Kazakhstan and Cyprus Sign Double Tax Treaty

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On 15 May 2019 the Republics of Kazakhstan and Cyprus signed for the first time a Convention for the Avoidance of Double Taxation and the Prevention of Tax Evasion on Income Taxes (the "Double Tax Treaty"). The Double Tax Treaty was signed in Nursultan by the Cypriot Minister of Foreign Affairs, Mr Nikos Christodoulides and the Kazakh First Deputy Prime Minister, Finance Minister Alikhan Smailov.

Cyprus has been a member of the European Union since 2004 and a member of the Eurozone since 2008. It is also the first EU country reached when travelling from Kazakhstan to Europe. For its part, Kazakhstan is at the heart of Eurasia and represents a bridge between the East and West, fostering investments to and from Europe and the USA, via Cyprus. As such, the Double Tax Treaty is of key importance and is expected to further enhance economic and trade ties between Kazakhstan and Cyprus and will provide new opportunities and better protection to tax residents of both countries.

The Treaty is based on the OECD's Model Convention for the Avoidance of Double Taxation on Income and on Capital and provides for:

Dividends

Where the recipient of the dividend payments is a company (other than a partnership) that directly holds at least 10% of the capital of the company paying the dividends, a maximum 5% withholding tax (WHT) rate applies, as opposed to withholding tax rates of 15% and 20% in Kazakhstan.

Interest

Interest payments are subject to a maximum 10% WHT rate, provided that the recipient is the beneficial owner of such interest payments.

However, the Treaty provides for certain instances where such interest payments are exempt. More specifically, interest arising in a contracting state shall be exempt from tax in that contracting state if the beneficial owner of the interest is the Government of the other contracting state, a political subdivision, a central or local authority, the Central Bank or any other financial institution wholly owned by the Government of the other contracting state.

Royalties

The Treaty provides for a maximum 10% WHT rate in the case of royalty payments, provided that the recipient is the beneficial owner of such royalty payments.

For the purposes of the Treaty, it should be noted that royalty payments are in relation to: the use of, or the right to use, any copyright of literary, artistic or scientific work, software, (including cinematograph films, tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information (know how) concerning industrial, commercial or scientific experience and payments for the use of, or the right to use, industrial commercial or scientific equipment.

Royalty payments do not include payments for the use of, or the right to use, ships or aircraft.

Note: Under the provisions of local Cyprus legislation, Cyprus does not withhold tax on outbound dividends or interest payments to non-Cyprus tax residents, and only withholds tax on royalty payments (10%) if the royalties are used within Cyprus.

Capital Gains

In the case of capital gains, Cyprus retains the exclusive taxing rights on disposals of shares made by Cyprus tax residents, except in the following cases:

- non-listed shares which derive more than 50% of their value, directly or indirectly, from immovable property situated in Kazakhstan, and,
- shares which derive the greater part of their value from certain offshore rights and/or movable property relating to exploration or exploitation of the seabed or subsoil or their natural resources located in Kazakhstan

Principal Purpose Test (PPT)

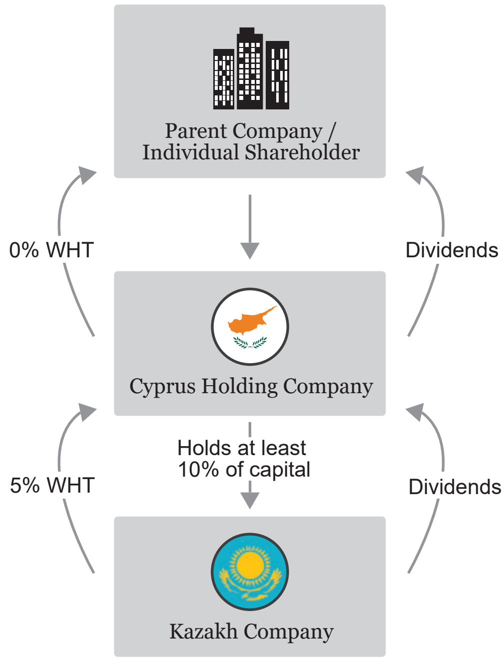
The Treaty incorporates the OECD/G20 Base Erosion and Profit Shifting (BEPS) project Action 6 PPT, which is a minimum standard under the BEPS project. The PPT provides that a Double Tax Treaty benefit shall not be granted, under conditions, if obtaining that benefit was one of the principal purposes of an arrangement or transaction. This measure is designed to tackle "treaty shopping" and puts a strong emphasis on ensuring that operations are supported by appropriate substance and reflect a principal commercial rationale.

