

# Cyprus – Ukraine Double Tax Treaty

The government of the Republic of Cyprus and the Government of Ukraine, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes of income and confirming their endeavour to the development and deepening of mutual economic relations have signed an agreement on 8<sup>th</sup> of November 2012, effective as from 1<sup>st</sup> January 2014, replacing the 1982 Convention for the avoidance of double taxation of income and property (the Cyprus – USSR Treaty).

On 11<sup>th</sup> of December 2015, Cyprus and Ukraine signed a double taxation avoidance protocol in Kiev. This protocol amends the current double tax avoidance convention and the prevention of fiscal evasion with respect to taxes on income and on capital. The said protocol is expected to enter into force on 1<sup>st</sup> of January 2019.

The signed protocol is based on OECD Model Tax Convention for the avoidance of double taxation on income and on capital and contributes to the further development of the trade and economic links between Cyprus and Ukraine.

According to the Cypriot minister of finance, “a most favourable nation clause has been agreed for the taxes of interest, dividends, royalties and capital gains, ensuring that Cyprus is treated no less favourable than any other of Ukraine’s double taxation agreement counterparties in the future”.

## **Taxes Covered**

*In case of Cyprus – “Cyprus Tax”*

1. The income tax
2. The corporate income tax
3. Special contribution for the defence
4. The capital gains tax

*In case of Ukraine - “Ukrainian Tax”*

1. Tax on profits of enterprises
2. Income tax on individuals

## **Resident (Article 4)**

Resident of a contracting state means any person who, under the laws of that state, is liable to tax therein by reason of his domicile, residence, place of management, place of registration or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that state in respect only of income from sources in that state.

If an individual is a resident of both contradicting states then his status shall be determined by his permanent home or the centre of vital interests or the habitual abode or his national.

Where a person other than individual is a resident of both contradicting states, then it shall be deemed to be a resident of the contradicting state in which its place of effective management is situated.

## **Permanent Establishment (Article 5)**

The term “**permanent establishment**” means a fixed **place of business** through which the business of an enterprise is wholly or partly carried on.

The term “permanent establishment” includes specifically:

- a) place of management;
- b) branch;
- c) office;
- d) factory;
- e) workshop;
- f) mine, oil or gas well, quarry, or any other place for extracting natural resources.
- g) an installation or structure for the exploration of natural resource
- h) a warehouse or other structure used for the sale of goods.

#### **Immovable Property Tax (Article 6)**

Income derived by a resident of a contracting state from immovable property (including income from agriculture or forestry) situated in the other contracting state may be taxed in that other state.

Applies to income derived from the direct use, letting, or use in any other form of immovable property.

Ships, boats and aircraft are not regarded immovable property.

#### **Business Profits (Article 7)**

The profits of an enterprise of a contracting state shall be taxable only in that state unless the enterprise carries on business in that other contracting state through a permanent establishment situated therein.

If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state but only so much of them as is attributable to that permanent establishment.

#### **International Transport (Article 8)**

Profits derived by a resident of a contracting state from the operation of ships, boats or aircraft, in international traffic shall be taxable only in that state.

Profits from the operation of ships or aircraft in international traffic shall include profits derived from the rental of ships or aircraft on a full (time or voyage) basis. They shall also include profits derived from the rental of ships or aircraft on a bareboat basis.

#### **Dividends (Article 10)**

Dividends paid by a company which is a resident of a contracting state to a resident of the other contracting state may be taxed in that other state.

However, such dividends may also be taxed in the state of which the company paying the dividends is a resident and according to the laws of that state, but if the beneficial owner of the dividends is a resident of the other state, the tax so charged shall not exceed:

- a. 5% of the gross amount of the dividends if the beneficial owner holds at least 20% of the capital of the company paying the dividends **OR** has invested in the acquisition of shares or other rights of the company equivalent of at least €100.000

- b. **15%** of the gross amount of the dividends in all other cases.

***New Protocol (applicable as from 1<sup>st</sup> January 2019)***

- a. 5% of the gross amount of the dividends if the beneficial owner holds at least 20% of the capital of the company paying the dividends **AND** has invested in the acquisition of shares or other rights of the company equivalent of at least €100.000
- b. **10%** of the gross amount of the dividends in all other cases.

