Cyprus Banks On The International Scene

Cyprus is not Greece, is the first thing to say about the Cyprus banking sector. Although people in Cyprus have in common with those in Greece (along with other Mediterranean countries) a regrettable habit of not paying all the tax they should, and although the government has been slow and reluctant to tackle its growing fiscal deficit, the economy grew lustily until 2008, barely shrank in 2009 (one of the best performances in the EU) and is expected to return to a growth path in 2010. The banking sector is sound, and has experienced none of the problems of the Greek or Irish banks; domestic banking assets total 800% of GDP, with little exposure to toxic sovereign debt, and the loans to deposits ratio is 114%, signalling little reliance on debt funding. If there is a potential problem, it would lie in exposure to the real estate sector, which has suffered seriously in the downturn after having been the star of the Cypriot economy for twenty years. But the fundamentals remain unchanged: Cyprus was, and will again be, a highly attractive destination for international real estate buyers, both English-speaking and otherwise.

CONTINUED PAGE 6
Private Investments Funds (ICIS) In Cyprus: The New Trend
by Michalis Kyriakides and Olga Shelyagova

Cyprus is definitely on the map as a prominent forum for the establishment of private investment funds, also known as private International Collective Investment Schemes (private ICIS). An ICIS can also be formed as a public fund, however the purpose of this brief is to provide a general overview of the primary advantages of a private ICIS.

The purpose of a private ICIS is the collective investment of funds injected in such schemes by the unit-holders. A private ICIS can have up to 100 investors, also known as unit-holders. It provides an arrangement that enables a number of investors to add collectively their assets, have these professionally managed and invested by independent managers/entities and, in case of successful investment, extract their profits in a tax efficient manner.

The primary advantages of a private ICIS are flexibility, regulation, transparency, straightforward formation, clear legal framework and tax efficiency. These are examined in brief below:

(1) Flexibility. Private ICIS can be established with limited and unlimited duration or with variable or fixed capital. They can also take the form of a limited company, trust or partnership, depending on the underlying circumstances applicable in each specific occasion.

(2) Regulation. Private ICIS are fully regulated by the Central Bank of Cyprus. In order to issue an approval of the scheme, the supervising authority must be satisfied that the directors, promoters, managers and trustees of the scheme are competent, honest and meet certain legislative requirements and, also, that the manager(s) or the general partner(s) or the trustee(s), as applicable, act independently. The constitutional documentation and the offering memorandum of the scheme must contain the information prescribed by the law and be drafted in a form acceptable to the supervising authority. After formation, the Central Bank of Cyprus pursues a substantial monitoring role.

(3) Transparency. Annual and half-yearly reports must be prepared by the managers in relation to each ICIS. The former reports must contain financial statements, information on borrowing, portfolio information, report by trustees and report by auditors. The latter must as a minimum contain financial statements, including balance sheet, income and expenditure account, statement of the sources from which the total income of the ICIS has been generated, statement of income distribution and allocation and statement of duties, charges and fees paid out.

(4) Straightforward Formation. Formation can be effected within 6 weeks.

(5) Tax Incentives. Cyprus private ICIS benefit from significant tax incentives. A private ICIS is treated identically to any other Cypriot entity and, accordingly, enjoys a 10% flat corporate income tax on the annual net profits earned worldwide. In addition, the following tax advantages are especially significant for an ICIS: (a) exemption from tax on profits from sale of shares and other financial instruments; (b) exemption from tax on foreign dividends received; (c) no withholding on interest and dividend payment made from Cyprus abroad; (d) no withholding tax on income repatriation; (e) exemption on profits on disposal of securities; and (f) a wide network of Double Tax Treaties is in place with more than 40 countries worldwide, securing tax incentives and encouraging the channelling of funds in other countries without or with reduced further taxation.

Cyprus private ICIS are commonly used for the accumulation of funds and collective investments in countries such as Russia, Poland, Ukraine and India. Investments in the Balkans are equally favourably structured via Cyprus. These can be combined by alternatives or more elaborate tax structures, such as a private ICIS operating as a subsidiary of funds established in other international jurisdictions (“Feeder Funds”). The development of ICIS law and practices in Cyprus has strengthened the position of Cyprus as a reputable and strong international financial centre and has attracted considerable international investment.

Up to 30 July 2010, 52 private ICIS have been successfully registered and operate in Cyprus.

Contact Harris Kyriakides
115 Faneromenis Avenue, Antouanettas Building,
P.O. Box 40089, 6300, Larnaca, Cyprus
Tel: +357 24 828244
Fax: +357 24 818877
Email: info@kyrlaw.com.cy
Website: www.kyrlaw.com.cy
International Holding and Trading Companies: Their Formation, Uses and Tax Structure

Cyprus is no longer an offshore jurisdiction in the strict sense of the word, but its tax regime, coupled with its location at the cross roads of Eastern Europe, the Middle East, North Africa and Asia, an extensive network of double-tax treaties, its membership of the European Union and its relatively sophisticated European business environment and stable economy mean that the island is an ideal place to locate holding, trading and intermediary companies.

Cyprus's taxation regime doesn't stand out particularly among its offshore competitors, but changes to tax legislation approved in 2002 gave Cyprus the lowest rate of corporate tax in the EU at 10%. Cyprus has also adopted the EU's 'Code of Conduct' on 'harmful tax practices' and is placed on the Organization for Economic Cooperation and Development's (OECD) 'white list' of tax compliant jurisdictions and therefore has a reputational advantage over some of its offshore competitors. Cyprus was also rated as the most attractive tax regime in Europe (with the net attractiveness score of 90%) by a 2009 KPMG poll, ahead of Ireland, Switzerland and Malta.

The Income Tax Act No. 118(I) of 2002 applied the 10% corporate tax rate to both 'offshore' and 'onshore' companies, although after a short transition period, this distinction has now been removed; as from January 1, 2003, an offshore company (IBC) no longer has a separate taxation status, and is taxed according to the same principles as a regular company. Thus, IBCs are now allowed to trade inside Cyprus. A pre-existing IBC which made an irrevocable commitment not to trade inside Cyprus until 2006 was able to claim the existing low tax rate for the three years 2003, 2004 and 2005.

Cypriot companies also pay a 2% levy on wage bills (meant to subsidize pensioners), and a 'Special Contribution' related to defence which in effect applies the 10% corporate tax rate to inter-company dividend and interest payments. However, profits from activities of a permanent establishment situated outside Cyprus are completely exempt. This exemption will not apply to a Cyprus company if: (i) its foreign permanent establishment directly or indirectly engages in more than fifty per cent (50%) of its activities in producing investment income, and (ii) the foreign tax burden is substantially lower than that in Cyprus (unlikely unless the foreign PE is located in no- or low-tax jurisdiction). In Cyprus, the term "Permanent Establishment" has the same meaning as defined in the OECD Model Tax Convention on Income and Capital with the exemption of "a building site or construction or installation project", which constitutes a permanent establishment only if it lasts more than three months.

