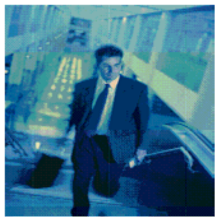
The ITPS Group

INTERNATIONAL TAX PLANNING AND STRUCTURE SERVICES

CONTENTS

International Tax Planning Newsletter

Volume 13, Number 2, December 2010



The International Tax Planning Newsletter is a quarterly newsletter of Broers & MacDonald tax lawyers and The ITPS Group, an independent provider of international tax planning and structure services. It provides these services in the Netherlands, Curacao, Aruba, Belize, Belgium, the British Virgin Islands, Luxembourg, Cyprus, Malta and Hong Kong.

Alexanderstraat 23, 2514 JM The Hague, The Netherlands
T: +31 70 364 09 00 F: +31 70 363 57 95
E: netherlands@itps-group.com
I: www.itps-group.com

ITPS OPENS OFFICES IN MALTA AND HONG KONG

We are delighted to let you know that, after the opening of our office in Belize in May of this year, we opened this month also offices in Malta and Hong Kong.

As business is becoming more international, organizations are seeking ways to minimize the incidence of taxation linked to it. On the other hand, organizations as well as individuals are seeking international ways to optimize their profits and to protect their assets.

International tax planning and structure services

The objective of ITPS is to meet customer needs for international tax planning and structure, not only providing typical products of these jurisdictions, such as the trading and holding structures, but also other products such as ship registration, portfolio management and asset protection structures.

At fixed fees for incorporation and maintenance

As we are doing in each of the other jurisdictions we are based in, these new offices focus on providing tax planning and structure services at fixed and firm fees for incorporation and maintenance with the highest standards of professional and personal service combined with complete confidentiality.

Tax planning opportunities

In this issue of our International Tax Panning Newsletter we will further elaborate about the tax planning opportunities of each of these jurisdictions.

TAX PLANNING OPPORTUNITIES MALTA

ITPS opens office in Malta

As you will have read above, ITPS opened its offices in Malta in December 2010. In this article we will further elaborate about the tax planning opportunities that Malta offers, starting off with some general information about Malta and its legal and tax system.

About Malta

With its full imputation and tax refund system, positive financial regulatory environment and highly skilled English speaking professional workforce, Malta has become a financial centre to be reckoned with especially since it joined the EU and the Euro zone. This memorandum is intended to provide a very brief overview of some advantages Maltese companies can offer to international investors looking for a cost-effective and commercially efficient business vehicle which can benefit from an extensive tax treaty network and some of the lowest effective tax rates in the EU.

The island

Malta is situated in the centre of the Mediterranean Sea about 60 miles south of Italy and 180 miles north of North Africa. The island is an independent republic, having gained independence from the United Kingdom in 1964 and has been a member of the European Union (EU) since 2004. Government is exercised by a democratically elected parliament with elections being held every five years.

The local population currently accounts for approximately 400,000 people. Whereas Maltese is the national language of the country, English is also an official language and is the language of business. Italian is also widely spoken. The official currency is the Euro.

The Maltese legal system

The Maltese legal system is often referred to as a “mixed” or “hybrid” system in that it contains elements of both continental European civil law systems and English common law. Private law is mainly based on civil law concepts contained in the Napoleonic Code but English legal concepts have had a strong influence on the Maltese legislator in the last two centuries particularly in the enactment of public, fiscal and commercial statutory legislation. As a result of European Union Membership, the EC Treaty, the tax directives and ECJ jurisprudence apply. Moreover, Maltese companies engaged in the provision of regulated services benefit from passporting rights.

The tax system in general

Malta operates a full imputation system of taxation whereby shareholders in receipt of dividends from a Maltese company may credit the 35% tax paid by the company against their own Maltese income tax liability or obtain a refund of tax where shareholder tax is less than the 35% tax paid by the company.

→

Persons who are resident and domiciled in Malta are subject to tax on their world-wide income at the rate of 35% (progressive rates apply to individuals).

