

Tax Briefing 4/2009

Cyprus-Russia DTT New Protocol initialed

On April 16th 2009, Cyprus and the Russian Federation initialed the Protocol amending the existing Double Tax Treaty concluded between the two states. The long term pressure policy from a Russian perspective requiring a renegotiation of the Treaty resulted to the initialization of the present Protocol, signed in Nicosia by the two Ministers involved. Once this Protocol comes into full effect, Cyprus would be removed from the Russian list of non-cooperative tax jurisdictions.

This Protocol is expected to be signed by the end of this year and enjoy full effect as from the beginning of 2010.

Major changes occurred regarding the limitation of benefits, exchange of information and the taxation of capital gains deriving from the sale of shares in a real estate company provided in the Protocol. Brief outlines of those Protocol provisions are provided further below:

1. Exchange of Information (Art.26)

New provisions under this section provide for the extended scope of exchange of information including taxes covered by the Tax Treaty and extensively taxes of every kind including among others indirect taxation. The lifting of the banking secrecy shall put the obligation to any competent Contracting authority to collect information for exchange purposes without providing any refusal grounds of possession. Additionally, information gathering measures should be used to obtain the requested information despite the lack of domestic interest.

2. Limitation of Benefits (Art. 29)

A resident of a Contracting state shall not be entitled to any tax minimization or exemption on income deriving from the other State if it is concluded by the authorities of the Contracting States that the main purpose for the presence of the resident is the application of the Treaty benefits where under different circumstances they would not have applied.

3. Gains from alienation of property (Art.VII)

The new provision grants the right to a Contracting State to tax gains from the alienation of shares of companies the value of which is deriving by more than 50% from property situated in the other Contracting State. Alienation of shares in the context of reorganization as well as shares in companies listed in a recognized stock exchange is excluded from this provision.

Art VII comes into effect at the time of expiration of a four-year period from the date the Protocol comes into force. In the meantime, such gains arising from the alienation of property may also be caught under the provisions of Art.29 which shall have immediate effect as from the date of entry of the Protocol.

Current Russian-Cypriot cross-border tax structures may be affected therefore careful consultation should be requested in order to overcome any upcoming hurdles.

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This circular is part of the informative client material of Euroglobal S.E.E Audit Ltd. specialist advice should be consequently sought regarding precise circumstances. New developments may be treated with caution and delicacy.

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