A substantial number of companies involved in the trading or distribution of FMCG and other physical goods use Cyprus as a trading base for the Mediterranean, Middle East and North African region. Non-resident enterprises (i.e. those neither managed and controlled nor with a local permanent establishment) are allowed to store, maintain, break bulk or re-package their own transit goods in bonded warehouses, providing the handling doesn't result in any change of customs' tariff classification. They are also permitted to conduct sales activities on the island, as long as no local deliveries result, and no permanent establishment is created.

Cyprus is not a particularly convenient base for supplying the CIS and Eastern Europe in physical terms, but that does not prevent companies with interests in those regions from establishing holding companies in Cyprus, and very many do so. Not only are the Cyprus treaty withholding tax rates normally lower than those in other countries' treaties, but there will be no local taxation as long as no permanent establishment is created, and even if it is, Cyprus's own 10% tax rate on company profits is itself low. The combination is quite hard to beat.

A frequent feature of international trade and investment, particularly as between advanced and less advanced countries, is the transfer of technology or 'brand' or intellectual property in return for license, franchise or royalty payments. Due to its network of double-tax treaties (unusually for a 'low tax' jurisdiction, Cyprus has more than 40 double-tax agreements) and favourable taxation regime, Cyprus is a suitable place in which to locate an intermediary company to handle payments streams which might otherwise be highly-taxed in the receiving country.

Such payments would normally be deductible expenses in the originating country, and under the tax treaties will be subject to low or zero withholding tax (Central and Eastern Europe, China, India, South Africa and a number of Middle Eastern countries). At worst, the income received in Cyprus will be taxed after deduction of expenses at 10%.

There are a number of company forms available in Cyprus, but the most commonly used for a Cypriot holding company is the private limited liability company. When 100% foreign-owned, a private company used to be referred to as an 'offshore company', although the expression International Business Company subsequently came into favour to describe such entities.

Continued on page 3
International Holding and Trading Companies: Their Formation, Uses and Tax Structure continued

Cypriot companies are formed under the Cyprus Companies Law, Cap. 113, which is virtually a copy of the English 1948 Companies Act. In order to form a foreign-owned company in Cyprus, a bank reference and copy of the owner's passport is required for the registration. The bank reference must be issued by a bank included on the Central Bank of Cyprus's list of qualifying banks. A holding company using the private limited company form will need at least one shareholder and the minimum share capital is EUR1,000, with share capital of between EUR5,000 and EUR10,000 the norm. A Cypriot private company must have at least one director which can be a natural person or a body corporate of any nationality.

Under amendments to the Cyprus Company Law in 2003, every company must prepare a full set of financial statements in accordance with International Financial Reporting Standards, and every parent company that has one or more subsidiaries, other than a company which is itself a wholly owned subsidiary, should present consolidated financial statements. Under article 120, every company must complete an annual return within a period of 42 days from the date of its Annual General Meeting and must file immediately with the Registrar of Companies a copy of the annual return, signed by a director and the company secretary. Under article 121, the annual return filed with the Registrar of Companies must be accompanied by the full set of financial statements.

So, as described above, due to the island's combination of tax treaties and low-tax regime, and its membership of the EU, many international investors choose Cyprus as a location for financial holding and investment companies as conduits for investment to and from Eastern Europe, the Near and Far East, and Africa.
PROFILE: Department of Merchant Shipping

The Department of Merchant Shipping (DMS) was established and started functioning as a distinct entity in the Ministry of Communications and Works, in 1977. The service existed, however since 1963 and functioned under the Department of Ports. The headquarters were situated in Famagusta, which was also the port of registration of Cyprus ships.

Following the Turkish invasion in Cyprus in 1974 and the subsequent occupation of Famagusta by the Turks, Limassol replaced Famagusta as the port of registration of Cyprus ships. At the same time the port of Famagusta, as well as other smaller ports in the occupied area of Cyprus, were declared closed to international maritime traffic.

The establishment of the DMS inaugurated a new era of development of Cyprus in this important sector. The registration of ships became just a part of an all round effort to establish a sound infrastructure which would facilitate not just the registration of ships but also ship management and other shipping related activities in Cyprus. The Cyprus Registry has shown phenomenal growth in the last twenty five years. In the early eighties Cyprus ranked thirty-second on the list of leading maritime nations. It now ranks among the top ten with a merchant fleet exceeding 21.6 million gross tons.

The DMS is responsible for the development of maritime activities which include: registration of ships, administration and enforcement of the Merchant Shipping Laws, control of ships and enforcement of international conventions ratified by the Government of Cyprus, investigation of accidents involving Cyprus ships or Seafarers serving on those ships or foreign ships sailing within the territorial waters of the Republic, resolving labour disputes on board Cyprus ships and training and certification of seafarers.

Since its establishment, the DMS has been strengthened with professional, administrative and clerical personnel enabling it to establish offices in Piraeus, London, Rotterdam, New York, Hamburg and Brussels for more efficient operation and the exercise of effective control regarding the implementation of the provisions of the shipping legislation.

The main efforts of the DMS are presently focused on the harmonisation of the Cyprus legislation to that of the European Union and its effective implementation in particular with respect to the improvement of safety standards and conditions of living and working of seafarers on board Cyprus ships in accordance with international conventions currently in force. At the same time, action is taken for the continuous improvement of the existing infrastructure, the incentives available to both residents and non-residents and the enhancement of the international reputation of the Cyprus flag as a maritime flag.

Particular attention is also given to the protection of the environment against marine pollution through enactment of legislation and raising the society’s awareness on environmental issues.

CONTACT DETAILS

DEPARTMENT OF MERCHANT SHIPPING
Kyllinis Street, Mesa Geitonia, CY 4007 Lemesos, Cyprus
P.O.Box 56193, 3305 Lemesos, Cyprus
Telephone: +357 25848100, Telefax: +357 25848200,
E-mail: maritimeadmin@dms.mcw.gov.cy,
Web page: www.shipping.gov.cy
PROFILE: Aspen Trust Group

The Aspen Trust Group excels at the implementation and management of an integrated range of professional services and practical advice based on tailor-made international tax solutions.

Since the establishment of the group in 1998, our vision has been to provide the tax optimisation structuring tools to businessmen expanding the frontiers of international trade and investment, and to affluent individuals wishing to manage their wealth today and develop new sources of wealth for future generations.

We do this by becoming more than just a provider to our clients: we fully understand their objectives and embrace them as our own.

We enjoy an outstanding level of cooperation with key professionals in the main international jurisdictions. This allows us to offer our clients an international approach at a local level.

We have the right size to provide a full scope of services with a personalised touch, delivery of custom-built tax solutions, and the level of advice that our discerning clients expect on how to best meet the business and wealth management challenges and make the most of the investment opportunities of the 21st century.