Persons who are resident but not domiciled in Malta are only taxed on income arising in Malta or on income (not including capital gains) which although arising outside Malta is remitted to Malta. This may give rise to very attractive tax planning opportunities for expatriates and resident non-domiciled companies.

Transfers of shares are mainly exempt from transfer duties for international business. There are no thin capitalization rules, controlled foreign corporation legislation, transfer pricing or capital or wealth taxes.

Double taxation relief

Double taxation relief (DTR) is provided, under an applicable treaty or unilaterally, in the form of an ordinary credit for foreign taxes suffered on foreign income. This applies both for resident companies and registered branches of foreign resident companies.

The ordinary credit applies to both withholding and underlying tax (for dividends) of direct subsidiaries and 10% (participation in) sub-subsidiaries to all tiers. Thus if foreign taxes exceed the Malta tax charge (35%), no further Malta tax is payable.

An alternative form of DTR, the Flat Rate Foreign Tax Credit (FRFTC) is also available whereby foreign income is deemed to have suffered foreign tax of 25% of foreign income received. The application of this DTR method can reduce tax suffered to between 7.47% and 18.75%.

The FRFTC may be claimed on income allocable to the foreign income account (FIA income) if company empowered to receive FIA income.

FIA income consists of royalties and similar income arsing outside Malta; income/gains derived from a participating holding, dividends, interest, rents, capital gains and other income derived from investments situated outside Malta; profits of permanent establishments; profits from foreign assets/liabilities of Malta licensed banks and financial institutions and profits of Malta licensed insurance companies related to risks situated outside Malta.

Tax refunds

Perhaps the characteristic that sets apart the Maltese tax system from other tax systems is the possibility given to shareholders to claim a cash refund of the tax paid by a Maltese company following a distribution of profits.

Duly registered shareholders of Maltese companies in receipt of a dividend may typically claim, from the Commissioner of Inland Revenue, a partial refund of 6/7ths of the tax paid by the company.

After the refund is received, the effective tax suffered in Malta is 5%. If a credit for foreign tax of 5% or more is claimed, the incidence of Maltese tax is eliminated.

A 5/7ths and a 2/3rds refund may also apply in specific circumstances depending on the nature of the income of the distributing company and whether double taxation relief is claimed on that income. A 100% refund may also be claimable in determinate circumstances (see section on participation exemption below).

Refunds of tax may be claimed irrespective of the activity exercised and whether the source of the income derived by the distributing company is in Malta or outside Malta, with the exception of profits derived from immovable property.

→

6/7ths Refund Practical example:

Profit of the company		1,000
Tax		350
Dividend distribution to shareholder		650
Refund (6/7ths of 350)		300
Total funds received by shareholder:		
Net Dividend		650
Tax refund		300
Total		950
Effective tax	350 -/- 300 =	50

Repatriation of profits and refunds
In some jurisdictions the nature and tax treatment of the tax refund may be hard to determine. This may be solved by incorporating a second Maltese company (referred to as a dividend feeder company or DFC) to hold the Maltese operating/trading company (OC). Dividends distributed by the OC and refunds receive from the Commissioner of Inland Revenue are integrated in the DFC as profits and can either be distributed in the form of dividends to the shareholders or re-invested in the OC.

As a result of the imputation system, the tax suffered by the Maltese subsidiary company will be credited against the tax due by the DFC on dividends received resulting in no further tax liability for the DFC. No withholding taxes are imposed on distributions of outbound dividends. The same applies to outbound dividend and royalty payments.

The participation exemption
Dividends and capital gains derived by a Maltese registered company from participating holdings in a foreign subsidiary, or from the disposal of such holdings, are exempt from tax provided certain conditions are satisfied. Several criteria determine what constitutes a participating holding. The more important are the following:

- A holding of at least 10% equity shares in the foreign company, or
- A certain level of control over the subsidiary company, or
- The Maltese holding company is an equity shareholder in the foreign company and invests therein not less than 1,164,673 Euros or the equivalent in any other currency. In such a case, a minimum holding period of 183 days is required.

Dividends will be exempt from tax if derived from a participating holding in an EU resident company or, if received from a non-EU company, are subject to foreign tax of at least 15% or less than 50% of the income of the distributing company is derived from passive interest or royalties.

