Answer-to-Question-_1_

Answer-to-Question-_1__

1) Effective from the tax year 2022 onwards, Cyprus inorporated in its domestic legislation the OECD TP Guidelines, based on which Controlled Transactions should be supported by a TP Documentation.

The ammended Article 33 of the Income Tax Legislation states that in cases the threshold is exceeded in the relevant categories, a Local File should be prepared, supporting the arm's length of the specific category.

The thresholds are: EUR 5.000.000 for Financing Category and EUR 1.000.000 for the remaining categories (Goods, Services, Intellectual Properties - Royalties, and other).

Further to the Preparation of Local Files in case the relevant threshold is exceeded, the Commisisoner of Taxation issued a Tax Circular (6/2023) based on which a Simplified TP Documentation is required for Controlled Transactions below the abovementoined thresholds.

The Simplified TP Documentation is as follows:

A. Mini TP Documentation (including a benchmarking analysis, functional analysis, etc.),

OR

B. The use of Safe Harbour only for 4 specific transactions (including a functional analysis, the use of Safe Harbour Interest Rates accordingly, reconsiliation of the tax computation and TP Calculations, etc.).

Safe Harbour Related Party Transactions:

1. Back-to-Back Loan (using a profit margin of 2,5% before tax)

2. Loan Receivable (using the 10-years gov. bond of the jurisdiction of the borrower plus 3,5%)
3. Loans Payable (using the 10-years gov. bond of Cyprus plus 1,5%)
4. Low Value Adding Services (mark-up of 5%).

It is important to note that based on the ammended article 33 of the IT legialation, a related party is considered any person with which there is a direct or indirect control / relationship by more than 25%.

Based on the information provided, seems that CypCo has both Back-To-Back loans with its subsidiaries and also Intercompany Receivables financed by equity.

The threshold for Financing category of EUR 5.000.000 is exceeded, therefore a Local File should be prepared.

The Local File should be based on the provisions of the OECD TP Guidelines.

According to the provisions of the OECD TP Guidelines, the remuneration / handling fee for the Back-to-Back loan facility should be supported by a Benchmarking Study.

Therefore, the mark-up of 2,5% should be supported by a benchmarking study.

Further to the mark-up that should be supported by a benchmarking study, the CypCo should have appropriate benchmarking studies supporting its financing activities from own funds (i.e. from Equity). In our scenario, the Interest Expense and Interest Income Rates, being 8,5% and 11% respectively.

In case the interest rates are not at arm's length and are not supported by a proper Local File and Benchmarking Studies, the Cyprus Tax Authorities may challenge the interest rates and the commissioner has the power to proceed with the relevant adjustments in the tax computation of CypCo.

2) Based on the informaiton provided, the loan payable to Bull#2 has been capitalised. Meaning that the loans Receivable of CypCo now are all financed by Equity (i.e. no actual interest expense).

According to the provisions of Article 9B of the Income Tax legislation, CypCo will be eligible to claim NID agains the interest income derived from the loans receivable.

The NID is the lower between:

a) the New Equity multiplied by the reference rate of the country of the borrower + 5%

and

b)80% of the taxable profit derived from the specific loans receivable.

The NID may reduce the effective tax rate of a Cypriot company to 2,5%.

Additionally, the capitalisation of the Loans Payable, will enhance the substance of CypCo in Cyprus.

Answer-to-Question-_2__

1) According to the Cyprus Income Tax Legislation (IT Legislation) an individual is considered Cyprus tax resident if he stays in Cyprus for a period or periods exceeding in aggregate 183 days in the year of assessment.

In addition, the definition of tax resident includes an individual who does not stay in any other state for one or more periods exceeding in aggregate 183 days in the same tax year and who is not considered a resident for tax purposes in any other state in the same tax year provided that the individual cumulatively meets the following criteria:

- Stays in Cyprus for at least 60 days in the year of assessment,

- Excersise any business in Cyprus and/or is employed in Cyprus and/or holds an office for a person tax resident in Cyprus which is maintained until 31st of December of the year of assessment, and

- Maintains a permanent residence in Cyprus which is owned or rented by him.

Based on the informaiton provided, seems that Peter spent more than 183 days in 2023 (he came in Spring), therefore he is considered Cyprus Tax Resident with the 183 days rule.

During 2024, Peter was in Cyprus for only 90-110 days, therefore he may claim his residency in Cyprus with the 60 days rule, provided that all the abovementioned conditions are met.

Since he spent more that 183 days in UK, UK may claim tax residency as well.

In case of double tax residency, Since Cyprus has a Double Tax Treaty with UK, Article 4 of the DTT can be used, in order to determine his tax residency status.

For 2024, seems that Peter has permanent home available to him in both states, but since is childred are in UK, it may be considered that his center of vital interest is in UK.