We offer an integrated range of services to ensure our clients’ objectives are met without feeling the change of stepping into the world of international tax planning, by providing a seamless link between the international tax planning advice, day-to-day operations and reporting of our proposed structures:

- International Tax Planning
- Company and Trust Formation
- Fiduciary Services
- Nominee and Trustee Services
- Corporate and Legal Services
- Administration Services
- Financial Management Support
- Accounting and Financial Reporting Services

Our approach ensures that every tax advice is executed correctly; that it is flexible enough to facilitate the growth of our clients’ business and wealth; and that every solution is implemented as a vehicle that takes our clients from where they are now to where they want to be.

Contact Details

Elia House,
77 Limassol Avenue,
2121 Nicosia,
Cyprus
Tel: + 357 22418888
Fax: + 357 22418890
Email: info@aspentrust.com
Web: www.aspentrust.com

Additional Contacts

Name: Mr. Andreas Athinodorou - CEO
E-mail: andreas.athinodorou@aspentrust.com

Name: Ms. Marina Zevedeou - Chief Operations Officer
E-mail: marina.zevedeou@aspentrust.com

Name: Mr. Vivesh Pillay - Head of Banking and Treasury Services
E-mail: vivesh.pillay@aspentrust.com
Cyprus Banks On The International Scene

Cyprus is not Greece, is the first thing to say about the Cyprus banking sector. Although people in Cyprus have in common with those in Greece (along with other Mediterranean countries) a regrettable habit of not paying all the tax they should, and although the government has been slow and reluctant to tackle its growing fiscal deficit, the economy grew lustily until 2008, barely shrank in 2009 (one of the best performances in the EU) and is expected to return to a growth path in 2010. The banking sector is sound, and has experienced none of the problems of the Greek or Irish banks; domestic banking assets total 800% of GDP, with little exposure to toxic sovereign debt, and the loans to deposits ratio is 114%, signalling little reliance on debt funding. If there is a potential problem, it would lie in exposure to the real estate sector, which has suffered seriously in the downturn after having been the star of the Cypriot economy for twenty years. But the fundamentals remain unchanged: Cyprus was, and will again be, a highly attractive destination for international real estate buyers, both English-speaking and otherwise. There are significant Russian and Middle-Eastern communities which will attract new entrants in due course. And underlying Cypriot real estate prices are still well below those in comparable locations around the Mediterranean. Under pressure from the European Commission and the IMF, the government has now taken some painful and necessary steps towards greater fiscal rectitude which should return the deficit to Maastricht levels by 2014.

Cyprus is also very unlike Greece, Italy or Spain in its tax regime, with what is still the lowest corporate tax rate in the EU, a factor which should not be underestimated and is highly attractive to companies - including banks - which need to establish a headquarters somewhere in the EU. If the government helps with other business-friendly measures, the island will surely attract a good flow of incoming financial services operators, who can then provide their services throughout the EU under the passporting directive. The Central Bank certainly has this as one of its objectives, and pursues policies which are very welcoming to foreign banks. Even if the domestic sector could be said to be adequately, if not over-banked, there are plenty of international opportunities both in the financial services sector itself and also in the support of non-domestic activity, notably including the maritime sector, where Cyprus has a well-established regime and very tax-friendly policies.

The days are long gone in which Cyprus, followed by Malta, was somehow involved in Russian capital flight. The Prevention and Suppression of Money Laundering Law of 1996 has been largely successful: in April 1998 a Select Committee of Experts from the Council of Europe reported enthusiastically about the island’s measures to control money laundering. On December 13, 2007, the House of Representatives enacted an updated Prevention and Suppression of Money Laundering Activities Law, which consolidated, revised and repealed the 1996 law. Under the current Law, which came into force on January 1, 2008, the Cyprus legislation has been harmonised with the Third European Union Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Directive 2005/60/EC).

The present Law, as the previous one, designates the Central Bank of Cyprus as the competent supervisory authority for persons engaged in banking activities and money transfer business. Under this framework, the Central Bank of Cyprus has the responsibility of supervising and monitoring the compliance of banks and money transfer businesses with the provisions of the Law for the purpose of preventing the use of the financial system for money laundering and terrorist financing activities.

In April 2008, the Central Bank of Cyprus issued a revised Directive to the banks, in accordance with the provisions of the Law of 2007, requiring the introduction of new revised policies and procedures, as well as the upgrading and enhancement of the measures and systems for the effective prevention of money laundering and terrorist financing in line with the FATF standards and the Directives of the European Union in this sector. It is emphasized that the Law explicitly states that Central Bank of Cyprus’ Directives are binding and compulsory to all persons to whom they are addressed.

Since 1997, a special Unit for Combating Money Laundering has existed at the Attorney General’s Office which is responsible for the receipt and analysis of suspicious transaction reports and money laundering investigations. In the course of money laundering investigations, this Unit may apply to the Court and obtain an order for the disclosure of information addressed to any person, including banks, who may be in possession of information related to the investigation as well as orders for the freezing and confiscation of funds and property suspected to be derived from money laundering. In March, 2009, Cyprus ratified the Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). The convention opened for signature to the member states of the Council of Europe, the non-member states which have participated in its elaboration, and the European Community, in Warsaw, on May 16, 2005. It entered into force on May 1, 2008.

Continued on page 7
Cyprus Banks On The International Scene

The latest convention replaces the Council of Europe’s 1990 convention, providing legislation to take into account the fact that not only could terrorism be financed through money laundering from criminal activity, but also through legitimate activities.

The Central Bank has always stoutly denied culpability for the events of the early ‘90s, and it is certainly true by now that the banking sector is super-clean, with tight local and EU regulation and supervision, which is due to become even more stringent (as in all EU countries) with new prudential directives emanating from Brussels.

For the offshore investor, Cyprus banking law provides a reasonable but not outstanding level of non-disclosure. Offshore entities must disclose beneficial ownership to the Central Bank on formation, but Central Bank employees are bound to secrecy by Section 3 of the Central Bank Law 37 of 1975 (now Section 29 of the Banking Laws 1997 to 2009). Normally speaking, local banks apply about the same standards of confidentiality as apply in English law. In December, 2003, the Government announced plans to breach banking confidentiality, allowing the tax authorities access to residents’ bank accounts. This made it possible for the government to run a tax amnesty scheme targeting those with undeclared bank accounts.

The rules for exchange of information with foreign states are a complex mixture of the local taxation laws, the network of double-tax treaties, and international agreements for mutual legal assistance and the exchange of information to which Cyprus is a signatory, now further complicated by the EU acquis communautaire which substantially worsens the position of individuals and corporations as regards secrecy. However Cyprus law does provide for normal judicial appeal procedures against treaty requests for information and cooperation.