Passive interest or royalties is interest or royalties not derived, directly or indirectly, from a trade or business and which have suffered foreign tax at a rate which is less than 5%

If the latter criteria are not met, the participation exemption may still apply to such dividends if the holding is not a portfolio investment and the foreign company or its passive interest or royalties are subject to tax at a rate of at least 5%. It should be noted that the latter anti-abuse provisions do not apply to capital gains or other forms of income (not being dividends) from a participating holding.

A company may choose, instead of applying the participation exemption, to be taxed at 35% on the income received or gains made on a participating holding with shareholders then claiming a 100% refund of the tax paid by the company. This latter option is often preferred in view of the application of CFC legislation in certain countries.

It should also be noted that the normal refunds and double taxation relief provisions may still apply where the participation exemption or 100% refund do not. As from January 2010 the participation exemption may be availed of on capital gains arising from another Maltese entity. This change facilitates exit strategies for structures involving multi-tier companies.

Tax treaties
Malta has an extensive network of double taxation agreements most of which are based on the OECD Model Convention.

Most notably, Malta has a treaty with all EU member States, a unique double taxation agreement with Libya and has signed a treaty with the US. Malta has to date signed tax treaties with Albania, Australia, Austria, Barbados, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Egypt, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Korea, Kuwait, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Malaysia, Montenegro, Morocco, the Netherlands, Norway, Pakistan, Poland, Portugal, Qatar, Romania, San Marino, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Syria, Tunisia, United Arab Emirates, the United Kingdom, and the United States of America.

Aviation industry
Income arising in Malta derived by persons who are not ordinarily resident and domiciled in Malta from the ownership, leasing or operation of aircraft or aircraft engines (irrespective of the country of registration of the assets) will be deemed to be income arising outside of Malta and therefore will be exempt from tax unless remitted to Malta.

This provision is intended to make Malta an attractive jurisdiction for aircraft registration in particular for private aircraft.

Patent box
Royalties and other similar income derived from patents in respect of inventions, whether in the course of a trade, business, profession or vocation or otherwise are exempt from tax in Malta. This exemption will also apply when the income is distributed by way of dividend to the shareholder.

→

This recent development further improves Malta's status as an ideal jurisdiction for patent holding entities.

'Step up' in asset value on re-domiciliation/ transfer of tax residence

On election in the year in which the company re-domiciles/transfers tax residence in Malta, the base cost of the assets of the company will be 'stepped up' to the market value of the asset.

The 'stepped up' cost will then be utilized in determining the chargeable gain (if any) on the subsequent disposal of the asset or in determining the chargeable income, thus potentially reducing the tax liability.

The 'stepped up' cost will then be utilized in determining the chargeable gain (if any) on the subsequent disposal of the asset or in determining the chargeable income, thus potentially reducing the tax liability.

TAX PLANNING OPPORTUNITIES HONG KONG

ITPS opens office in Hong Kong

As we have mentioned above, ITPS opened an office in Hong Kong in December 2010. In this article we will further elaborate about the tax planning opportunities that Hong Kong offers.

About Hong Kong

Hong Kong is situated at the south-eastern tip of the mainland of China, covering a total area of just under 1,100 square kilometres including Hong Kong Island, Kowloon and the New Territories, as well as 235 outlying islands.

Retaining its current political, social, commercial and legal system at least until 1 July 2047

Hong Kong was established as a British colony in 1841 and under the terms of the Joint Declaration of the British and Chinese governments of 1984, reverted to Chinese sovereignty on 1 July 1997. At that time, Hong Kong became a Special Administrative Region of the People's Republic of China retaining its current political, social, commercial and legal system for a minimum period of 50 years after 1 July 1997. Since the handover, Hong Kong has continued to run its own affairs with complete autonomy. Hong Kong has independent membership of several international bodies such as the World Trade Organisation and for most international purposes is and will continue to be treated as a separate entity from China.