**Interest (Article 11)**

Interest arising in a contradicting state and paid to a resident of the other contradicting state shall be taxable in that other state if such resident is the beneficial owner of this interest.

However, such interest may also be taxed in the contradicting state in which it arises and according to the laws of that state, but if the beneficial owner of the interest is a resident of the other contracting state, the tax so charged shall not exceed **2%** of the gross amount of the interest.

The component authorities of the contracting states shall by mutual agreement settle the mode of application of this limitation.

***New Protocol (applicable as from 1<sup>st</sup> January 2019)***

The tax so charged *shall not* exceed **5%** of the gross amount of the interest.

Interest means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

**Royalties (Article 12)**

Royalties arising in a contracting state and paid to a resident of the other contracting state shall be taxable only in that other state.

The term royalties means payments of any kind received as a consideration for the use of, or the right of use, of any copyright of literary, artistic or scientific work, including cinematograph films and recordings for radio and television broadcasting, any patent, know-how, computer programmes, trade mark, design or model plan, secret formula or process, or for information concerning industrial, commercial or scientific experience or for the use of, or the right to use industrial, commercial or scientific equipment.

However, such royalties may also be taxed in the contracting state in which they arise, and in accordance with the laws of that state, but if the if the beneficial owner of the royalties is a resident of the other contracting state the tax so charged *shall not* exceed **10%** of the gross amount of all payments.

In the case of payment of royalties in respect of any copyright of scientific work, any patent, trade mark, secret formula, process or information concerning industrial, commercial or scientific experience the tax charged *shall not* exceed **5%** of the gross amount of the royalties.

The component authorities of the contracting states shall by mutual agreement settle the mode of application of this limitation.

**Capital Gains (Article 13)**

Gains derived by a resident of a contracting state from the alienation of immovable property situated in the other contracting state may be taxed in that other state.

Gains from the alienation of ships or aircrafts operated in the international traffic by an enterprise of a contracting state or movable property pertaining to the operation of such ships or aircrafts, shall be taxable only in that contracting state.

Gains from the disposal of shares (irrespective of whether the gain arises mainly from immovable property) are taxed in the country of which the seller is resident.

***New Protocol (applicable as from 1<sup>st</sup> January 2019)***

Gains from the disposal of shares deriving at least 50% of their value from immovable property **are taxed in the country in which the immovable property is situated** (subject to exemptions).

**Director fees (Article 15)**

Director fees and other similar payments derived by a resident of a contracting state in his capacity as a member of the board of directors of a company which is a resident of the other contracting state may be taxed in that other state.

**Elimination of Double Taxation (Article 21)**

Where a resident of a contracting state derives income which, may be taxed in the other contracting state, the first mentioned state shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other state. Such a deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in that other state.

**Mutual Agreement Procedure (Article 23)**

Where a person considers that the actions of one or both of the contracting states result or will result for him in taxation not with the provisions of this convention, he may, irrespective of the remedies provided by the domestic law of those states, present his case to the competent authority the contracting state which he is a resident or national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention.

**Exchange of information (Article 24)**

The requesting contracting state shall provide the following information when making a request for information under the Article 24 to demonstrate the foreseeable relevance of the information to the request:

- a. the identity of the person under examination or investigation
- b. a statement of the information sought including its nature and the from in which the requesting contracting state wishes to receive the information from the requested contracting state
- c. the tax purpose for which the information is sought
- d. the grounds for believing that the information requested is held in the requested contracting state or is in the possession or control of a person within the jurisdiction
- e. the name and address of any person believed to be in possession of the requested information
- f. a statement that the provision of such information is in compliance with the legislation and the administrative practices of the requesting state and if the requested information was

within the state in question, the component authority may procure the information in accordance with its own laws and its ordinary administrative practices

- g. A statement that the requesting contracting state has exhausted all means available in its own territory to obtain the information, except those that would have caused excessive difficulties.

For further guidance in this matter we are always at your disposal, simply click here and [get in touch with us.](#)

*written by Louiza Loizou, Head of Tax Dept.*