As part of its support for international banking, the Central Bank has followed a policy of entering Memoranda of Understanding with other countries’ financial regulators. Typically, such Memoranda define a general framework of mutual cooperation and exchange of information between the two supervisory Authorities, with a view to facilitating the consolidated supervision of cross-border establishments, and ensuring the safe functioning of credit institutions in their respective countries, in accordance with their national laws and regulations. Such Memoranda have been signed with Austria, The Dubai Financial Services Authority, the Central Bank of the Russian Federation, the Bulgarian National Bank, the National Bank of Ukraine, the National Bank of the Republic of Belarus, the National Bank of Serbia, the National Bank of Romania, the Financial and Capital Market Commission of the Republic of Latvia, the National Bank of Slovakia, the Bank of Tanzania, the Central Bank of Jordan, the Bank of Greece, the Banque du Liban, the Central Bank of Armenia, De Nederlandsche Bank N.V. and the Jersey Financial Services Commission, all of these being countries with financial interests in Cyprus. A number of further Memoranda are under negotiation.

Also not to be forgotten in assessing the attractions of Cyprus as a financial center is its network of double tax treaties, particularly with the ex-member countries of the USSR. Cyprus figures high up on the list of ‘conduit’ countries for FDI into Russia and other Eastern European countries, and the flows of investment in one direction and tax-privileged dividends in the other must of necessity pass through Cyprus-resident banks.

The Central Bank’s list of financial institutions under its sway currently includes 44 entities, four of them being publicly-listed in Cyprus, with a further four local banks, nine being subsidiaries of foreign banks, eight being branches of other EU banks, seventeen being branches of non-EU banks, and two being representative offices.

The banking sector doesn’t only look outwards, of course, and in mid-2009 the European Investment Bank inaugurated unprecedented cooperation with three Cypriot banks, the Bank of Cyprus, Marfin Popular Bank and Hellenic Bank, to provide additional support in the financing of entrepreneurial activity in Cyprus. The agreement will provide facilities totalling EUR228m from the European Investment Bank; EUR120 will go to Bank of Cyprus, while Marfin Popular Bank and the Hellenic Bank will receive EUR50m and EUR58m, respectively.

The funds will be used to provide finance to small- and medium-sized enterprises (SMEs) in the fields of industry, commercial services and tourism in Cyprus. The lending facilities signed with the Bank of Cyprus and Hellenic Bank will also be able to fund SMEs located in Greece.

Continued on page 8
Cyprus Banks On The International Scene

continued

The Cypriot Minister of Finance, Charliaos Stavrakis commented: “The new EUR228m EIB financing facility will offer enhanced possibilities for meeting the liquidity needs of Cypriot SMEs in the current economic crisis. The funds will be used for financing enterprises in industry, tourism, trade and, more generally, services. I am sure that these funds will be used for the benefit of our enterprises. We are interested in considerably improving financing opportunities for smaller companies, by increasing the amounts available and offering greater flexibility as well as new financial products. Our objective, which is also our obligation, is to utilise all available development tools, such as those offered by the EIB to the European economies. We therefore signed recently with the EIB Group a EUR20m funding and management agreement for the implementation here in Cyprus of the Joint European Resources for Micro- to Medium-Enterprises initiative, known as JEREMIE. Today we take a further big step forward.”

EIB Vice-President Mr Sakellaris commented at the signing ceremony: “The signature today marks a milestone in our activity in Cyprus: quantitatively as it is the biggest-ever for SMEs, qualitatively, as it is a new product and involves a wide alliance with Cypriot partners, and, in terms of timing, it coincides with the fifth anniversary of Cyprus’s accession to the European Union. Now is the time to work together to restore the growth that can only come from strong and flourishing enterprises that harness innovation and advance opportunity.”

“The success of the Cypriot economy is inextricably linked to small businesses, so we are therefore acting boldly in favour of Cypriot SMEs. Our action is amplified by the synergy with our partner banks Bank of Cyprus, Marfin Popular Bank and Hellenic Bank. Further synergies to benefit Cypriot SMEs have been sought within the framework of JEREMIE, for which we held a working session here yesterday, involving most banks working in Cyprus as well as representatives of SMEs. Our future action, though, will not be limited to SMEs,” he further added.

Mr Shiarly, Bank of Cyprus Group General Manager Domestic Banking stated: “SMEs are undoubtedly the backbone of the economy of Cyprus. Throughout our 110 years of history we recognised their importance and consistently, through good times and bad, at times of peace or war, we stood by and supported Cypriot SMEs, which comprise almost 100% of all businesses in Cyprus. In today’s troublesome times and in the midst of an international financial crisis, these loans from the EIB will enhance our lending liquidity and our ability to continue our support for and offer competitively priced loans to SMEs.”

Mr Efthymios Bouloutas, Chief Executive Officer of Marfin Laiki Bank said: “Marfin Laiki Bank puts special emphasis on the financing of SMEs, which form an important part of our customer base in Cyprus. Some months ago, when the crisis was seen as a serious threat, the management of the bank took the decision to strengthen our presence in this sector, and we are very pleased that this aim will now have the support of the European Investment Bank. I would like to take this opportunity to underline that the capital provided for under the present agreement will be directed exclusively towards supporting SMEs in Cyprus, since we have signed another agreement with the EIB for the Greek market.”

Mr Keravnos, CEO of the Hellenic Bank Group welcomed the signing of the agreement with the European Investment Bank: “These new funds of approximately EUR 250 million drawn from the EIB will enhance our ability to help small and medium-sized enterprises with loans on favourable terms, a grace period and on much improved terms than the ones offered today.” Mr Keravnos emphasised that “Hellenic Bank, being a socially responsible organisation, predicted at a very early stage the adverse effects the global financial crisis would have on both the real economy and SMEs. For this reason, Hellenic Bank was the first Cypriot bank to apply promptly to the European Investment Bank for lending facilities regarding the funding of SMEs, in an effort to provide effective help and support both its customers and the entire business world of Cyprus.”
PROFILE: Fiducenter

Fiducenter is an independent domiciliation agent, with offices in both Luxembourg (Head Office) and Cyprus. Since creation it has followed a multi-disciplinary service approach, remaining highly flexible and open to new ideas, thus allowing it to react promptly and efficiently.

Fiducenter can take advantage of its presence in two of the most attractive financial centres in Europe, Luxembourg and Cyprus, to provide structures which include a combination of vehicles from both jurisdictions.

What makes this choice most attractive is the blend of the knowledge and expertise of the legal and fiscal systems of the two countries, the opportunity to include in the structure two EU establishments and Fiducenter’s preferential rates for such a package. The whole Fiducenter Group currently consists of 60 multilingual, highly qualified, and experienced members. Its strength is the complementary combination of accountants, tax advisors, legal experts, asset managers, insurance brokers and all other contributors who will coordinate their efforts to provide clients with the best advice and services.

Fiducenter offers the following services to its clients: Tax advice and planning; Legal advice; Financial advice; Asset management; Incorporation and restructuring of companies; Creation of trusts and provision of trustee services; Provision of directors, company secretary, nominee shareholders and registered office; Daily management; Accounting and administration; Tax and VAT registration and administration; Provision of staff and corporate offices; Tailor-made business-centre-like solutions.