Hong Kong has for the 15th consecutive year retained its rating as the freest economy in the world in the 2009 Index of Economic Freedom published by The Heritage Foundation. Hong Kong is also a major trading centre with total volume of trade in goods and re-exports of over USD 500 billion. Regional distribution centre for Mainland appears well-positioned to support Hong Kong in a long run and would be a significant factor in sustaining this competitive position.

Hong Kong is the world's 12th largest trading economy, 6th largest foreign exchange market, 15th largest banking centre and Asia's 3rd biggest stock market as well. Hong Kong's population is approximately 7 million with gross domestic product growing at an average annual rate of 4.1% in real terms. The local language is the Cantonese dialect and Mandarin Chinese is increasingly spoken in Hong Kong.

Hong Kong acts as a regional business centre in Asia with well established commercial links to most Asian countries. Hong Kong is in a special position with regard to business in China and this has been enhanced through the Closer Economic Partnership Arrangement (CEPA) which grants Hong Kong companies tariff free access to the Chinese market for certain goods and offers concessions for service companies.

Since October 1983, the Hong Kong Dollar has been pegged to the US Dollar at the rate of HKD 7.80 to USD 1.00 and there are no controls over foreign exchange or the remittance of funds. CEPA became active in 2004 and the two sides signed Supplement VI to CEPA on 18 May 2009, bringing in a new package of services liberalisation and co-operation measures beginning January 2009. CEPA and its six supplements provide a sound foundation on the economic integration between Hong Kong and the Mainland.

The Hong Kong legal system

The legal system in Hong Kong is based on English common law and an increasingly comprehensive body of statutory law has been passed by the local legislature. Generally, the legal system is effective and the courts are relatively efficient. The legal system is now bilingual with English and Cantonese but English prevails.

→

The Hong Kong government has generally adopted a positive non-intervention policy and in general makes no distinction between local and foreign companies.

The Hong Kong tax system: territorial basis

Although not commonly thought of as an offshore financial centre, Hong Kong offers significant tax advantages including low rates of taxation and a simple tax regime. It will not be a surprise that Hong Kong has long been regarded as the preferred jurisdiction for multinationals to headquarter their Asian operations.

According to a press release by the Hong Kong Companies Registry the 1,500,000th company was registered in early September 2010. The first Hong Kong company was incorporated in 1865, going up to 500,000 companies in 1994 and one million in 2005.

Hong Kong source profits taxed at 16.5%

The major advantage of Hong Kong is that it is one of the few jurisdictions in the world that taxes on a territorial basis rather than on residency or management and control basis.

Unlike most countries, which tax the worldwide profits of a business including profits derived from an offshore source, Hong Kong profits tax is only charged on profits derived from a trade, profession or business carried on in Hong Kong. Hong Kong source income is subject to a rate of taxation of 16.5 per cent.

No tax in Hong Kong on capital gains, dividends and interest earned

Expenses incurred in earning assessable profits may be deducted and there is a scheme of depreciation allowances for fixed assets. There is no tax in Hong Kong on capital gains, nor are there any domestic withholding taxes on dividends, interest or royalties. There is no value added tax, goods and services tax or sales tax.
There are however taxes on property ("rates"), stamp duties, customs duties and a variety of other duties and levies.

As a consequence of the taxation on a territorial basis, a company that carries on a business in Hong Kong, but derives profits from another place, even if it is remitted to Hong Kong, is generally not subject to Hong Kong profits tax at all. Consequently, if a Hong Kong company's trading or business activities are based outside Hong Kong then no taxation will be levied.

However, please note that the question on Hong Kong taxable profit is one of facts and circumstances and there is a sizeable base of case law as to the basis giving rise to taxable income. For example, a factor that determines the locality of profits from trading in goods and commodities is generally the place where the contracts for purchase or sale are affected, i.e. the place where the contracts are legally executed and/or the place where the terms of the contracts are negotiated, concluded and executed.

Advice and tax rulings

Therefore, for a Hong Kong company, great care is required to be taken when structuring transactions. Advice must be sought on the circumstances of each case.

Please note that it is possible to apply to the Commissioner, subject to payments and certain regulations, for a ruling on how any provision of the Inland Revenue Ordinance applies to him or the arrangement specified in the application.