Centaur Trust has over fifteen years specialisation in establishing companies and structures with sufficient substance and based on correct economic reasoning so as to satisfy even the most demanding scrutiny.

We provide solutions which include directors and staff with industry relevant experience at a very high level, as well as physical office, HR/Payroll, Accounting and IT solutions (please refer to our publications on substance an office solutions).

Practical Examples

1. Payment of Dividend Income from Kazakhstan to Cyprus



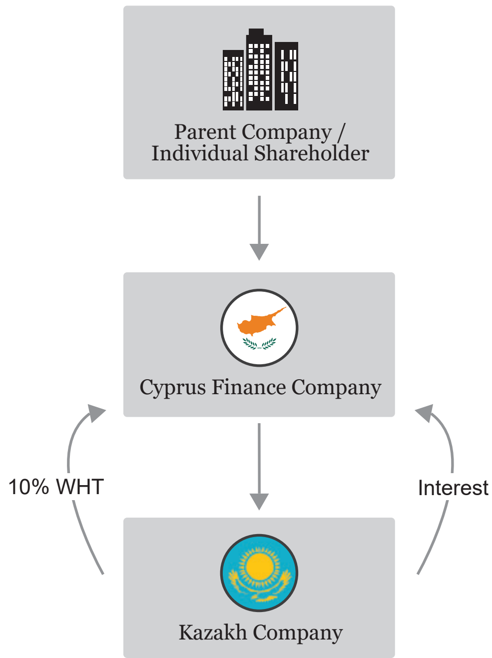
i. Under the provisions of the Double Tax Treaty, provided that the Cyprus holding company holds directly, or indirectly, at least 10% of the share capital of the Kazakh company, a WHT rate of 5% is applied to dividend payments made to the Cyprus holding company from its Kazakh subsidiary.

ii. From the Cyprus perspective, incoming dividends paid to the Cyprus holding from its Kazakh subsidiary company are exempt (subject to relaxed conditions).

iii. Furthermore, under the provisions of local Cyprus legislation, Cyprus does not withhold tax on outbound dividend payments to non-Cyprus tax residents.

iv. An additional benefit is that Cyprus will not tax any capital gains upon the disposal of the Kazakh company (unless the Kazakh company is the owner of immovable property located in Cyprus, subject to certain conditions).

2. Payment of Interest Income from Kazakhstan to Cyprus

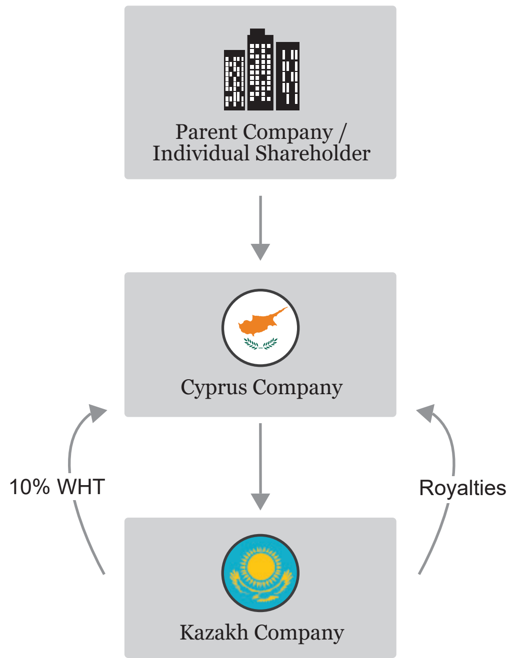


i. Under the provisions of the Double Tax Treaty, interest paid from the Kazakh company to the Cyprus finance company will be subject to 10% WHT.

ii. From the Cyprus perspective, incoming interest paid to the Cyprus finance company will be subject to 12.5% corporate income tax in Cyprus. However, the WHT in Kazakhstan is allowed as a tax credit towards the tax payable in Cyprus.

iii. As a result, the effective tax rate in Cyprus will not be in excess of 2.5%.