Fiducenter works primarily through other professionals, like lawyers, accountants, fiduciary services providers, all over the world. The majority of the final clients are entrepreneurs, who have built up their wealth through the inception of clever business ideas and their successful commercial exploitation either by themselves or through licensing of intellectual property (trademarks, patents, copyrights, etc.) related to such ideas. We also provide services to Cypriot vehicles part of big multinational groups in demanding and sometimes heavily regulated industries.

In addition to the popular structures Cyprus has to offer, such as holding, royalty, portfolio management, Fiducenter (Cyprus) Limited can also set up Cyprus International Trusts. In addition, for private equity clients Fiducenter can make use of the expertise of its office in Luxembourg with investment funds to offer private equity clients a variety of vehicles of both jurisdictions.

CONTACT DETAILS

Vaschiotes Business Center
1st floor, office 101
1, Iakovou Tompazi Street
3107 Limassol
P.O. Box 54810
3728 Limassol
Tel: +357 25 504 000
Fax: +357 25 504 100
Email: fiducenter@fiducenter.com.cy
Website: www.fiducenter.com.cy
Working hours: 08:30 - 18.00 local time (GMT+2)
Cyprus: An International Maritime Centre

by Department of Merchant Shipping

Cyprus: a “Flag of Progress”

The Cyprus Registry has shown phenomenal growth in the last thirty years. In the early eighties Cyprus ranked thirty-second on the list of leading maritime nations. It now ranks among the top ten international fleets - with 1.026 ocean going vessels of a gross tonnage exceeding 20.2 million- and has the third largest fleet within the European Union with a percentage of 12% of the total fleet of the 27 EU Member States.

The classification of Cyprus flag in the “White List” of the Paris and Tokyo MOUs on Port State Control, as well as its exclusion from the “List of Targeted Flag States” of the U.S. Coast Guard reveal our commitment to safety and quality.

The high quality standards of the fleet and the services provided, in combination with a number of fiscal, economic and other benefits offered, make the Cyprus flag the ideal choice for every successful entrepreneur.

The continuous improvement of the existing infrastructure, the incentives available to both residents and non-residents and the enhancement of the international reputation of the Cyprus flag as a quality flag, are our main objectives.

Why Use the Cyprus Flag?

Economic benefits:
- No tax on income derived from the operation of a Cyprus registered vessel.
- No tax on dividends paid to shareholders of a Cyprus registered vessel, out of profits made from the operation or from the sale of the ship.
- No tax on interest earned on working capital of a Cyprus registered vessel.
- No tax on the income, or profit made from the sale of a Cyprus registered vessel.
- No tax on the wages or other benefits of officers and crew members of a Cyprus registered vessel.
- Competitive ship registration costs and fees.
- Favourable tonnage tax scheme approved by the EU
- No estate duty on the inheritance of shares in a shipowning company.
- Full protection for financiers and mortgagees.
- No stamp duty on ship mortgage deeds or other security documents.

Other advantages:
- EU flag.
- Classification of Cyprus flag in the “White List” of the Paris and Tokyo MOUs and exclusion from the “List of Targeted Flag States” of the U.S. Coast Guard resulting in fewer inspections of the ships and less delays at the ports of both MOUs and of the U.S.A.
- Maritime offices in New York, London, Rotterdam, Piraeus, Brussels and Hamburg offering services to Cyprus ships.
- A network of local inspectors of Cyprus ships, covering important ports worldwide in order to ensure efficient and effective control of Cypriot vessels and to avoid detentions by port state control.
- Signatory to all international maritime conventions on safety and pollution prevention.
- Bilateral agreements on merchant shipping with 23 countries, through which Cyprus ships receive either national or favoured nation treatment in the ports of other countries.
- Efficient and qualitative provision of services by the Department of Merchant Shipping.

Continued on page 11
Cyprus: An International Maritime Centre

Opportunities of Joining the Cyprus Maritime Cluster

There is no doubt that Cyprus has firmly established itself as an international business and maritime centre within the EU. The efficient corporate planning opportunities, well-regulated solid infrastructure and the sound business platform, are key advantages that encourage entrepreneurs to establish their business on the island.

The accession of Cyprus to the EU has launched a new era of opportunities. Joining the European Monetary Union secured a robust economic performance characterised by price transparency across the euro-zone and exchange rate risk elimination.

The unique geographical position at the junction of three continents, the advanced banking, telecommunications and accounting services, as well as the broad range of tax advantages offered, make Cyprus an ideal location for shipowning, ship management and ancillary shipping-related companies.

Unlike other open registries, Cyprus is also a major base for international shipping operations and for other shipping related activities. In fact Cyprus has, over the years, become one of the largest and widely known shipping centres in the world, comprising both shipowning and shipmanagement companies. Several of the shipmanagement companies which operate on the island, rank among the largest of their kind in the world and it is estimated that they manage about 20% of the world’s third party managed fleet. In addition, more than 100 companies have been established with shipping related activities ranging from marine insurance, ship chartering, ship broking, financial services, equipment suppliers and telecommunications, to port services, transshipment operations, ship bunkering, shipping agency and ship chandlers.

New Tonnage Tax Scheme

The new tonnage tax scheme for Cyprus merchant shipping was approved by the European Commission on 24th March 2010, as compatible with the requirements of the EU acquis, in accordance with the relevant guidelines on State Aid to Maritime Transport. This simplified tonnage tax system is approved for the first time for an EU Member State, a state with an open registry.

The said scheme was approved for a ten years period, which may be extended for a further period of ten years. The provisions of the Law are applicable for the fiscal year 2010, starting on the 1st January 2010 and will be valid until December 2019.

Highlights of the new tax scheme:

- **Based on an annual tonnage tax** instead of ordinary corporate tax. The tax will be charged on the basis of the net tonnage of the vessels.
- **Owners of Cyprus ships** will continue to be automatically taxed with tonnage tax.
- **Shipowners or charterers or shipmanagers** participating in the tonnage tax system, are also exempted from income tax, or any other tax or levy on dividends paid to shareholders, on interest earned on working capital and on any profit made from the sale of a qualifying ship.
- **Eligible owners of foreign ships, charterers and shipmanagers** have the option to decide whether they should be subject to tonnage tax or not and their decision will be effective for 10 years.
- Only qualifying ships employed in international maritime transport and shipmanagement activities can be included in the tonnage tax system. Other activities eligible for tonnage tax include towage and dredging activities as well as cable-laying activities.
- **Innovative provisions of the scheme regarding the taxation of shipmanagers.** Shipmanagers providing crew management services and/or technical management services are eligible for tonnage tax.
- **Tax exemption on the wages or other benefits** derived from the employment of the master, the officers and the crew members of a Cyprus ship.
EU Approval Of Cypriot Scheme For International Maritime Transport
by Fiducenter

Introduction

The Parliament approved on 29 April 2010 the Merchant Shipping (Fees & Taxing provisions) Law which introduces a new tonnage tax system in Cyprus, applicable retroactively as from 1 January 2010.