Hong Kong is expanding its tax treaty network

As we have informed you in our previous newsletter, Hong Kong continues to expand its tax treaty network, negotiating and concluding comprehensive double taxation agreements, after the decision to adopt the OECD standard on exchange of information.

After having concluded a double taxation arrangement with Mainland China (in force 10 April 1998) and important double tax treaties with Thailand (in force 7 December 2005), Vietnam (in force 12 August 2009), but especially with Belgium (in force 7 July 2004) and Luxembourg (in force 10 January 2009), new agreements were concluded with Austria, Brunei, Hungary, Indonesia, Ireland, Kuwait, Liechtenstein, the U.K., France, Japan and the Netherlands.

No provision for the automatic exchange of information with overseas tax authorities

Of equal importance, this means there is no provision for the automatic exchange of information with overseas tax authorities.

Trading structures

Since Hong Kong is a significant trading economy, a Hong Kong company does not share the profile of a company incorporated in some of the popular offshore jurisdictions. In particular, if the company is involved in trading or commercial activities almost anywhere within the Asian Pacific Region, Hong Kong is a natural business base.

Combined with the territorial basis of taxation, based on which a Hong Kong company that carries on a business in Hong Kong, but derives profits from another place, even if it is remitted to Hong Kong, is generally not subject to Hong Kong profits tax at all, this makes Hong Kong the ideal base to establish a trading company for international cross-border trading.

→

Holding structures

As we have mentioned in our previous International Tax Planning Newsletter, Hong Kong may also be an efficient location to base an international holding company, benefiting from the Luxembourg, Belgium or Netherlands tax treaty for the avoidance of double taxation.

Other structures

Apart from trading structures and holding, Hong Kong is also an excellent location for asset holding structures (such non-Hong Kong real estate, security portfolios, intellectual property and ships), savings structures (removing foreign exchange limitations), royalty structures (licensing or the sublicensing of intellectual property rights) and financial intermediary structures (back-to-back loans).

Nevertheless, we would like to reiterate that the question on Hong Kong taxable profit is one of facts and circumstances and there is a sizeable base of case law as to the basis giving rise to taxable income to be taken into account.

Therefore, for a Hong Kong company, great care is required to be taken when structuring transactions. Advice must be sought on the circumstances of each case.

EUROPEAN COMMISSION REQUESTS NETHERLANDS TO CHANGE SUBSTANTIAL INTEREST RULES

On 30 September 2010, the European Commission announced (case 2008/4577) that it had formally requested the Netherlands to change a number of rules which the Commission considers to be discriminatory.

Substantial interests in Dutch companies not forming part of the business capital

One of these rules taxes income from substantial interests in Dutch companies not forming part of the business capital of companies established in the European Union, respectively in the European Economic Area (“EEA”) and the European Free Trade Association (“EFTA”) States.

Consequently, they do no not benefit from the same exemption as companies resident in the Netherlands, which benefit from the participation exemption on income from substantial interests, regardless whether it forms part of their business capital.

Article 17, paragraph 3, part b of the Law on the Corporation tax 1969

On the basis of Article 17, paragraph 3, part b of the Law on the Corporation tax 1969 (“Wet op de vennootschapsbelasting 1969”) foreign parent companies are taxable on their substantial interests in Dutch companies, in so far as these substantial interests do not form part of their “business capital”.

For domestic parent companies there is no condition that the participation is part of their business capital. On the basis of Article 2 paragraph 5 of the Wet op de vennootschapsbelasting 1969 all their assets are deemed to form part of their business capital.

EC: difference in treatment is discrimination

The Commission considers this difference in treatment discrimination, i.e. contrary to the freedom of establishment, to the freedom of movement of capital and to the Parent-Subsidiary Directive. If the Netherlands fails to comply with the request to change these rules within 2 months, the Commission may refer the Netherlands to the European Court of Justice.

Please note that until new rules have been enacted, the Dutch tax authorities still may tax income from substantial interests in Dutch companies not forming part of the business capital of companies established in the EU, EEA and EFTA.

