

## TAX UPDATE

On 14 December 2010 the Cyprus Parliament has voted amendments aiming to simplify certain provisions of the Cyprus tax legislation as well as to extend and strengthen the anti avoidance and anti evasion provisions contained therein.

This presentation summarises the main changes of the principles of the Cyprus tax legislation after the amendment voted by the Cyprus Parliament.

There are two main taxes affecting Cyprus companies: Corporation tax and Defence tax.

### 1. AMENDMENTS TO THE INCOME TAX LAW

#### ▪ **DISALLOWED EXPENDITURE**

All expenses must be supported by lawful documentation. Any expenditure which is not supported by invoices and relevant receipts or other supporting documents as required by relevant Regulations will not be deductible under income tax.

This provision will apply with respect to tax liabilities which arise during the tax year 2011 and any subsequent tax years.

#### ▪ **LOANS TO DIRECTORS OR SHAREHOLDERS**

Up to 31 December 2010, notional interest at the rate of 9% may be imposed on receivables from directors and shareholders of companies which are controlled by less than five persons.

As from 1 January 2011, this provision will not apply in the case where the directors or shareholders are companies. In this case, the provisions of article 33 relating to arm's length conditions in transactions between related parties would apply.

#### ▪ **TAX WITHHELD ON PAYMENTS TO NON CYPRUS RESIDENTS**

Tax withheld on payments to non Cyprus residents should be paid to the tax authorities by the end of the following month. These payments may include:

- i) Intellectual property rights
- ii) Profits of artists, professionals etc
- iii) Rent for films

Under this amendment if the withholding tax is not paid on the aforementioned due date as required by law a penalty equal to 5% of the tax due will be imposed.

## **2. AMENDMENTS TO THE SPECIAL DEFENCE CONTRIBUTION LAW**

The following provisions of the Special Defence Contribution Law will enter into force six months after the publication of the relevant amending law in the official Gazette of the Republic.

### **▪ WITHHOLDING OF SPECIAL DEFENCE CONTRIBUTION (SDC) AT SOURCE WITH RESPECT TO RENTS**

Companies, partnerships, the Government or any local authorities that pay rents should withhold SDC at source at the rate of 3% on 75% of the amount of the rental income.

The payment of the SDC on rents should be made in two six-monthly instalments on 30 June and 31 December of the respective year.

### **▪ PAYMENT OF SDC ON DIVIDENDS OR INTEREST INCOME RECEIVED FROM ABROAD**

It has been clarified that the SDC on dividends or interest from sources outside the Republic is payable in two six-monthly instalments by 30 June and 31 December of the respective year.

### **▪ TRANSFER OF COMPANY ASSETS TO ITS SHAREHOLDER/S**

Transfer of company assets to its shareholder or to his/her relative up to 2nd degree of kindred, at a consideration which is lower than the market value, it will be deemed that the company has distributed dividend to its shareholder, equal to the difference between the market value of the asset and the amount of the consideration.

This provision will not apply in the case where the asset had been acquired by the company by way of donation from its shareholder.

### **▪ COMPANIES WHICH ARE UNDER VOLUNTARY DISSOLUTION OR LIQUIDATION**

Companies which are under voluntary dissolution or liquidation are obliged to submit within one month from the date of approval of the relevant resolution, the deemed dividend declarations and pay any resulting SDC with respect to the profits of the specific tax year and the two preceding tax years. It is noted that in case where, upon the dissolution or liquidation of a company, any profits become realized, the deemed dividend distribution of such profits may not exceed the amount or the value of the net assets distributed to the shareholders.

- **ACCOUNTING PROFITS ARISING DURING DISSOLUTION OR LIQUIDATION**

Any accounting profits arising during the dissolution or liquidation will not be subject to a deemed dividend distribution if the assets of the company are not sufficient for the repayment of its creditors and no amount is available to be distributed to the shareholders.

- **TRANSFER OF ASSETS UPON DISSOLUTION OR LIQUIDATION OF A COMPANY**

When assets are being distributed upon the dissolution or liquidation of a company, which have a market value exceeding the cost of their acquisition by the company, it will be deemed that a dividend has been distributed to the shareholders, equal to the difference between the market value of the asset and its cost of acquisition.

- **REDUCTION OF THE CAPITAL OF A COMPANY**

In the case of reduction of the capital of a company, any amounts paid to the shareholders in excess of share capital which had actually been paid by a shareholder will be treated as deemed dividends.

### **3. LIFTING OF BANKING SECRECY FOR TAX RESIDENTS**

Under the applicable legislation, lifting of banking secrecy for Cyprus tax residents requires a court order, while for the exchange of information to foreign tax authorities only the approval of the Attorney General is required. With the amendment of the legislation, lifting the banking secrecy no longer requires a court order and the approval of the Attorney General is now sufficient. The legislation provides for certain conditions and procedures which must be followed by the Commissioner before the banking secrecy is lifted.

This provision will enter into force six months after the publication of the relevant amending law in the official Gazette of the Republic.

#### 4. POWER OF COMMISSIONER FOR A FIELD AUDIT

The Commissioner has the right to enter and inspect business buildings (except private residences), documents and goods of a business, provided this is done during normal working hours. A reasonable notice must be given for such inspection.

This provision will enter into force six months after the publication of the relevant amending law in the official Gazette of the Republic.

#### 5. ADMINISTRATIVE PENALTIES

Various administrative penalties are imposed in case of non timely submission of a return or submission of evidence requested (Euro 100 – Euro 200 depending on the omission) or non timely payment of the taxes due (5% of the tax due) in addition to the applicable interest. These penalties apply to Income Tax, Special Defence Contribution, Capital Gains Tax and Immovable Property Tax.

This provision will enter into force after six months from the date of publication of the relevant legislation in the Official Gazette of the Republic.

**FOR ANY FURTHER INFORMATION AND OR CLARIFICATION  
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