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ADVOCATES & LEGAL CONSULTANTS

Double Tax Treaty between India and Cyprus

Due to historical and cultural reasons, it seems that India has a close link with Mauritius and Singapore in terms of funds following a route in and out of India.

However, and in terms of comparison of Double Taxation Treaties, one can see that Cyprus it is by far a more favorable jurisdiction.

The Double Taxation Treaty between India and Cyprus ('DTT'), establishes, amongst others, tax treatment with respect to dividends, interest and royalties as well as immovable property. The said DTT avoids double taxation and prevents fiscal evasion. Furthermore the DTT offers benefits such as exemption from capital gains tax. As a result of the benefits offered, an ever increasing proportion of investment into India has been channeled through Cyprus.

This DTT gives a great opportunity to Indian investors to establish investment vehicles and channel with Cyprus for their business expansion.

Cyprus is a member of the European Union while being a predominantly English speaking country. Furthermore, Cyprus' legal system is based on English Law and the majority of the professionals based in Cyprus is British educated.

Cyprus is characterized for the simplicity of transactions and lack of bureauocracy while the provision of corporate, audit and legal services are at the most professional level.

This publication focuses on the main aspects of the DTT between India and Cyprus and emphasizes on the opportunities created by this DTT for Indian investors through investment vehicles established in Cyprus.

Place of Management: Residency status, Permanent Establishment

The taxability of a company in Cyprus is determined upon the residency status of the company. The DTT shall have the same application when the residency status of the company shall be determined.

The residency status of the company is determined by where the management and control of the company is exercised. Although a company may have been registered or incorporated elsewhere, the management and control must be exercised in Cyprus.

Mainly, but not exhaustively, tax authorities in Cyprus consider that management and control is established when (1) the majority of the Directors of the company are residents in Cyprus (physical or legal persons), and (2) Major decision making is made in Cyprus by local directors.

For the purposes of the DTT a 'resident' is defined as *a person who is liable to tax by reason of his domicile, residence, place of management or any other criterion of a similar nature.*

Furthermore, according to the DTT a permanent establishment is defined as *a fixed place of business through which the business of an enterprise is wholly or partly carried on.* The term "permanent establishment" includes especially:

a. a place of management;

b. a branch;

c. an office;

d. a factory;

e. a workshop;

f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

g. A building site, construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than twelve months.

A Permanent Establishment in general does not include the use of facilities for auxiliary-preparatory purposes, such as storage, display or delivery of goods, giving in this way the capability of Cyprus companies with limited activities abroad to profit from the current Corporate Income Tax ('CIT') rate of 10%.

Benefits of the DTT between India and Cyprus

- **No dividend withholding on payments** from Cyprus to India and from India to Cyprus, according to Cyprus and India laws. For Indian company distributing dividend, there is a Dividend Distribution Tax at 16.995%.
- **Dividend** received in Cyprus from an overseas company are exempt, provided that the passive income of the paying company is <50% (passive income=interest/dividends) or foreign tax rate is not significantly lower than in Cyprus (significantly lower <5%).
- **No interest withholding tax** on payments from Cyprus to India. Interest withholding tax from India to Cyprus is 10% according to the DTT.
- **No withholding tax** on royalty payments from Cyprus to India. Withholding tax from India to Cyprus is limited to 10%, according to Indian laws. Indicative profit margins for transfer pricing of intangible property through Cyprus are: Intangible property up to €5mil. - 2,5% and more than €5mil. - 1,25%.
- Withholding of 10% on Technical fees (i.e. consultancy fees).
- **Capital gains** from the sale of securities are exempt from taxation in Cyprus and India.

The following fall under the definition of ***Securities***: Ordinary, Preference and Founder shares, Options on titles, debentures, bonds, short positions on titles, futures/ forwards on titles, swaps on titles, depositary receipts on titles, Rights of claims on bonds and debentures, Index participations (which result to shares), Repos on titles, Participations in companies, Units in open-end or closed-end collective investment schemes.