The new regime has previously received EU approval on 24 March 2010. The Commission based its decision on the importance of the shipping industry on the economy of Cyprus. It has particularly noted that the Cypriot shipping industry is one of the largest in the EU and the 10th largest worldwide. Moreover, Cyprus is the biggest third party ship management centre in the EU.

The tonnage tax regime will be available for companies engaged in international maritime transport and liable to Corporation Tax in Cyprus. This measure allows companies to opt for a tax calculated on the net tonnage of the fleet that they operate instead of being taxed on the actual profits of their maritime transport activities.

The Commission authorized this new regime until 31 December 2019.

A large number of new shipping companies both within and outside of the European Union are expected to seek to benefit from this new very competitive taxation system by establishing and operating shipping offices in Cyprus.

Details

Income on which it applies

The new regime extends the favourable benefits applicable to owners of Cyprus flag vessels and ship managers to owners of foreign flag vessels and charterers. It also extends the tax benefits that previously only covered profits from the exploitation of vessels in shipping operations to cover:

- profits on the disposal of vessels;
- interest earned on funds used other than for investment purposes; and
- dividends paid directly or indirectly from shipping-related profits.

Beneficiaries

The underlying principle is that the tonnage tax system is available to any owner, charterer or ship manager who owns, charters or manages a qualifying ship in a qualifying shipping activity.

The tonnage tax is calculated on the net tonnage of the ship according to a broad range of bands and rates prescribed in the legislation. The rates applicable to ship managers are 25% of those applied for ship owners and charterers.

Qualifying ship

A qualifying ship is any seagoing vessel certified under applicable international or national rules and regulations and registered in the ship register of any member of the International Maritime Organisation and/or the International Labour Organisation that is recognized by Cyprus.

The regime specifically excludes certain types of ships, such as fishing vessels, ships used primarily for sports or recreation, river ferries, non-self-propelled floating cranes and tug boats, etc.

Qualifying shipping activity

Any commercial activity that constitutes maritime transport, crew management and/or technical management is considered a qualifying activity.

The definition of maritime transport includes the traditional carriage of goods and passengers, as well as ancillary services such as all hotel, catering, entertainment and retailing activities on board a vessel, the loading and unloading of cargo, the operation of ticketing facilities and passenger terminals, tonnage and dredging, cable laying, etc.

Continued on page 13
EU Approval Of Cypriot Scheme For International Maritime Transport continued

Ship owners

Ship owners of Cyprus flag ships automatically fall within the scope of the tonnage tax system. Ship owners of EU flag ships and/or third country flag ships may elect to be taxed under the tonnage system.

Ship owners of third country flag ships must comply with certain requirements to qualify for an election to be taxed under the new regime. These include the requirement that a part of their fleet be comprised of EU flag ships, which part must not be reduced in the 3-year period following the election and that the commercial and strategic management of the fleet be carried out from the EU.

Any ship owner electing the tonnage tax system must remain in the system for 10 years. Early withdrawal will result in penalties, calculated as the difference between the amount paid during the period the ship owner was under the tonnage tax system and the amount that would have paid had it been subject to Corporation Tax in the same period. In addition, the ship owner will lose the right to elect for tonnage taxation until expiration of the 10-year period from the date of the first election.

The tonnage tax system covers:
- profits from shipping operations;
- dividends paid directly or indirectly out of such profits;
- profits on the disposal of the ship; and
- interest earned on funds used as working capital, or for the financing, operation and/or maintenance of the ship.

Charterers

Any charterer who charters a ship under bareboat, demise, time or voyage charter is eligible for the tonnage tax system provided the tonnage of the ships under time and/or voyage charters do not exceed 75% of the total tonnage of ships chartered and owned for more than 3 consecutive years. This eligibility percentage increases to 90% if the ships chartered are EU ships or their crew and technical management are carried out from the EU. The charterers of third country flag ships must comply with the additional requirements that apply for third country flag ship owners.

An eligible charterer may elect to be taxed under the tonnage tax system, but once the election is made, it must remain in the system for 10 years. Early withdrawal will result in the penalties outlined above for ship owners.

The tonnage tax system covers:
- profits from shipping operations;
- dividends paid directly or indirectly out of such profits; and
- interest earned on funds used as working capital, or for the payment of expenses arising out of the charter agreement.

Ship managers

A ship manager who provides crew and/or technical ship management services is eligible for the tonnage tax system provided it satisfies certain criteria. These include the maintenance of a fully fledged office, the employment of a sufficient number of qualified personnel (51% of whom should be EU citizens), and at least two thirds of the management is carried out from within the EU. Further, at least 60% of the fleet under management should be carrying an EU flag, while all ships and crew under management must comply with international standards and EU law requirements relating to maritime security, safety, training and certification of seafarers, the environment, on-board working conditions, and so on.

Other specific criteria must be complied with, depending on the ship management service provided (i.e. full implementation of the Maritime Labour Convention for crew managers, the ISM Code certification for technical managers, etc.).

The 10-year election rule also applies to eligible ship managers and the same penalties apply for early withdrawal.

The tonnage tax system covers:
- profits from the provision of crew/or technical ship management services;
- dividends paid directly or indirectly out of such profits; and
- interest earned on funds used as working capital, or for the payment of expenses relating to the management of the ships.
Cyprus On The Ocean Wave

Cyprus’s strategic location at the crossroads of Europe, Asia and Africa, in combination with a benign tax regime, has enabled the island to become a world force in shipping. The Cypriot maritime industry is one of the largest in the EU and the 10th largest worldwide, with more than 1,850 ocean going vessels exceeding 21 million gross tons on the jurisdiction’s registry. Moreover, Cyprus is the biggest third party ship management centre in the EU, with about 60 ship management companies operating in the territory.

Cyprus has developed a maritime policy which is highly favourable for ship owners. Shipping companies owned by non-residents and deriving their income from sources outside Cyprus are not subject to Cypriot taxation. Cyprus also recently extended a beneficial tonnage tax regime for companies engaged in international maritime transport and liable to corporate tax in Cyprus.

In recent years, the safety standards of the fleet have improved markedly, as evidenced by the removal of Cyprus from the Black List of the Paris and the Tokyo Memoranda of Understanding on Port State Control (Paris MOU and Tokyo MOU) and its promotion to the White List. Moreover, the Cypriot government employs a global network of inspectors to ensure that ships registered in Cyprus adhere to the latest safety, environmental and employment standards. There are 16 such inspectors with a presence in 13 ports worldwide.

The Cyprus Merchant Shipping Laws are based on the English Merchant Shipping Acts 1894-1954 and registration is administered by the Department of Merchant Shipping of the Ministry of Communications and Works. A ship may be registered in Cyprus if it is majority-owned by a Cypriot person or company; a non-Cypriot company qualifies if it is majority-owned by Cypriots.