Moreover, similar risks continue to exist where the parent of a Dutch company is resident in a country, with whom the Netherlands has not entered into a tax treaty for the avoidance of double taxation (such as Jersey or Guernsey) or is resident in a tax treaty country which treaty nevertheless allows the Netherlands to tax income from substantial interests in a Dutch company not forming part of the business capital (such as under the new Netherlands – Hong Kong tax treaty).

NETHERLANDS ANTILLES DISSOLVED ON 10-10-10

NETHERLANDS ANTILLES DISSOLVED ON 10-10-10
As a consequence of a Constitutional Reform, the Netherlands Antilles, which had existed since 1954 as an autonomous Caribbean country within the Kingdom of the Netherlands, was dissolved on 10 October 2010.

The Kingdom previously consisted of the Netherlands, Aruba and the Netherlands Antilles, whereas the Netherlands Antilles was comprised of five island territories: Curacao, Bonaire, St. Maarten, St. Eustatius and Saba.

Curacao and St. Maarten: autonomous countries within the Kingdom of the Netherlands

At the same time, Curacao and St. Maarten became constituent states within the Kingdom of the Netherlands Besides Aruba, which had separated from the Netherlands Antilles in 1986, whereas the islands of Bonaire, St. Eustatius and Saba (the so-called BES islands) became special municipalities of the Netherlands.

Bonaire, St. Eustatius and Saba (the so-called BES islands): special municipalities of the Netherlands

Therefore, from 10 October 2010, the Kingdom of the Netherlands consists of four jurisdictions: Aruba, Curacao, the Netherlands (including the islands of Bonaire, Saba and St. Eustatius) and St. Maarten.

The Dutch government will remain responsible for defence and foreign policy in the new countries, and will have initial oversight over Curacao's finances under a debt relief deal. Moreover, the Common Court of Justice for the islands (with the Supreme Court of The Hague as the highest court), will continue to exist.

It is expected that Curacao and St. Maarten will introduce a new joint currency, the Caribbean guilder by 2012. Up until then the Netherlands Antilles guilder (ANG) will continue to be their local currency. The U.S. dollar (rather than the euro) will be the official currency of the BES islands as from 1 January 2011, whereas the Netherlands Antilles guilder (ANG) will not be a valid currency after 31 January 2011.

Legal implications in Curacao and St. Maarten

Up until 10 October 2010 the Netherlands Antilles constituted one jurisdiction with Netherlands Antilles law as the governing law. Upon the dissolution of the Netherlands Antilles, Netherlands Antilles law ceased to exist and was automatically converted into Curacao law in Curacao and St. Maarten law in St. Maarten, being the legal successors of the Netherlands Antilles.

Consequently, legal entities having their seat in Curacao became Curacao legal entities subject to Curacao law and legal entities having their seat in St. Maarten became St. Maarten legal entities, subject to St. Maarten law.

As per same date, in legal documents pertaining to legal entities resident in Curacao and St. Maarten reference should be made to Curacao law and St. Maarten law respectively.

Legal implications in BES islands

Legal entities having their seat in one of the BES Islands became Netherlands entities, subject to Netherlands law as applicable in the BES Islands.

Tax implications in Curacao and St. Maarten

Until new legislation is adopted, Curacao and St. Maarten will, barring a few changes, maintain the current tax regulations of the Netherlands Antilles, including the grandfathering offshore regime (including all rulings) until 2019.

The Netherlands Antilles tax treaties and tax information exchange agreements continue to apply to Curacao and St. Maarten as the legal successors of the Netherlands Antilles.

Tax implications in BES islands

In conjunction with the Constitutional Reform, the Netherlands Parliament approved a new tax framework for the BES islands on 7 October 2010, which generally will apply as from 1 January 2011, with the result that two sets of tax rules will apply within the Netherlands: one in the BES islands and one in the Netherlands.

For international tax purposes, the Netherlands tax treaty network will not be extended to the BES islands, although rules for the prevention of double taxation will apply within the jurisdictions of the Kingdom.

TAX TREATY DEVELOPMENTS

Tax Treaty Developments

Below are mentioned a number of tax treaties for the avoidance of double taxation that have been signed, ratified and/or have become effective recently or will become so shortly.

