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International Tax Alert

Ernst & Young Russia

Vladimir Zheltonogov

Partner, Head of International Tax for Russia and CIS
Phone: +7 495 705 9737
E-mail: Vladimir.Zheltonogov@ru.ey.com

Vladimir Gidirim

Phone: +7 495 755 9716
E-mail: Vladimir.Gidirim@ru.ey.com

Mikhail Sokolovsky

Phone: +7 495 648 9626
E-mail: Mikhail.Sokolovsky@ru.ey.com

Andrei Fokin

Phone: +7 495 662 9320
E-mail: Andrei.Fokin@ru.ey.com

Ernst & Young Cyprus

Neophytos Neophytou

Phone: +357 2520 9999
E-mail: Neophytos.Neophytou@cy.ey.com

Maarten Koper

Phone: +357 2520 9999
E-mail: Maarten.Koper@cy.ey.com

Petros Liassides

Phone: +357 2220 9999
E-mail: Petros.Liassides@cy.ey.com

Philippos Raptopoulos

Phone: +357 2520 9999
E-mail: Philippos.Raptopoulos@cy.ey.com

Protocol to the Russia-Cyprus double tax treaty has been signed - Cyprus to be removed shortly from the Russian "blacklist"

On 7 October 2010, during the visit of the Russian President to Cyprus, the Russian and the Cypriot Ministers of Finance have signed a Protocol amending the Russia-Cyprus double tax treaty, which has been in effect since 1 January 2000 ("*the Treaty*"). At the same time President Medvedev announced the removal of Cyprus from the Russian "blacklist" as soon as the Protocol comes into force (once the ratification procedures are completed). Reference can be made to our September Russian Tax Brief.

Summary of changes

The main changes to the Treaty can be summarized as follows:

- ▶ The articles of the Treaty on Exchange of Information and on Assistance in Collection of Taxes are brought in line with the latest version of the respective articles in the OECD Model Tax Convention
- ▶ The "Capital Gains" article of the Treaty has been amended to allow the Contracting States to tax capital gains from the sale of shares or other similar rights deriving more than 50% of their value from immovable property situated in their own territory
- ▶ Distributions by real estate investment trusts and real estate investment funds will be treated and taxed as income from real estate (rather than being treated as dividends or other income for the purposes of the Treaty)

- ▶ The “Mutual Agreement” article has been amended to allow a Russian or a Cypriot tax resident to present his case to the competent authority of either Russia or Cyprus (and not only of the state of his tax residence)
- ▶ The term “dividends” has been expanded to include income received from units in mutual investment funds or in similar collective investment schemes (other than real estate investment trusts or real estate investment funds)
- ▶ The exemption of international transportation income from source taxation will be available now only to companies with the “place of effective management” in the residence state, just a “residence” is not sufficient anymore
- ▶ Income realized by a company through an individual in the other state (so-called “service PE”) could be taxed in the source state if certain conditions are met
- ▶ A new article has been introduced to prohibit companies which are not registered in either Russia or Cyprus (but are considered as tax resident in either State) from benefiting from the provisions of the Treaty, if the main purpose of becoming tax resident is to take benefit under the Treaty.

Entry into effect

The Protocol is expected to come into effect on 1 January 2011 (provided it will be ratified by both Russia and Cyprus before the end of 2010).

The following provisions of the Protocol have a different date of entering into effect:

- ▶ The changes to the “Capital Gains” article regarding the taxation of capital gains from the sale of shares or other similar rights in property rich companies will come into effect on either 1 January 2015 or 1 January 2016 (depending on when the Protocol comes into force)
- ▶ The article on Assistance on Collection of Taxes will come into effect only when Cyprus amends its domestic tax legislation to allow for the application of such procedures. The current Cypriot tax legislation allows only such assistance to be extended to other EU Member States.

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