Information Sheet No. 59

Cyprus for Inbound and Outbound Investments in Ukraine

Introduction

Investments in and out of Ukraine have traditionally been structured efficiently through cyprus. Specifically, the island has served as an efficient platform for inbound investments in Ukraine as well as for Ukrainian outbound investments to the rest of world.

Why Cyprus for Ukraine?

For decades, Cyprus has served foreign investors as a stable platform for investments and transactions in Ukraine, Russia and other CIS countries. Furthermore, Cyprus has an exceptionally attractive tax regime (especially for holding companies) and provides access to benefits of its good double tax treaty network and relevant EU Directives.

Ukrainian statistics evidence Cyprus' position as the single major direct investor in the Ukrainian economy as well as attracting around 90% of Ukrainian outbound investments.

Double Tax Treaty ('DTT')

After lengthy negotiations between the two countries, the new Cyprus-Ukraine DTT was signed in November 2012 and was subsequently ratified by the Ukrainian parliament on 4th July 2013. The provisions of the new DTT will be applicable as from 1st January 2014, replacing the 1982 Cyprus-USSR DTT that has been in force to date. This development gave an end to uncertainties which existed due to the non-finalisation of the new DTT.

The new DTT between Ukraine and Cyprus, in conjunction with the attractive Cyprus tax regime, still constitutes Cyprus as one of the preferred jurisdictions for Ukrainian investments. The main provisions of the new DTT are provided in the **Appendix.**

Planning Tips

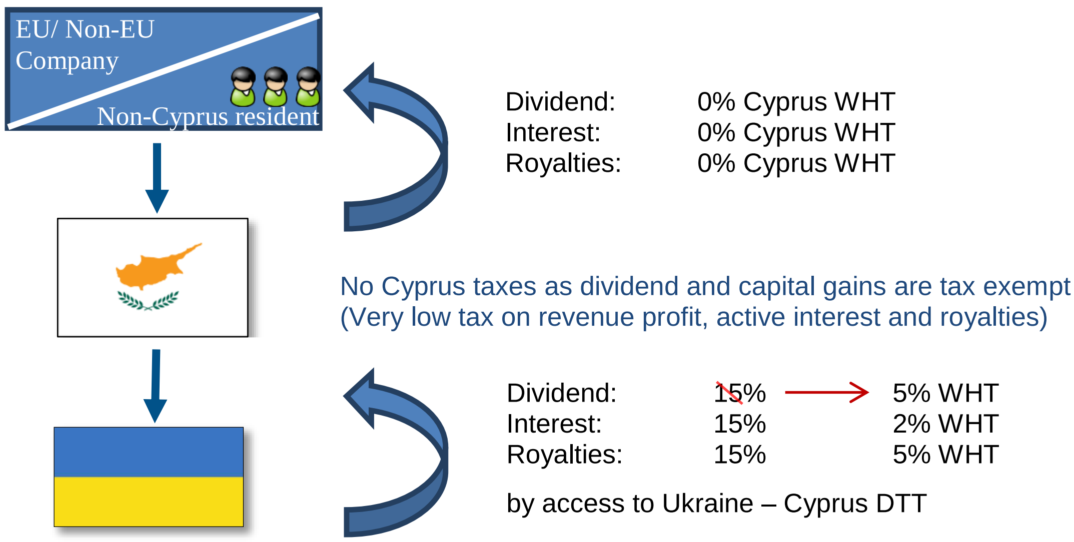
Up to 31 December 2013, Cyprus and Ukraine will continue to apply the 1982 Cyprus-USSR which, amongst other, provides for zero Ukrainian withholding taxes on dividends, interest and royalties. With the new DTT effective as from 2014, Ukrainian withholding tax shall be 5% (for holdings over 20%) for dividends, 2% for interest and 5% for royalties.

