to immovable property situated outside Cyprus. Therefore, when a Cypriot company acquires a foreign subsidiary owning real estate situated outside Cyprus, and in turn sells the shares of that subsidiary, no taxes should be triggered in Cyprus. In some cases though, DTT allows for the taxation of such gains at the level of the subsidiary.

Acquisition of real estate property by non-Cypriot residents, other than those coming from EU countries, requires the approval of the Ministry of Interior, a process which takes between one and four months.

Immovable property situated in Cyprus is taxed on an annual basis on the market value of the property as of 1 January 1980. The rates for legal entities are the same as for individuals and vary from 0.6% to 1.9%. For persons with properties of aggregate value €12.500 or less, no tax is due.

In the case of a transfer of immovable property, applicable transfer taxes are a liability of the buyer. Transfer taxes are rated between 3% and 8%.

Sell-side

15. How are capital gains taxed in your country? Is there any participation exemption regime available?

The imposition of capital gains tax on transfers of immovable property is subject to exceptions including among others:

- Gains from the sale of shares in listed companies that are exempt from capital gains tax whether or not they own Cypriot immovable property
- Gains from the disposal of shares other than those identified above that are exempt from capital gains tax scope
- Gains resulting from qualifying company reorganisations, whether related to share transfers or transfers of ownership

No capital gains tax is imposed in Cyprus on gains from the disposal of immovable property situated outside Cyprus.

Gains deriving from the sale of assets other than immovable property are exempt from capital gains tax. They may however be subject to corporate income tax, depending on the nature of the assets. Generally gains from the sale of trading assets are subject to corporate income tax.

Further, when Capital Gains Tax in Cyprus is triggered, it is imposed at the rate of 20% and this is in the cases of capital gains derived from the disposal of immovable property located in Cyprus or from the disposal of shares of companies which own immovable property in Cyprus, with the exception of any such shares being listed at a recognised stock exchange or when the sale is made in the event of a qualifying company reorganisation.

Further, as per recent amendment to the relevant law, as from 17 December 2015 the definition of 'property' is extended so that Capital Gains Tax is also levied on sale of shares which directly or indirectly participate in other companies that in turn hold immovable property in Cyprus, on the provision that at least 50% of the market value of the shares that are sold is derived from that Cyprus immovable property. In the process of calculations towards determining whether this 50% threshold is applicable, any liabilities are not taken into account.

Generally, gains from the sale of securities and gains deriving from the disposal of shareholding, are exempt from both capital gains and corporate income tax, other than in the cases as identified above hereto.

Further, a favourable exemption is also in place as from July 2015, as per which gains from sale of immovable property [with this being land, or land with building[s], or buildings] are 100% exempted from Capital Gains Tax when i) they were/will be acquired between the day the new law came into effect being 16 July 2015, up to 31 December 2016 inclusively, and ii) they were/will be acquired from an independent non-related party at market value, via an ordinary purchase / purchase agreement, and not through: a donation, or gift, neither by way of exchange, trade nor in a way of settlement of debt, and the sale must not be related to any foreclosure agreement either.

16. Is there any fiscal advantage if the proceeds from the sale are reinvested?

There is no fiscal advantage in Cyprus in re-investing proceeds from a sale. The proceeds from the sale of shares are generally exempt from tax, and as such, no tax obligations are anticipated to arise.

While gains deriving from the sale of assets would be taxed accordingly.

17. Are there any local substance requirements for holding/finance companies?

Overall, the tax residency of a Cyprus company is determined by the underlying principles of the notion of 'Management and Control'. Additionally, in the absence of a formal definition regarding the establishment of the management and control, it is advisable that the following parameters be taken into account:

- The majority of the Directors of the Company are tax residents in Cyprus;
- The headquarters of the company are maintained in Cyprus;
- Important company decisions are taken in Cyprus by the local directors, and also it is recommended that the Memorandum and Articles of Association of the Company, allow only for Special Powers of Attorney [SPoA] to be issued by the Directors as opposed to General ones. These SPoA further need be clearly specifying the exact activity to be undertaken by the attorney, [e.g. only some particular transaction in a certain area of activities]. This measure acts as a safeguard towards the monitoring of the business solely by the Directors, since they are the ones originally entrusted with the managerial function and thus appointed by the shareholders of the Company;
- Moreover, the company needs to have economic substance in Cyprus. As economic substance has become a very important issue, a deeper look into the 'substance over form' doctrine is encouraged.

While some common characteristics of substance for Cyprus companies are:

- Having a real physical presence in Cyprus, whether through an owned distinct office or via leasing space at a serviced business centre;
- Having people working part-time or full-time at the company's offices;
- Having dedicated telephone, facsimile, and internet lines, as well as a website and electronic mail addresses;
- Owning at least one bank account maintained with a Cyprus bank, and operated by a Cypriot member of the Board of Directors;
- Maintaining proper accounting books and records in Cyprus, and preparing timely annual Audited Financial Statements, submitting promptly all annual tax returns, and settling promptly all relevant tax amounts due.

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