3. Payment of Royalty Income from Kazakhstan to Cyprus

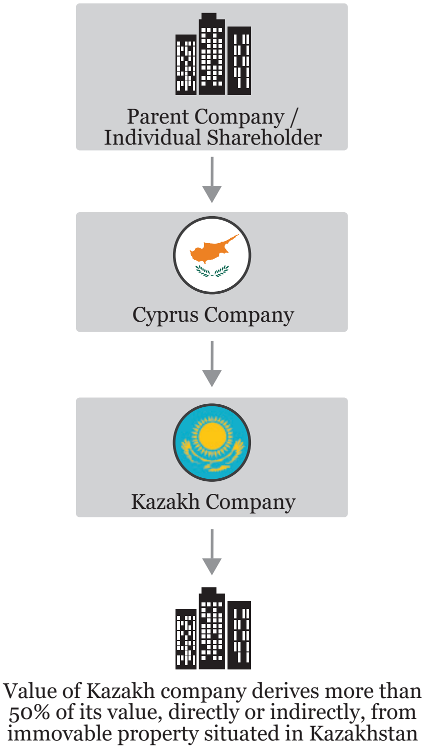


i. Under the provisions of the Double Tax Treaty, royalties paid from the Kazakh company to the Cyprus company will be subject to 10% WHT.

ii. From the Cyprus perspective, incoming royalties paid to the Cyprus company will be subject to 12.5% corporate income tax in Cyprus. However, the WHT in Kazakhstan is allowed as a tax credit towards the tax payable in Cyprus.

iii. As a result, the effective tax rate in Cyprus will not be in excess of 2.5%.

4. Property Rich Company – Capital Gains Tax implications



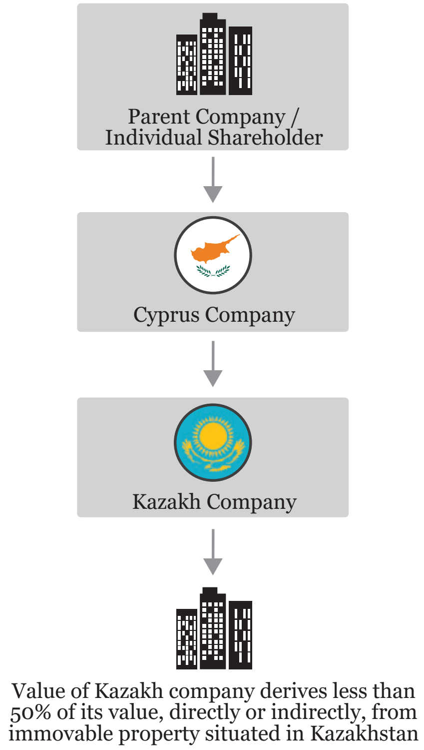
i. Under the provisions of the Double Tax Treaty, proceeds from the sale of the Kazakh company by the Cyprus company will be taxable in Kazakhstan, as more than 50% of the value of its shares are derived, directly or indirectly, from immovable property situated in Kazakhstan.

ii. Any capital gains arising from the disposal of shares related to immovable property located in Kazakhstan are exempt from tax in Cyprus.

iii. There will be no withholding tax in Cyprus on the repatriation of funds to the shareholders (non tax residents of Cyprus).

Note: If the shares are listed, the gains will be taxed in Cyprus

5. Non-Property Rich Company – Capital Gains Tax implications

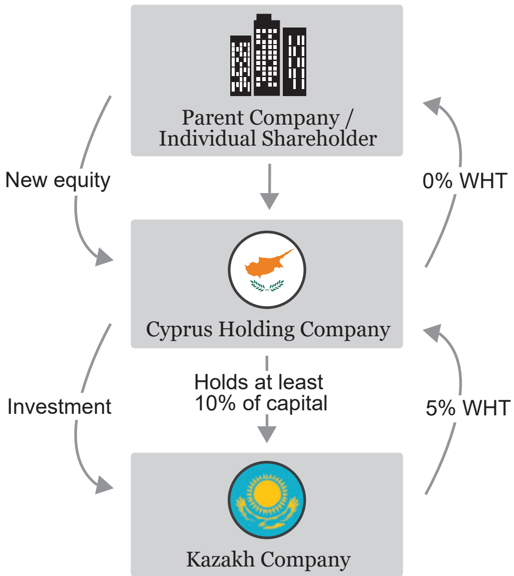


i. Under the provisions of the Double Tax Treaty, any capital gains arising out of the sale of the Kazakh company by the Cyprus company will be taxable in Cyprus as the Kazakh company does not derive more than 50% of its value, directly or indirectly, from immovable property situated in Kazakhstan.

ii. Capital gains from the disposal of shares of the Kazakh company are exempt from taxation in Cyprus.

iii. Any distribution of dividends by the Cyprus company, to its non-Cyprus resident shareholders will be free of withholding tax.

