

December 2010 Amendments to the Tax Laws

➤ Amendments to the Cyprus Income Tax Law

- **Deductibility of Expenses:**

In addition to the requirement that expenses must be incurred 'wholly and exclusively for the production of income, expenses will be deductible provided that they are supported by invoices, receipts or other evidence set out in the Regulations issued under the provisions of the Assessment and Collection of Taxes Law.

It applies for the tax year 2011 onwards.

- **Loans to Shareholders:**

(Article 39) the notional interest of 9% on such loans or other financial facilities shall be applicable only when granted to individuals. As a result, for corporate shareholders as of 1.1.2011, only the arm's length principle will be applicable.

- **Penalty for late payment** of withholding tax in respect of royalties, film rights, and other Cyprus sourced income derived by non-residents: 5% of the amount of the tax in addition to the interest payable.

It applies as from 1.7.2011 (by concession as from 1.10.2011).

➤ Amendments to the Special Contribution for the Defence Law

- **Transfer of Assets:**

Whenever a company transfers an asset to an individual shareholder or to a relative up to second degree (including a spouse) without any consideration, or at a consideration lower than the market value of the asset, the market value less the amount of consideration (if any) shall be deemed as dividends distributed to the individual shareholder and taxed accordingly.

This shall not apply if the asset was acquired by the company through a donation from an individual shareholder, the spouse or a relative up to a second degree of the shareholder.

- **Deemed Dividend Distributions:**

In determining the accounting profit for the purposes of applying the Deemed Dividend Distribution provisions, the taxpayer is entitled to deduct any Special Defence Contribution and Capital Gains Tax paid or payable as well as any

amount of unrelieved foreign tax, in addition to the deduction of the Corporation Tax paid or payable on the income of the year.

- **The term “actual dividend”** which reduces the profits subject to Deemed Dividend Distribution includes an actual dividend distributed during the year to which the profits relate.
- **Liquidation:**
 - In the event of a voluntary liquidation, the tax return for deemed dividend distribution and the settlement of the tax due in respect of the deemed dividend on the profit of the current year and that of the last two years, must be submitted within a month from the date of the resolution approving the liquidation.
 - The deemed dividend provisions will not apply in the event where the company is in a negative asset position and the assets of the company are not sufficient for settling the company's liabilities leaving no amounts to be distributed to the shareholders.
 - Any distributions to shareholders in the process of liquidation, of any assets whose market value exceeds its cost of acquisition will be treated as a dividend distribution equal to the difference on the date of the distribution (following the deduction of any Capital Gains Tax paid). This applies to distributions to both companies and individual shareholders.
 - The Deemed Dividend Distribution imposed on any profits during the liquidation cannot exceed the amount or the value of the assets that are, or may be distributed to the shareholders.

- **Reduction of Capital:**

Any amounts paid or payable to an individual shareholder in excess of the amount of the share capital that was actually paid by this shareholder shall be deemed as distributed dividends subject to special Contribution.

The above amendments come into force as from 1.1.2011

- **Withholding tax on Rents:**

Any legal person paying rents is obliged to withhold Special Defence Contribution (i.e. 3% on 75% of gross rents) and pay it to the Tax Authorities together with a statement containing full particulars of the circumstances as a result of which the deduction has been made and showing how the deduction of the special contribution has been calculated. The provision applies to companies, partnerships, the Government and Municipal Authorities.

Application date, 1.7.2011.

- **Payment of Special Defence Contribution for dividends and interest from sources outside Cyprus:**

This is done in two installments, on 30 June and 31 December of the year in a similar way as for rents received.

➤ **Amendments to the Assessment and Collection of Taxes Law**

They come into effect as of 1.1.2011

- **Obligation to register and obtain a Tax Identification Code (T.I.C.):**

Companies are obliged to submit the relevant return and obtain a Taxpayer Identification Number within 60 days from the date of their incorporation. In the event of a Company that is incorporated abroad a T.I.C. should be obtained within 60 days from becoming a tax resident.

In addition to the obligation to register, Companies are also required to notify the tax authorities of any changes that affect the Tax Record kept for this Company within a period not exceeding 60 days from the date the change in the Company's status takes place (submit form I.R.162).