3) The Cyprus investments consist of the following:

a) Bulding with 14 appartments and his private residence

b) Agriculture Plot

c) Shares in Cyprus companies

The disposal of immovable property situated in Cyprus and the disposal of shares of a company that directly or indirectly owns immovable property in Cyprus (subject to conditions), falls under the provisions of the Capital Gains Tax.

Provided that the Cypriot companies do not own any immovable in Cyprus, the disposal of shares will be exempt from Capital Gains Tax in Cyprus.

The Gain or Loss from Disposal of the 14 appartments, since they were rented out and used for business purposes, according to the badges of trade they constitute of a Capital Nature, and it will be subject to Capital Gains Tax.

The disposal of his personal residence will be also subject to Capital Gains Tax, since the conditions of the badges of trade are met.

Also the disposal of Agrigulture land will be subject to Capital Gains tax, since the conditions of the budges of trade are also met.

Peter will be eligible for lifetie allowances provided by the CGT legilation. He can claim the maximum between:

- Residence Allowance EUR 85.430 (subject to conditions)
- Agrigulture land EUR 25.629
- Other sales EUR 17.086

For the residence allowance, he should reside at least five years and should be disposed within one year from the stop of use.

The residency condition is not meet, therefore he is not eligible for the Residence Allowance.

Peter can claim the Agriculture allowance.

2) For 2023, Peter will be taxed on his worldwide income as he is considered Cyprus Tax Resident.

For 2024, if UK will claim his tax residency, he will be considered as UK Tax Resident, therefore Peter will be taxed in Cyprus only for the income derived only from sources within Cyprus.

a) Business Income from rent activity

- In the scenario it does not specify whether Peter established any company for this activity, therefore we will assume that he perform the business as self-employed.

The income derived will be subject to Income Tax in Cyprus for 2023. For 2024, it will be also subject to Income Tax In Cyprus because it constitutes income derived from a PE in Cyprus. It will be taxed under the personal income tax rates for individuals.

The business rental income does not fall under the provisions of SDC in Cyprus (Peter is also non Cyprus Domiciled individual).

The Business income from rent activities will be subject to GHS at a rate of 4% for self-employed.

b) Pension from UK

He has the option to elect to be taxed under the special regime.

Based on that, the first eur 3.420 will be exempt. The remaining pension will be taxed at a rate of 5%.

From 2024 onwards, since he is non Cyprus tax resident.....

C) Dividend Income from Cyprus Companies

It is exempt from Income Tax.

Since he is non-dom, it is also exempt from SDC.

iT WILL BE SUBJECT TO GHS during 2023 since he is Cyprus tax resident at a rate of 2.65%. For 2024 as he is not Cyprus tax resident, it will be also exempt from GHS.

d) Interest Income from Corporate bonds

It is exempt from Income Tax.

Since he is non-dom, he will be exempt from SDC as well.

It will be subject to GHS for 2023 at a rate of 2.65%. For 2024 since he is not cyprus tax resident it will be exempt.

Answer-to-Question-_4__

1) Commencement of first employment in Cyprus

According to Article 8(21A) First employment in the Republic ever since (occasional employment is excluded).

According to Article 8(23A): Employment from 01/01/2022
- First Employment means: Employment in the Republic after 15 years of absence (considered as "first employment". More specifically: Firs employment is considered when, for the first time, after a period of 15 consecutive tax years during which he/she did not perform any salaried services in Cyprus, commences employment in Cyprus either for a Cypriot resident employer or for a non Cypriot resident employer.

According to Article 8(23A)- Old: Employment from 01/01/2022 - 29/06/2023
- First Employment in the Republic ever since (occasional excluded)

2) Provisions of 8(21A)

- Article 8(21A) is applicable for employment since 26/07/2022

- According to the provisions of article 8(21A) of the Income Tax Law, an individual who meets the First Employment Status mentioned in paragraph "1" is eligible to claim 20% exemption of the remuneration from the first employment in the Republic with a maximum exemption per tax year of eur 8.550.

- There is no minimum remuneration requirement.

- The exemption i applicable for 7 years (starting from the year following the year of commencement of first employment), or until the termination of the first employment, whichever occurs earlier.

- Beneficiaries of the exemptions provided by Article 8(21)A is a person who, for 3 consecutive years immediately before te commencement of his/her employment in Cyprus was employed outside Cyprus by an employer who is not a resident of Cyprus.

- For the provisions of 8(21A), the employment can commence between 26/07/2022 and 31/12/2027.

3) Provisions of 8(23A)

- Article 8(23A) is applicable for employment since 01/01/2022.

- According to the provisions of article 8(21A) of the Income Tax Law, an individual who meets the First Employment Status mentioned in paragraph "1" is eligible to claim 50% exemption of the remuneration from any employment in Cyprus.

