



Amending protocol to the Double Tax Treaty between Cyprus & Russia

Dear Clients and Associates,

Executive Summary

The protocol signed between the Governments of Cyprus and Russia increases the withholding tax (WTT) that may be charged at source, albeit allows certain carve outs. The changes are contemplated to come into effect as from January 1st, 2021.

The Russia Government announced its intention to enforce similar changes to the DTTs currently in force between Russia Federation and other jurisdictions, such as Luxembourg, Malta, Netherlands, Hong Kong, Switzerland and media reports that relevant notices have already been issued. It also appears that Malta and Luxembourg have already agreed to the proposed increases.

Comprehensive Summary

1. Current Operative DTT provisions

1.1. **Article 10: Dividends**

The current provision places the following limits to taxation at source if the beneficial owner of the dividends is a resident of the other State:

"(a) 5 % of the gross amount of the dividends if the beneficial owner has directly invested in the capital of the company paying the dividends the equivalent of at least 100 000 euro;

(b) 10% of the gross amount of the dividends in all other cases..."

1.2. **Article 11: Interest**

Interest is exempt from taxation at source (ie 0% WHT).

2. The New Provisions & Commentary

2.1. **Article 10: Dividends**

"2. ... dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividend

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3. Notwithstanding the provisions of paragraphs 1 and 2, dividends paid by a company which is a resident of a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State, but —

i. if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is an insurance undertaking or a pension fund; or

ii. if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is a company whose shares are listed on a registered stock exchange provided that no less than 15 per cent of the voting shares of that company are in free float and which holds directly at least 15 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of payment of the dividends; or

iii. if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is the Government of that Contracting State or a political subdivision or a local authority thereof; or

iv. if the beneficial owner of the dividends is a resident of the other Contracting State and the beneficial owner is the Central Bank of that Contracting State,

the tax so charged shall not exceed 5 per cent.”

Commentary:

The underlined text is the new provisions.

The new provisions introduce a WHT of 15% instead of the current rates of 5% & 10%. However, paragraph 3 reduces the WHT on dividend back to 5% in certain cases. This lower WHT rate is linked to specific ownership types and in particular where **the beneficial owner** of the dividend is (a) governmental body, (b) listed company (subject to certain criteria), (c) insurance undertaking or pension fund and (d) the Central Bank of one of the two countries.

It follows that the Cyprus – Russia DTT remains unchanged (with a 5% WHT on dividend) for those cases and allows suitable interested parties to restructure and continue enjoying the lower (5%) rate.

2.2. Article 11: Interest

«1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.».

«2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid to a resident of the other Contracting State, who is the beneficial owner of the interest, shall be taxable only in that other Contracting State if

A) the beneficial owner is —

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i. an insurance undertaking or a pension fund; or

ii. the Government of that Contracting State or a political subdivision or a local authority thereof; or

iii. the Central Bank of that Contracting State; or

iv. a bank;

or

B) the interest is paid in respect of the following securities listed on a registered stock exchange:

i. government bonds;

ii. corporate bonds;

iii. Eurobonds.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, interest arising in a Contracting State and paid to a resident of the other Contracting State, who is the beneficial owner of the interest, may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but 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 per cent of the voting shares of that company are in free float and which holds directly at least 15 per cent of the capital of the company paying the interest throughout a 365 day period that includes the day of payment of the interest, the tax so charged shall not exceed 5 per cent.».

Commentary:

The underlined text is the new amending text.

It substitutes the previous zero WHT provision by allowing taxation by the source state, but caps the WHT to 15% unless the transaction falls under a number of other categories which (i) are exempted from WHT at source (ie the existing 0% WHT on interest remains unchanged for specific cases), (ii) taxed at the lower WHT of 5%.

The cases which fall within the 0% WHT on interest are listed above and in a nutshell they are linked to:

(a) the type of the recipient (the types are explicitly outlined above), and

(b) the types of the financial instruments (the types are explicitly outline above).

It follows, again, that the Cyprus – Russia DTT remains unchanged for the above-mentioned cases and allows suitable interested parties to restructure and continue enjoying the lower zero (0%) WHT rate on interest.

Finally, (new) paragraph 4, lowers the WHT to 5% if the recipient is a listed company (subject to certain criteria).



Takeaway Points

- The new protocol does not amend the current royalty provision which exempts Royalty payments from taxation at source (0% WHT on Royalties).
- Russia announced its intention to amend the Interest and Dividend provisions of treaties with other countries who are seen as major investment routes into the Russian Federation.
- Despite the amendments, Cyprus remain a favourable location due to:
 - (a) the exemptions provided in the Amending Protocol, and
 - (b) the combination of the DTT with Russia and Cyprus' own domestic legislation, including the incentives for headquartering and setting up businesses / redomiciliation of companies to Cyprus. In this respect, the competitive tax system, climate, and sound (common law) legal framework are some of the key factors.

Our team of lawyers, advisors and consultants is at your disposal to discuss and navigate the situation.