Registration fees in Cyprus are low, and compare favourably with those in other registries. Fees vary depending on the vessel’s gross tonnage, but vessels other than passenger ships will pay a maximum fee of EUR5,125.80 and a minimum of EUR213.58. There have traditionally been many other advantages of Cyprus registration, some being:

- No income tax, estate duty or capital gains tax for Cyprus-registered ships;
- No income tax in Cyprus for foreign crew;
- No stamp duty on documents or mortgage deeds;
- Anonymity for beneficial owners through nominee or trustee shareholders;
- Recognition of Competence Certificates from many countries;
- Easy deletion of ships from the Register.

Registration traditionally depends on the age and type of the ship. In July, 2005, Cyprus amended its policy on the registration of vessels for the purpose of harmonisation with the European Acquis and also to overcome problems encountered during the implementation of the existing policy. The new government policy covers additional categories of vessels, such as research vessels and small passenger vessels.

Under the latest rules, cargo vessels of more than 500 tons and not exceeding 15 years of age may be freely registered in Cyprus. Vessels over 15 years of age but not exceeding 20 may be registered subject to a satisfactory entry inspection. Vessels over 20 years of age but not exceeding 25 must also undergo an entry inspection and, where it is required by legislation that the vessel should comply with the ISM Code, be operated by a ship management company having its principal place of business in the EU or European Economic Area (EEA). Vessels over the age of 25 are not accepted for registration in the Cyprus register. Similarly, passenger vessels (defined as those carrying more than 12 passengers on international voyages) not exceeding 30 years in age may be registered in Cyprus provided they pass an entry inspection. Passenger vessels older than 40 years are not accepted for registration on the Cyprus Register. Yachts and other pleasure craft may also be registered in Cyprus provided that they are used exclusively for recreation and are not engaged in any commercial operations, irrespective of size. Vessels in this category which do not exceed 25 years of age may be registered without any additional conditions. Vessels exceeding 25 years of age must pass an entry inspection.

Continued on page 15
Cyprus On The Ocean Wave continued

Ships may be provisionally registered while they are in a non-Cyprus port; this must be converted into permanent registration during an actual visit to Cyprus within 9 months.

A new tonnage tax system was approved by the European Commission on March 24, 2010 under European Union state aid rules for maritime transport. The simplified tonnage tax system extends the favourable benefits available to owners of Cyprus flag vessels and ship managers to owners of foreign flag vessels and charterers. It also extends the tax benefits that previously only covered profits from the operation of vessels in shipping activities to cover profits on the sale of vessels, as well as interest earned on funds used other than for investment purposes and dividends paid directly or indirectly from shipping-related profits.

The new tonnage tax system was implemented by the Merchant Shipping (Fees and Taxing Provisions) Law, which was enacted in May 2010 and applies from the 2010 fiscal year. The tonnage tax system is available to any owner, charterer or ship manager who owns, charters or manages a qualifying ship in a qualifying activity (any seagoing vessel certified under applicable international or national rules and regulations and registered in the ship register of any member of the International Maritime Organization or the International Labour Organization that is recognized by Cyprus). The tonnage tax is calculated on the net tonnage of the ship according to a broad range of bands and rates prescribed in legislation. The rates applicable to ship managers are 25% of those applied for ship owners and charterers. This regime excludes certain types of ships, such as fishing vessels, ships intended primarily for sports or recreation, river vessels, non-self propelled floating cranes, and tug boats.

Owners of Cyprus flagged ships automatically fall under the new tonnage tax regime and ship owners of EU/EEA flagged ships or third country flagged ships may opt to be taxed under the tonnage tax system. Ship owners from third countries must satisfy certain requirements in order to qualify for the tonnage tax, including that a share of their fleet be comprised of EU flagged ships, and that this share is not reduced over a three year period.

Any ship owner opting in to the tonnage tax regime must remain in the system for 10 years, with penalties applying to early withdrawal. The European Commission has authorized the scheme until December 31, 2019.

The Cyprus maritime sector is largely centred on Limassol, which has the island's largest port, and this city houses a substantial maritime support network of freight operators, specialized legal firms, international logistics companies, ship financing brokerages, insurance agencies etc.
PROFILE: FBME Bank Ltd

Why FBME Bank?

FBME, a commercial Bank established in Cyprus in 1982, is the island’s longest-standing international Bank. We are specialists in cross-border transactions and commercial trading activities. For nearly three decades, we have built on our sustainable business strategies through providing products and services along traditional banking lines. This has resulted in strong financial growth and liquidity, consequently enabling us to develop and grow in partnership by providing customised solutions for our clients.

Customer Service

We collaborate with our clients by providing flexibility in adapting to high quality bespoke services. Furthermore, we offer our customers S.W.I.F.T and ‘Fast Track’ transactions as well as quick account opening process and documentation. Our working hours allow access to different global financial markets. FBME’s international accessibility is strengthened by our international networks, partnerships and Correspondent Banks therefore providing our clients with efficient global services.

FBME’s human capital has an extensive international banking knowledge and proven skills in the financial industry. Our highly professional multi-lingual team endeavours to maintain a strong, personal contact with our clients and handles every matter efficiently, providing full confidentiality.

Products and Services

We have the expertise that clients would expect from an international financial institution of our calibre, in the following nine key business lines:

- Cross-Border Transactions
- Swift Account Services
- Credit Facilities
- Trade Finance
- FOREX Trading Facilities
- E-banking
- International Card Services Solutions

FBME Card Services

FBME Card Services Ltd (FBMECS) is the Bank’s wholly-owned subsidiary which specialises in card issuing, physical and e-commerce acquiring and payment processing, as well as customised card projects. FBMECS is ISO 27001 certified for operating a protected Information Management Security System, the first company in Cyprus to receive such certification.

FBMECS offers a full range of card products such as Infinite Card, Platinum Card, Gold Card, Silver Card, Global Card and Key Card. Furthermore, FBMECS provides customised card solutions including international payroll, e-commerce and branding services.

At FBME we establish strong business relationships based on mutual trust and 360 degree feedback which enables us to meet the high-end expectations of our clients.

Contact Details:

FBME Bank Ltd - Nicosia Branch
90 Archbishop Makarios III Avenue
1077 Nicosia, Cyprus
P.O. Box 25566, 1391 Nicosia, Cyprus
Phone: +357 22 888444
Fax: +357 22 888555
E-mail: banking@fbme.com
Web site: www.fbme.com
Savva & Associates specializes in providing high level international and Cypriot tax advisory services, and assisting international clients with the formation and ongoing administration of Cyprus structures. Our firm is looking to work with clients that have an interest in using Cyprus vehicles as part of their international tax planning strategies. Our goal is to allow our clients and their professional advisors the opportunity to work with fellow professionals and enjoy the peace of mind that comes with knowing that competent experts are looking after their Cyprus needs.