- **Lifting of Bank secrecy for Cyprus tax residents:**

- The Director, after obtaining written consent from the Attorney-General (AG) and furnishing the person under investigation with a relevant written notice, has the right to request any bank to provide any information, relating to the period of up to 7 years preceding the date of his request, that the Bank has in its possession in relation to any existing or closed bank account of a person under investigation by the tax authorities.
- In order for the consent of the AG to be granted, the Director of Income Tax should apply himself to the AG and furnish, both the AG and the Bank, with:
 - a) The identity of the person under examination;
 - b) A description of the information requested including the nature and manner in which the Director wishes to receive the information from the bank;
 - c) The reasons which lead to the belief that the requested information is in the possession of the Bank;
 - d) The specific period of time for which the information is requested; the time period should be specific and reasoned.
 - e) A declaration that the Director has exhausted all means at its disposal to obtain the requested information, including a statement of assets and liabilities in the case of individuals but excluding legal steps.

- The Director of Income Tax must inform the AG of the tax purpose and the reasons for which the information is requested.
- Following the consent of the AG, the bank should comply within a period of 60 days from the date of receipt of the written notice.
- In case a person under investigation, and for which information is requested, maintains a joint bank account with one or more other persons, the Director must follow the above procedure, separately for all persons stated as joint holders of the bank account.
- The Director must inform the person under investigation of the written consent or of the refusal of such consent by the AG as soon as this information is made available.

- **Electronic Filing:**

Any person required under the Law to submit his income tax return by 31st December of the year following the tax year (persons obliged to prepare audited financial statements), must file his tax return electronically or by any other means the Director may stipulate from time to time. Where electronic filing of returns will apply, the taxpayer will have a filing extension of 3 months.

- **Assessment based on information already available:**

The Director is entitled to determine the object of the tax to the best of his judgment based on his findings resulting from a review or an investigation or according to data and information already on the hands of the Director. The Director is able to use information relating to other years in order to determine the tax liabilities. This right applies not only in respect of returns not submitted but also extends to the improper keeping of records or the failure to provide the facilities necessary for the Director to verify information in the tax returns or where such returns are incomplete or incorrect.

- **Objections:**

The deadline for filing objections to assessments issued in December is extended to the end of February of the following year.

The objection must state specifically and precisely the reasons upon which the objection is based and state the correct amount of tax payable, income exempted, deductions, or tax credit and include any documentation supporting the objection.

- **Provision of information by civil servants:**

Civil servants have the obligation to reveal to the Tax Authorities upon request, any information they may have concerning the tax payer. However, the officers of the Cyprus Central Bank and of the Authority for the Supervision and Development of Co-operative Societies are exempted from such an obligation.

- **Record keeping and Field Audits:**

During a field audit the Director is entitled, following the provision of a reasonable notice to the interested party, to enter and inspect any business premises during business hours, including any goods and documents found in them. Residential dwellings are excluded.

Any person that is liable to keep books and records under the assessment and collection of taxes law is liable to update such books and records not later than the end of the fourth month following the month in which the transactions of the business are taking place.

- **Issue of invoices:**

An invoice should be issued within a period of 30 days from the date on which the transaction is completed unless the Director allows a longer period following a written request by the interested party.

- **Stock Taking:**

Businesses maintaining stocks are obliged to carry out an inventory annually at the end of the financial year. The records of the inventory must be available to the Director upon request.

- **Payment of non disputed tax in case of recourse to the court:**

Any non disputed tax is not postponed anymore due to a recourse to the court.

➤ **Penalties imposed under the Assessment and Collection of Taxes Law, the Capital Gains Tax Law and the Immovable property Tax Law:**

(i) Any person who refuses, fails or neglects to submit any notification or tax return or provide any evidence or does not perform any of his duties as they are explicitly prescribed by Law within the deadline expressly prescribed by the Law, is liable to a penalty of EUR€100.

(ii) Any person who refuses, fails or neglects to submit any notification or tax return or provide any information requested or does not perform any of his duties as those are explicitly prescribed by Law and the Director has duly served a written notice on such person requesting the compliance with a deadline expressly mentioned therein (regardless of whether the Law specifies a deadline or not), is liable to a penalty of EUR€200.

The deadline set by the Director should not be less than 60 days.

(iii) Any person who refuses, fails or neglects to submit any notification or tax return or provide any information requested or does not perform any duties for which no deadline is prescribed by the Law and these notices, returns, information or duties relate to a third party and the Director has duly served a written notice on such person requesting the compliance with a deadline expressly mentioned therein, is liable to a penalty of EUR€100.

The deadline set by the Director should not be less 60 days.

(iv) Where a tax liability is not paid within the deadline set by legislation or in a written notification by the Director, an additional penalty of 5% will be payable on the amount of tax due.

Enforcement Date for penalties: 1.7.2011 (by concession it was extended to 1.10.2011).

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