Moreover, developments are mentioned as to the negotiation of new treaties and the termination of existing treaties. The list does not mean to be exhaustive.

Cyprus - Ukraine

During a meeting on 10 November last with Mr. Marios Karoyan, the President of the House of Representatives of the Republic of Cyprus, the Prime Minister of Ukraine Mr. Mykola Azarov stated that he hopes for a quick decision on the termination of the existing tax treaty for the avoidance of double taxation between Cyprus and the former USSR and an agreement on a new double tax treaty between Ukraine and Cyprus.

“For many years we are in talks to sign convention on avoiding double taxation. Ten years ago when I worked as the Head of Tax Administration, I started to deal with that matter.

I think it's time to put an end to this process and to sign an agreement”, Mr. Azarov emphasized. Treaty negotiations for the new treaty started in April 1997. In total there were 5 rounds of negotiations with a gap of 9 years between first and second rounds.

The President of the House of Representatives of the Republic of Cyprus said that soon a visit of Cyprus Finance Minister to Ukraine is expected “to conclude the negotiations and we hope that this agreement will be signed”, he said. (Source: www.kmu.gov.ua).

This is already the third attempt to terminate the double tax treaty between Cyprus and the former USSR. The existing treaty is extremely favourable, as it eliminates withholding taxes (usually charged at 15%) on payments from Ukraine to Cyprus.

Furthermore, the treaty contains no anti-avoidance rules or restrictions on thin capitalisation. Therefore, the Ukraine's business community, strongly represented in Ukraine's parliament and government, are not thrilled about the prospect of terminating the treaty.

Cyprus - Russia

Cyprus and Russia signed a protocol to the 1998 tax treaty between the two countries on 7 October 2010.

The protocol will become effective as from 1 January of the year following the year both Cyprus and Russia complete their ratification procedures.

The protocol does not make any changes to the rates of withholding tax on dividends (which remain at 5% or 10%). The requirements for eligibility for the 5% rate on dividends, however, are amended. Instead of a minimum USD 100,000 investment in the capital of the distributing company, the minimum investment would be EUR 100,000. The 10% rate would remain unchanged, as would the nil rates of withholding tax on interest and royalties.

The most significant effect of the protocol is that, because it includes an exchange of information provision that complies with the OECD standard, Cyprus should be removed from Russia’s black list, thus enabling Russian companies with qualifying participations in Cyprus subsidiaries to benefit from Russia’s participation exemption.

Under the participation exemption, dividends received by a Russian company from a foreign subsidiary are exempt from tax provided the Russian recipient holds at least 50% of the charter capital of the payer company for at least 365 calendar days and the subsidiary (payer company) is not resident in a country included on the black list.

ITPS OFFICES

ITPS (Netherlands) B.V.

Alexanderstraat 23
2514 JM The Hague
The Netherlands
T: +31 70 36 40 900
F: +31 70 36 35 795
E: netherlands@
itps-group.com
Contact: Mr. Jaap Broers

Broers & MacDonald
Tax lawyers
Alexanderstraat 23
2514 JM The Hague
The Netherlands
T: +31 70 36 35 800
F: +31 70 36 35 795
E: info@broersenmacdonald.nl
Contact: Mr. John MacDonald/
Ms. Eliza den Aantrekker

ITPS (Antilles) N.V.
Chuchubiweg 17
Willemstad
Curacao
T: +599 9 7367181
F: +599 9 7366161
E: antilles@itps-group.com
Contact: Mrs. Sonja Diaz

N.V. ITPS (Belgium) S.A.
Henri van Heurckstraat 15
B-2000 Antwerpen
Belgium
T: +32 3 226 08 83
F: +32 3 226 08 21
E: belgium@itps-group.com
Contact: Mr. Frederik Tirez

ITPS (Belize) Ltd.
Belize Marina Towers
Suite 303, Newtown Barracks,
Belize City
Belize
T: +357 22556 802
E: m.ioannides@itps-group.com.cy
Contact: Mrs. Maria Ioannides

