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N E W S L E T T E R

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NOBELTRUST

THE NEW CYPRUS – UKRAINE DOUBLE TAX TREATY

A new double tax treaty between Cyprus and the Ukraine was a necessity since the regulatory instrument governing the issue of taxation between the two countries was that signed in 1982 between Cyprus and the then USSR. The new double tax treaty was signed in Cyprus on the 8th of November 2012 and ratified by Cypriot parliament on the 22nd of March 2013 and by the Ukrainian parliament on the 4th of July 2013. The double tax treaty will come in to force as of the 1st of January 2014.

Below are the most important provisions of the double tax treaty that we believe are noteworthy and could be of assistance to our clients.

A) ELIMINATION OF DOUBLE TAXATION

Primarily the double tax treaty makes allowance for tax credit where a resident of a contracting state receives income by way of the provision of the treaty and which was taxed in the other contracting state. Taxation which has been paid abroad will be deducted from the tax payable in the other contracting state.

B) IN RELATION TO DIVIDENDS

Dividends payable by a company which is resident in a contracting state to a resident of the other contracting state may be subject to a 5% withholding tax in cases where the beneficial owner holds a shareholding of at least 20% in the company which is paying the dividends or alternatively where the owner has invested at least €100.000,00 by way of capital in the company. Dividend payments falling outside the ambit of these requirements are taxed with a 15% withholding tax instead.

This provision in essence has unilateral application since it only affects dividends being paid from Ukraine to Cyprus since dividends paid from Cyprus to foreign nationals and companies are exempt from withholding tax pursuant to Cyprus Tax Law (N.118(I)/2002).

C) IN RELATION TO INTEREST PAYMENTS

Interest payments paid by a resident company of one contracting state towards a resident of the other contracting state may be taxed with a 2% withholding tax.

This provision also has unilateral application and only affects payments from Ukraine to Cyprus since interest paid from Cyprus to foreign nationals and/or companies is exempt from withholding tax again pursuant to Cyprus Tax Law.

D) IN RELATION TO DIRECTORS' FEES

Directors' fees and other such payments which are derived by a resident of a contracting state in his capacity as a member of the board of directors of a company which is resident in the other contracting state may be taxed in the contracting state in which the company is registered.

E) COMPANIES OWNING SUBSTANTIAL AMOUNTS OF PROPERTY

The treaty itself does not contain a definition for immovable property and there is also no reference to restrictions on the sale of shares in property-rich companies in the article regulating Capital Gains. The treaty has not adopted the OECD provision of taxing in the State of source the gains derived by a resident of a contracting state from the alienation of shares or comparable interests deriving more than 50% of their value from immovable property situated in the other contracting state. Other gains not mentioned specifically are taxable only in the residence state.

F) IN RELATION TO ROYALTIES

In the case of royalties bipartite situation will apply in relations to the rates imposed. Firstly, the copyright of scientific work, patents, trademarks, secret formulae and knowledge of process and information pertaining to industrial, commercial or scientific experience will be taxed at the rate of 5% when they arise in a contracting state and are paid to a resident of the other contracting state. For all other royalties a tax of 10% is imposed. Please note that there is no withholding tax on payments for royalties from Cyprus to residents abroad.

G) IN RELATION TO THE SALE OF SHARES

Gains from the sale of shares are taxed in the country of residence of the seller. The nature assets held by or parted with on the part of the company are irrelevant.

H) IN RELATION TO THE EXCHANGE OF INFORMATION

The double tax treaty has adopted Article 26 of the OECD (Organisation for Economic Cooperation and Development) which regulates the exchange of information. Under this article the state requesting the information must show foreseeable relevance in requesting the information from the other contracting state and therefore must provide the following details (This list below is not exhaustive):

1. The identity of the person being examined

2. The name and address of any person who may hold the requested information

3. A description of the information requested and directions as to how the requesting state wishes to receive the said information

4. The purpose for which the information is sought

5. The reason for believe that the contract state is indeed the holder

or is in possession or under control of such information

6. A declaration on the part of the contracting state making the request verifying that it has exhausted all other reasonable means of obtaining the said information prior to making the request.

SUPPLEMENTARY INFORMATION

1. The OECD definition of permanent establishment has been adopted for the purpose of the double tax treaty. Under this definition the place of effective management is the standard which determines the residence of a company.

2. Any tax that is withheld in one contacting state may be used as tax credit on any taxation imposed on the same income in the other contracting state.

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