As you may likely know, Cyprus remains a leader amongst international tax planning jurisdictions, and is the preferred gateway for doing business in Europe, Russia, Ukraine, India, and beyond. Thousands of Cyprus companies are formed each year by foreign investors. The administration of these companies in most cases is entrusted to Cypriot Corporate Service providers. Unfortunately, the Corporate Services industry in Cyprus is unregulated and laden with abuses. Such abuses create risk to tax planning structures which are often not communicated to international tax planning professionals. As a result, taxpayers are exposed to risk they are not aware of.

At Savva & Associates we will work with you to ensure your Cyprus structure is established and administered to the highest level of international standards. We aim to ensure that your structures contain the appropriate level of substance, and that all risks are clearly identified and communicated.

If you are thinking about or ready to enter the Cyprus market, choosing the right business partner is the most important decision you will make.

Our business model is based on offering our clients complete business solutions regarding the formation and ongoing administration of a Cyprus structure.

Our high caliber professionals are well positioned to offer you a complete range of services in:
- International Tax Planning
- Cypriot Tax and VAT Planning
- Company, Trust, and Special License Company formation
- Trustee and Representation services
- Company Secretarial services
- Financial Management and Accounting
- Financial Reporting and Audit
- Substance solutions

At S&A you can trust that your business is in excellent hands. Our policy is to employee primarily qualified Chartered Accountants and lawyers, and individuals with significant experience within the industry, both in Cyprus and abroad.

We have worked diligently to establish the trust and respect of our good clients and associates. As a result, we currently find ourselves the trusted partner of Canadian/US/UK publicly listed companies with Cypriot structures, high profile and net worth individuals, as well as many private entrepreneurs who have trusted us with their business in Cyprus.

For further information regarding our comprehensive services and fees please visit our website at www.savvacyjprus.com or email us at info@savvacyjprus.com for further information.

Contact Us

C. Savva & Associates Ltd
15 Aglantzia Avenue
2nd Floor, Office 202
2108 Nicosia
Cyprus

Tel: +357 22 516 671
Fax: +357 22 516 672
Email: info@savvacyjprus.com
Web: www.savvacyjprus.com
New Developments in Russia Regarding Cyprus Structures

by C. Savva & Associates

As the international tax community waits patiently for the ratification of the Cyprus-Russia protocol (for details regarding the content of the protocol), and following clarifications provided in December 2009 regarding the term 'directly invested', the Moscow Department of the Russian Federal Tax Service and the Ministry of Finance recently provided important clarifications with respect to the application of the Double Tax Treaty (DTT) between Cyprus and Russia. These clarifications are as follows:

- The definition of permanent establishment;
- The treatment of liquidation proceeds;
- The re-classification of interest (to dividends) with respect to the application of the Double Tax Treaty (DTT) between Cyprus and Russia.

Although these clarifications are not binding on either taxpayers or courts, they certainly indicate how the tax authorities in Moscow may be interpreting the relevant tax treaty, particularly the treatment of a permanent establishment and interest payments.

Scope of the term 'Permanent Establishment'

In line with the said circular, the provision of management services by a Cyprus company shall give rise to a permanent establishment in Russia. The clarification is based on the assumption that a Cypriot Company cannot provide management services without the presence of its representatives in Russia. The presence of representatives in Russia constitutes a permanent establishment hence taxed in Russia.

Although at present there is no case law regarding the above, caution should be taken if your Cyprus structure involves such supply of services from Cyprus to Russia.

Tax treatment of liquidation proceeds

A recent clarification from the Ministry of Finance of 10 June 2010 (No. 03-08-05) prescribes the tax treatment of liquidation proceeds both under the Russian tax perspective and their treatment under the Cyprus-Russia DTT. Specific rules were outlined as having application to the taxation of liquidation proceeds distributed by a Russian subsidiary to its Cyprus corporate shareholder.

Accordingly, proceeds from the liquidation of Russian Company received by a Cyprus Corporate shareholders shall not be taxed in Russia to the extend that such proceeds are not in excess of the share capital contribution of the Cyprus shareholder.

Any income exceeding the amount of the share capital contribution is viewed as an undistributed profit, treated as a dividend distribution, and taxed (namely withholding tax) accordingly under the provisions of the existing Cyprus - Russia Double Tax Treaty at the rate of 10%, or 5% if direct investment of the parent into subsidiary is at least USD 100,000.

Continued on page 19
New Developments in Russia Regarding Cyprus Structures continued
by C. Savva & Associates

Excessive interest payments

On 14 May 2010 the Russian Ministry of Finance provided further clarifications with regards to excessive interest payments via a new circular. According to the clarifications an amount of interest paid by a Russian Company to its foreign parent (or domestic company affiliated to the parent Company) may be re-classified as dividends. This re-classification would apply when a Russian Company exceeds the debt to equity ratio provided under the relevant Russian legislation. In such cases, the amount of interest in excess of the permissible ratio is considered a non-deductible expense and accordingly re-classified as dividends.

The result, applying the Cyprus-Russia DTT, will be the imposition of Russian withholding tax at the rate of 10%, or the reduced rate of 5% if the shareholder receiving the dividends has directly invested an amount equal or higher than US$100,000 in the share capital of the paying Company.

It is important to note that Russian thin cap rules apply only to Russian companies held directly or indirectly by non-residents. Under certain interpretations this approach is discriminatory and is contradictory to non-discrimination provisions in the current Cyprus-Russia DTT. The Moscow Commercial Court of Cassation, being the second highest court in the country, found Russian thin cap rules contradictory to the Cyprus-Russia DTT tax treaty in the cases of Field Invest on 23 September 2009 and Gidromashservis on 12 July 2010. As a result, the clarifications of Ministry of Finance will not necessarily be upheld by the courts.

Ensuring you are prepared

Savva & Associates are at your disposal to assist in preparing for potential challenges by tax authorities following the interpretations above. Careful consideration of the relevant risks involved is a key factor for long-term tax planning of business operations in Russia via Cyprus.

On a final note, it is expected that the pending Protocol to the Cyprus-Russia DTT will be signed in Cyprus in early October of this year, slightly prior or during President Medvedevís pending visit to Cyprus. As such, amendments to the tax treaty may affect positions of current Cypriot/Russian structures, hence a tax audit of existing structures is strongly recommended.

Further Assistance

S&A Cyprus are at your disposal for any assistance you may require in relation to the above. We look forward to helping you better understand how these changes may affect your business or create new opportunities, and working together to offer you practical and reliable solutions.

For further assistance please contact Charles Savva c.savva@savvacyprus.com.

Contact

Vision Tower
67 Limassol Avenue,
2nd floor,
2121 Nicosia,
Cyprus

Office: +357 22 516 671
Telefax: +357 22 516 672

Mr. Charles Savva
Director, International Tax
c.savva@savvacyprus.com