- **Dividends:** Where a Ukrainian company is owned wholly or partially by a Cyprus company and where such Ukrainian company is / has been profitable, it should be considered to pay dividends within 2013 so as to take advantage of the zero Ukrainian dividend withholding tax. This dividend may be as a result of accumulated profits up to and including 2012 and/or an interim dividend for 2013 profits
- **Interest/Royalties:** As from 2014, there will be a 2% Ukrainian withholding tax on interest payments to Cyprus and 5% for royalties. In most cases, this Ukrainian withholding tax will NOT be an extra cost to the structure as it can be claimed as credit against Cyprus tax resulting on the respective income. In cases where it is determined that this Ukrainian withholding tax shall exceed the Cyprus tax, clients may consider to review their structures accordingly

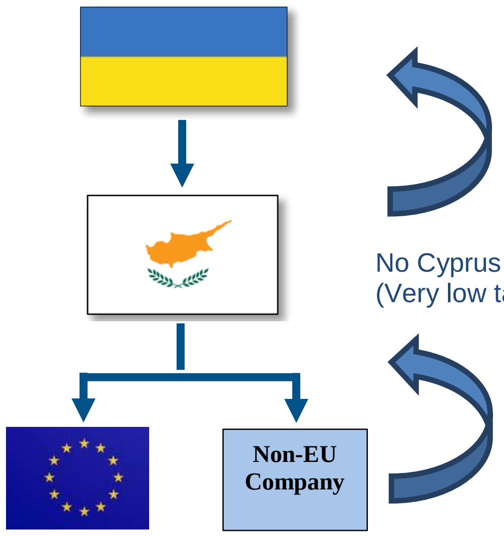
Tax Aspects

- Payments from Ukraine to Cyprus get the advantage of reduced Ukrainian withholding taxes (WHT) through access to the DTT between the two countries
- At the level of Cyprus the two main incomes of a holding company are tax exempt (i.e. dividend that derives from Ukrainian operating subsidiaries as well as profit from sale of shares). Other revenue related profit is taxable in Cyprus at the flat rate of 12,5%. Ukrainian withholding tax suffered may be claimed as credit (deduction) against Cyprus tax resulting from the same income
- Payments from Cyprus to its non-Cyprus resident shareholders (companies or individuals) are not subject to any Cyprus withholding taxes. This provision is within the domestic Cyprus legislation and as such there are no complications in having offshore companies (like BVI) or Trusts as direct shareholders of Cyprus companies
- Confidentiality on the identity of beneficial shareholders can be secured through the use of nominee / trustee shareholders at the level of the Cyprus Company

Inward Investments into Ukraine via Cyprus



Outward Investments from Ukraine via Cyprus



Dividend: 0% Cyprus WHT
Interest: 0% Cyprus WHT
Royalties: 0% Cyprus WHT

No Cyprus taxes as dividend and capital gains are tax exempt
(Very low tax on revenue profit, active interest and royalties)

Dividend: 0% or reduced WHT
Interest: 0% or reduced WHT
Royalties: 0% or reduced WHT

through access to DTT or EU Directive benefits

WHT = Withholding tax *DTT = Double Tax Treaty*

APPENDIX

Main provisions of the new Cyprus-Ukraine DTT applicable as from 2014

- **Withholding taxes**

  The following rates are applied for payments made from Ukraine to Cyprus, where the relevant conditions are met.

  Note: In accordance with the Cyprus tax legislation there are no Cyprus withholding taxes on payments of dividend, interest or royalties not used in Cyprus towards non-Cyprus residents.

- **Dividends**: 5% reduced withholding tax where the recipient is the beneficial owner and holds at least 20% of the capital in the paying company OR has invested an amount of at least €100.000. In all other cases a 15% withholding tax will apply.

  Interest: 2% withholding tax where the recipient is the beneficial owner.

- **Royalties**: 5% reduced withholding tax where the recipient is the beneficial owner of royalties paid under a license agreement in respect to copyright of scientific work, patent, trade mark, secret formula, process or information concerning industrial, commercial or scientific experience. In all other cases a 10% withholding tax will apply.

  Note: The Beneficial Ownership condition is of great importance and proper advice should be sought proactively to ensure satisfaction of the condition.

- **Capital Gains**: Gains from the sale of shares, including shares in property rich companies, will only be taxed where the seller is resident.

  Note: The favourable 'capital gains' provision which exists in the current DTT has been retained in the new DTT. This is very important for international tax planning.
- **Permanent establishment**: The definition of the Permanent Establishment has been aligned with the definition included in the OECD Model Tax Convention.
- **Exchange of information**: The treaty incorporates the relevant article of the OECD on the exchange of information. In a Protocol to the treaty, all the necessary procedures relating to a request for information are included, thus safeguarding tax payers against a potential misuse of the article.
- **No limitation on benefits clause ('LOB')**: The treaty does not include a limitation on benefits clause.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. P.G. Economides & Co Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.

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