6. Inbound Investments into Kazakhstan via Cyprus



i. Under the provisions of the Double Tax Treaty, provided that the Cyprus holding company holds directly, or indirectly, at least 10% of the share capital of the Kazakh company, a WHT rate of 5% is applied to dividend payments made to the Cyprus holding company from its Kazakh subsidiary.

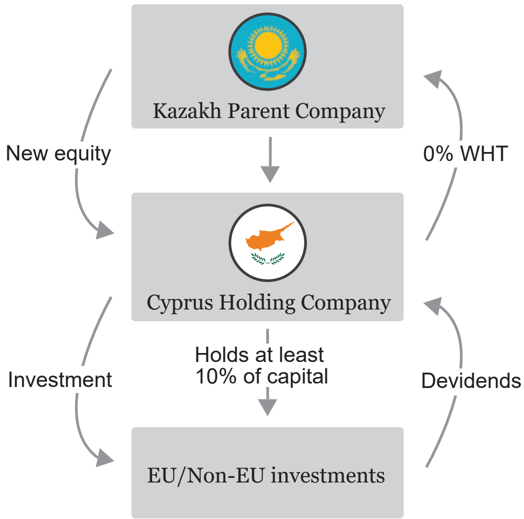
ii. From the Cyprus perspective, incoming dividends paid to the Cyprus holding company from its Kazakh subsidiary company are exempt (subject to relaxed conditions).

iii. Furthermore, under the provisions of local Cyprus legislation, Cyprus does not withhold tax on outbound dividend payments to non-Cyprus tax residents.

iv. Cyprus will not tax any capital gains upon the disposal of the Kazakh company, provided that the company does not derive more than 50% of its value from real estate located in Kazakhstan.

v. An additional benefit is that, under the Notional Interest Deduction (NID) (please refer to next section on “Why Cyprus?”) the Cyprus holding company is entitled to a NID.

7. Outbound Investments from Kazakhstan via Cyprus



i. Under the provisions of the numerous Double Tax Treaties signed by Cyprus or the EU Parent Subsidiary Directive, dividends resulting from the EU/Non-EU investments will be subject to:

  a. Low withholding tax (due to Double Tax Treaty network) or;

  b. Zero withholding tax (due to EU Parent Subsidiary Directive)

ii. From the Cyprus perspective, incoming dividends paid to the Cyprus holding company from its EU/Non-EU investments are exempt (subject to conditions)

iii. Furthermore, under the provisions of local Cyprus legislation, Cyprus does not withhold tax on outbound dividend payments to the Kazakh parent company.

iv. Cyprus will not tax any capital gains upon the disposal of the EU/Non-EU investments (provided these are not made up of immovable property located in Cyprus).

v. An additional benefit is that, under the Notional Interest Deduction (NID) (please refer to next section on “Why Cyprus?”) the Cyprus holding company is entitled to a NID.

Why Cyprus?

Introduction

Location: Cyprus is at the eastern end of the Mediterranean Sea and is the first European country to be reached, when travelling from Kazakhstan to Europe.

Gateway to Europe: Cyprus is a full member of the European Union, as well as a member of the Eurozone. As such, it represents a valuable gateway to markets in the European Union. Furthermore, under the provisions of the numerous Double Tax Treaties Cyprus has signed with other countries, it is an ideal location to establish a Holding Company for investments around the world.

Historically, Cyprus has always been a trading nation, due to its location between East and West. As such, the Island has long-standing trading relationships with most countries in the world, so it represents an ideal location for international business operations. It has a convenient time zone for all parts of the world, and the main business language is English. The Island has invested heavily in modern communications and travel infrastructure and offers seamless communications and connections with the rest of the world.

The legal system of Cyprus is based on English Common Law, giving a high degree of certainty and investor security in commercial relationships and transactions, with the country's Company Law being based on the UK Companies Act of 1948, as amended for local and EU legislation.

Due to the fact that Cyprus has been a leading financial center for many years, there is a large pool of highly qualified professionals in all fields relating to international business. The Island also has a large number of banks which are specialized in serving international clients.

It should also be noted that the cost of living in Cyprus is relatively low, when compared with other EU jurisdictions. As a result, the costs related to the establishment of a presence in Cyprus, as well as the ongoing operational costs, are also relatively lower than other EU locations. This is reflected in lower payroll and rental expenses, as well as fees for professional services, and is of particular relevance to cases where real substance must also be established in Cyprus.