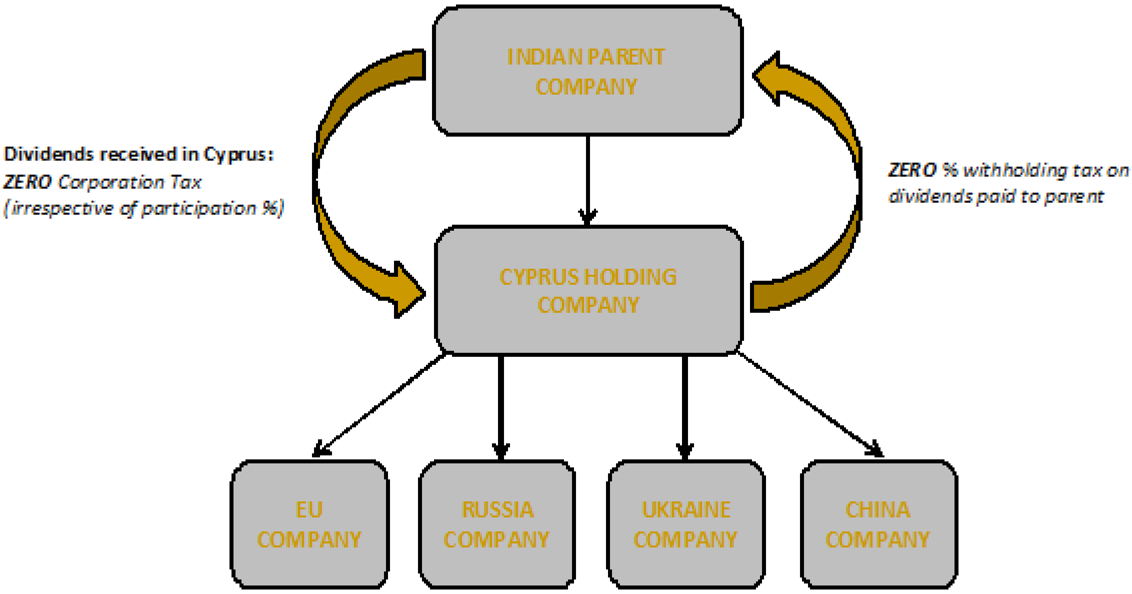
- **Sale of immovable property** situated outside Cyprus by a Cyprus company is capital gain exempt (May be taxed at 10% under Income Tax Law if it is deemed that the trade of the Company is trading in real estate).
- The DTT gives the right to India to tax a disposal of an immovable property situated in India.

This may be bypassed by a two level structure involving two Cyprus companies one of them owning the immovable property, and disposing off the shares of the company owning the immovable property rather than the property itself.

Example of Structures

EU, EAST OR WESTERN EUROPE

The DTT between India and Cyprus is most beneficial for Indian corporations. It provides the Indian corporations the capability to maximize profits by minimizing payment of foreign taxes, especially profits from European Countries to India. Please see below:



Dividends	0%*	5%	0%	10%
Interest	0%*	7%	0%	10%
Royalties	0%*	10%	0%	10%

** Please note that relevant EU directives must apply.*

For more information on structures such us Cyprus Holding Company Structures, Financing Structures and Royalties structures, please contact us directly at info@ecolaw.com.cy or at +357 25 573 175.

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Cyprus: An International Business Center

Cyprus is ideally suited for international business due to the many benefits it has to offer. Its geographic location and excellent commercial infrastructure coupled with numerous tax incentives are among the factors, that have assisted Cyprus towards becoming an important International Business Center.

The island's 42 double tax treaties offer ample opportunities for international tax planning to legitimately reduce the overall tax burden for businesses and their shareholders. Cyprus has double tax treaties in force with the following countries:

Armenia, Austria, Belarus, Belgium, Bulgaria, Canada, China, Czech Republic, Denmark, Egypt, France, Germany, Greece, Hungary, India, Ireland, Italy, Kuwait, Kyrgystan, Lebanon, Malta, Mauritius, Moldova, Montenegro, Norway, Poland, Romania, Russia, San Marino, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Sweden, Syria, Tadzhikistan, Thailand, Ukraine, United Kingdom and United States of America.