- For Art. 8(23A) to apply, the remuneration should exceed the EUR 55.000.

- The exemption is applicable for 17 years (starting from the same year of employment).

- Beneficiaries of the exemptions provided by Article 8(23)A is a person who was not a resident at least 15 years prior to the year of commencement of the first employment.

- For the provisions of 8(23A), the employment can commence from 01/01/2022 and onwards.

- All the above exemptions are granted regardless of whether the person after commencing his employment in Cyprus becomes a tax resident of Cyprus or remains a non Cyprus tax resident.

- A person who was eligible for the exemptions of the "old" 8(23A), continues to be beneficiary of the exemptions of 50%, provided that the conditions of art 8(23A) are met, as it was in force before the publication of the ammending Law 51/2023.

Answer-to-Question-_5__

1) According to article 2 of the Income Tax Law, a company whose management and control is exerciced in Cyprus is considered Cyprus Tax Resident.

As of 31 December 2022, a company which is incorporated or registered in Cyprus, and its management and control is exerciced outside Cyprus, should be considered resident for tax purposes of Cyprus unless it is a tax resident in another country.

With the above ammendment in the income tax legislation, Cyprus can prevent the double non-taxation of companies that were not considered Tax Residents of any jurisdiction (stateless companies)(i.e. because the criterion of the foreing jurisdiction was the place of incorporation).

This is a big concern for the OECD and is covered under BEPS Action 6 and BEPS Action 2 (neutralising hybrid mismathces). Cyprus want to follow these international rules and show that it supports fair tax practices.

By treating all Cyprus-Incorporated companies as tax residents, Cyprus ensures that every company pays tax somewhere. Even if a company is managed from another country, if it is registered in Cyprus and is not tax resident anywhere, it whill be taxed in Cyprus. This follows the OECD Model Tax Convention, which talks about tax residency in Article 4.

It is important to mention that the ammended legislation applies only in cases the Company is not tax resident in any other jurisdiction.

This rule seems to be fair because it does not lead to double taxation. It only applies when there is a risk that the company is not taxed anywhere. Cyprus follows the principle of single taxation, and it also repects Double Tax Treaties based on the OECD model.

Another reson of this rule, is to protect Cyprus international reputation. If Cyprus allowed companies to be registered here and not pay taxes anywhere, it would be seen as a tax haven. This could lead to blacklisting by the EU or the OECD. That would hurt Cyprus financlai sector. So, this rule helps Cyprus stay in linewith international tax standards.

2) A Cyprus tax resident company is taxed in Cyprus on its worldwide income. Of course the Cyprus income tax legislation provides relevant exemptions and tax credit allowances for income derived outside Cyprus.

Answer-to-Question-_6__

Under Article 2 of the Cyprus IT Law, a PE is a key concept used to decide when a foreign company is taxed in Cyprus.

1) What is defined as a PE

A PE means a fixed place of business through which a foreign company carries out its business activities fully or partly in Cyprus. The law lists examples to help us understand.

Examples of a PE include:

1. A place of management - where key decisions are made.
2. A branch - a separate office of the foreign company.
3. An office - a place where business work is done.
4. A factory - where goods are produced.
5. A workshop
6. A mine, oil or gas well, or any other place of natural resources.

This is in line with Article 5 of the OECD Model Tax Convention, which also defines a PE in a similar way.

According to both the OECD and Cyprus rules, having a PE means the foreign company may be taxed on profits made through that PE.

B) What is not PE

The law also gives a clear list of what is not a PE, even if there is a fixed place. These are activities that are considered minor or supporting, not main business functions.

The following are not treated as a PE under Cyprus IT Law:

1. Using a place only to store or display goods or merchandise (for example: a foreign company keeps goods in Cyprus but does not sell or produce anything here).

2. Keeping a stock o goods only for storage, display, or delivery. (if not selling or processing happens, it is not a PE).

3. Keeping a stock of goods only for processing by another business.

(for example, if the goodds are sent to Cyprus only to be packed or labelled).

4. A fixed place used only for purchasing goods or collecting information (this means that Cyprus office just gathers market data or buys supplies, it is not a PE).

5. A fixed place used only for adverticing, scientific research or simila activities.

6. A combination of the above activities are still not a PE as long as the overall activity remains preparatory and auxiliary.

This is also in line with the OECD Article 5(4), which lists what is not considered a PE.

The idea is that only real and ongoing business activities in Cyprus should be taxed here, not minor supporting functions.

This dinsdinction is important because if there is no PE, thenthe foreign company's profits are not taxed in Cyprus, under both domestic law and double tax treaties based on the OECD model.

In summary, Cyprus tax law gives a clean definition of what a PE is and what is not. A foreign company will only be taxed in Cyprus if it has a real business presence here through a PE. But if the Cyprus activity is only minor or preparatory, then the foreign company is not taxed on it.