ATTRACTIVE TAX REGIME

Cyprus has successfully transitioned from a pure offshore financial center, to an onshore low tax EU jurisdiction.

It has fully adopted all international initiatives and legislation aimed at combating money-laundering and terrorist financing, as well as being a transparent and compliant jurisdiction with regards to tax compliance.

However, recognizing the need to remain a leading and competitive financial center, Cyprus has achieved this while still maintaining a modern and attractive tax regime for companies and individuals. Furthermore, by recognizing the global shift away from pure tax-based structuring, Cyprus has evolved its model to one where the focus is on attracting international investors to use real Cyprus companies, with substance, as their vehicles for international business activities.

This change in focus is reflected in the tax incentives currently available to attract foreign investors to Cyprus, along with some of their senior management.

Corporate Incentives: Cyprus has a modern, effective, simple and attractive tax system which is fully compliant with the EU Acquis Communautaire and EU Directives, as well as OECD and FATF guidelines and requirements.

Though tax considerations are no longer the sole criteria when deciding where to locate an overseas company, Kazakh businesses who are considering Cyprus should take the following benefits into consideration:

- Capital gains arising from the disposal of shares, as well as a wide range of financial instruments, are not subject to tax in Cyprus, irrespective of the percentage holding or the period of ownership
- There is no withholding tax on dividends paid by a Cyprus company to its non-resident shareholders, irrespective of whether they are located in or outside the EU
- As a general rule, dividends received from subsidiaries of Cyprus companies are not taxed in Cyprus, subject to certain conditions
- Under the provisions of the EU Parent Subsidiary Directive, as well as the numerous Double Tax Treaties signed by Cyprus, dividends can be extracted by a Cyprus company, from its overseas subsidiaries, with no or low withholding taxes at source

Another significant incentive which is aimed at attracting new capital and investment into Cyprus is the **Notional Interest Deduction on New Capital**, which was introduced in January 2015, and can reduce the effective corporate income tax of qualifying companies from 12.5% to 2.5% after taking into account the notional interest deduction.

In addition to the above, there are many other significant benefits, such as:

- No thin capitalization rules
- No inheritance or estate taxes
- No wealth taxes
- Tax losses can be carried forward for five years, subject to certain conditions
- Availability of group relief
- Availability of tax credits for foreign tax paid
- Re-domiciliation of companies to and from Cyprus is possible
- Cyprus has adopted the EU Interest and Royalties Directive
- Proceeds from the liquidation of a Cyprus company can be distributed to non-resident shareholders tax free

Incentives for Individuals: In July 2015, The Cypriot House of Representatives approved a number of significant amendments to the Cyprus tax legislation, with particular emphasis on encouraging foreign companies to invest in Cyprus, and to establish businesses with real substance.

As part of this strategy, certain incentives were introduced, for the re-settlement of senior staff to Cyprus. More specifically:

- Introduction of "Non-Domiciled Status", with regards to Special Defence Contribution (SDC), enabling persons who are resident in Cyprus, but deemed as Non-Domiciled in Cyprus, to receive dividends free of SDC, which is currently 17% of the value of distributed dividends.
- Introduction of "High Earners Employment Relief", which enables persons who relocate to Cyprus and earn in excess of Euro 100,000 per annum, to benefit from an exemption from personal income tax of 50% of their employment income for a period of ten years, provided that they were not resident in Cyprus before the commencement of their employment

Investment Funds

Cyprus offers a competitive and attractive alternative to other EU jurisdictions in the investment funds industry, particularly with regards to Alternative Investment Funds (AIFs).

The enactment of the Alternative Investment Funds (AIF) Law in July 2014 aligned the Cyprus legal and regulatory framework with EU Directives on asset management. This was replaced with a new law in July 2018, which introduced additional investment structuring possibilities, upgraded guidelines for authorization, on-going operations, transparency requirements and supervision, as well as the regulation on the role and responsibilities of the key players.

However, by far the most significant development was the introduction of Registered AIFs (RAIFs), which do not require authorization, and therefore offer quick and cost-effective fund launching solutions. This development alone has resulted in a huge increase in interest from foreign investors to use Cyprus as the location for their investment funds.

Centaur Trust offers "One-Stop Shop" solutions for clients who want to establish investment funds in Cyprus (please refer to our publication on Alternative Investment Funds).

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