ITPS (BVI) Ltd.
P.O. Box 933
(Abbott Building)
Road Town
Tortola
British Virgin Islands
E: bvi@itps-group.com
Contact: Mrs. Sonja Diaz

ITPS (Cyprus) Corporate Services Ltd.
Ledra House, 15 Ayiou Pavlou St.,
Ayios Andreas,
1096 Nicosia, Cyprus
T: +357 22556 802
F: +357 22556 803
E: m.ioannides@itps-group.com.cy
Contact: Mrs. Maria Ioannides

ITPS (Hong Kong) Ltd.
6th Floor, ING Tower
308 Des Voeux Road
Central
Hong Kong
T: +852 3552 9046
E: hongkong@itps-group.com
Contact: Mr. James Lee

ITPS (Luxembourg) S.A.
43, Boulevard du Prince Henri
L-1724 Luxembourg
Luxembourg
T: +352 26 43 66 403
F: +352 26 43 66 300
E: luxembourg@itps-group.com
Contact: Mr. Luc Sunnen

ITPS (Malta) Ltd.
St. Helena's Building,
Tumas Fenech Street,
Birkirkara BKR2526
Malta
T: +356 2144 3350
E: malta@itps-group.com
Contact: Mr. Jonathan Corrieri/ Mr. Silvio Cilia

ITPS GROUP PROFILE

Needs of clients

As business is becoming more international, organizations are seeking ways to minimize the incidence of taxation linked to it. On the other hand, organizations as well as individuals are seeking international ways to optimize their profits and to protect their assets. The increasing complexity of (tax) laws necessitates careful planning and consideration of the structure to be established and maintained. Customers require highly specialized professional services.

Mission

The purpose of ITPS is: doing the best the things that the customer values most. The focus is long term customer satisfaction. The mission of the ITPS Group is to create value for it's customers through the provision of professional services in the field of international tax planning and structure, designed to optimize the customer's after tax profits.

Services

The objective of ITPS is to meet customer needs for international tax planning and structure by rendering "total offering" services with the highest standards of professional and personal service combined with complete confidentiality.

This comprehensive offering comprises not only the advice for international tax planning (i.e. for legal and tax questions), but also implementation to establish and maintain structures.

These services include, but are not limited to:

- International tax planning;
- Company formation, registered office facility, management,
  accounting and tax compliance;
- Trust and foundation formation and administration;
- Licensing and sub-licensing of intellectual property rights.

The services ITPS does not provide, but which we are rendered by correspondents, include auditing, legal opinions, litigation and portfolio investment.

Why you should use ITPS

The ITPS Group holds an unique position in each of these jurisdictions for the following reasons:

1. Market oriented (and not product oriented):
ITPS focuses on meeting the needs of the clients;
2. Rendering international tax planning and structure (trust) services:
Tax planning and structure services are complementary. Planning is of no use if you do not structure it. Moreover you can not efficiently structure if you do not take the first step: plan the structure. Therefore, the services of ITPS are not restricted to trust services. Since ITPS has the combined skill and experience for more than ten years, high quality is ensured;
3. All included fixed fees for structure (trust) services:
In each jurisdiction, tax structure services are charged at annual fixed fees, generally payable in quarterly installments in advance. Tax planning services are charged at an hourly rate;
4. One contact person is possible for several jurisdictions;
5. Independent:
There is no conflict of interest. ITPS works with all other skilled professionals and (financial) institutions as the client deems appropriate;
6. Personal contact and continuity:
ITPS focuses on long-term customer satisfaction, providing proactive, personal, attentive and competent services;
7. Regular meetings:
Customers and correspondents are visited on a regular basis (three to four times a year) to touch base and to discuss opportunities and problems that may have arisen, without a fee being charged;
8. Tax sparring and education:
ITPS strives to built up a (tax) sparring relationship with customers and correspondents in order to keep each other abreast in a fast changing environment. A quarterly newsletter on international tax planning, the International Tax Planning Newsletter, is sent to inform customers and correspondents on the changes in legislation;
9. An excellent network:
Since ITPS is not part of an international network, it has built up a network of highly skilled professionals to work with.