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# Analysis of the Protocol amending the Agreement for the Avoidance of Double Taxation between Cyprus and Russia

**2020**

## INTRODUCTION

On the 8th of September 2020, officials representing the Republic of Cyprus and the Russian Federation concluded to a Protocol amending the Double Tax Treaty ("DTT") between the two countries.

The protocol resulted after the Russian Government announced its intention to initiate negotiations with foreign jurisdictions like Cyprus, Luxembourg, Malta and Netherlands, to amend Russia's current DTTs and set the minimum withholding tax rate on dividends and interest payed from Russia at 15%.

## AMENDMENTS INTRODUCED

### I. DIVIDENDS

The protocol amends Article 10 of the Treaty in relation to Dividends and states that dividends paid to a beneficial owner of the other contracting state shall not be subject to more than **15% withholding tax**.

However, there are a number of exemptions, for which the charge on dividend shall remain at **5% withholding tax**. These exemptions include the following situations:

- If the beneficial owner of the dividend is an insurance undertaking or a pension fund;

- If the beneficial owner of the dividend is a company whose shares are listed on a registered stock exchange provided that:

    - no less than 15% of voting shares of that company are in free float, **and**
    - holds directly at least 15% of the capital of the company paying the dividends throughout a 365 day period that includes the day of payment of the dividends;

- If the beneficial owner of the dividend is the government or a political subdivision or local authority;

- If the beneficial owner of the dividend is the Central Bank of that state;

## II. INTEREST

The protocol amends Article 11 of the Treaty in relation to Interest and states that interest paid to a beneficial owner of the other contracting state shall not be subject to more than **15% withholding tax**.

However, there are a number of exemptions, for which the charge on interest shall remain at **0% withholding tax**. These exemptions include the following situations:

- If the beneficial owner of the interest is:
    - An insurance undertaking or a pension fund;
    - The government of that state or a political subdivision or local authority.
    - The Central Bank of that state.
    - A bank.

- The interest is paid in respect of government bonds, Eurobonds, corporate bonds listed stock exchange

In addition, interest paid to a beneficial owner of the other contracting state shall not be subject to more than **5% withholding tax** if:

- the beneficial owner of the interest is a company whose shares are listed on a registered stock exchange provided that:
    - no less than 15% of voting shares of that company are in free float, **and**
    - holds directly at least 15% of the capital of the company paying the interest throughout a 365 day period that includes the day of payment of the interest;

**COMMENTARY**

<u>Available Exemptions</u>

The protocol mentions a number of exemptions on both dividend and interest income, especially on companies having their shares or corporate bonds listed on a recognized stock exchange. The role of the Cyprus Stock Exchange (CSE) is therefore enhanced.

With proper and strict application of the laws and sustainable actions the CSE can play an important role in the business activities between the two jurisdictions.

<u>Royalties</u>

In relation to royalty payments, the Double Tax Treaty remained the same and any royalty payments from Russia to Cyprus will continue to be exempt from withholding tax. This is important, when considered together with the very attractive provisions of the Cyprus IP Box regime.

<u>Outbound withholding taxes from Cyprus</u>

Despite the provisions of the Double Tax Treaty, outbound payments of dividends interest and royalties (if IP not used in Cyprus) made by a Cyprus Company to a foreign person remain exempt from any withholding taxes due to the provisions of the local Cyprus Tax Laws.

<u>Foreign Tax Credit</u>

The Cyprus Tax system allows for a tax credit to be granted on foreign tax paid abroad (including withholding taxes), provided that the same income is subject to taxation in Cyprus. The tax credit is granted in situations where the foreign taxation was paid as per the provisions of a DTT (Article 35 of the Income Tax Law) or even in the cases where foreign taxation was paid by a Cyprus tax resident company in a jurisdiction with which no DTT exists (Article 36 of the Income Tax Law).

The tax credit is granted up to the extent that it will not create a tax loss (i.e. the foreign tax credit is restricted to the amount of the local taxation on that specific income) and can be used only in the same tax year.

A Cyprus company receiving dividend income from Russia may suffer an increased level of withholding tax (i.e.15%) and will not be able to claim any foreign tax credit since dividend income is not subject to taxation in Cyprus.

A Cyprus company receiving interest income from Russia may suffer an increased level of withholding tax (i.e.15%) but will be able to claim foreign tax credit since interest income is subject to taxation in Cyprus. The foreign tax credit cannot be higher that the taxation generated by the specific income in Cyprus.

## CONCLUSION

The role of Cyprus, as an international business centre is and will remain important even after the above changes. The benefits offered go beyond the mere tax benefits and expand to other legal and business benefits making Cyprus an ideal location for regional headquartering.

It remains to be seen that the negotiations of the Treaties with other countries such as Luxembourg, Netherlands and Malta will have a similar conclusion and that business will be conducted at a level playing field.

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