A New Protocol Amending the India - Cyprus Double Tax Treaty

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Introduction

The Cyprus Ministry of Finance announced that a Protocol amending certain of the provisions of the double tax treaty in existence between India and Cyprus has been agreed upon, following the completion of negotiations on 29 June 2016.

"Removal of Cyprus from list of Notified Jurisdictional Areas"

In an emailed statement from the Cyprus Ministry of Finance issued on Thursday 30 June 2016, following the completion of the negotiations, the Ministry stated that *"the agreement reached on all pending issues will pave the way for the removal of Cyprus from the list of Notified Jurisdictional Areas placed in November 2013."*

The statement went on to say that the Indian authorities had agreed to *"proceed with retrospectively rescinding the classification of Cyprus in the 'Notified Jurisdictional Area' as from 1 November 2013"* once the Protocol enters into force.

Gains from the alienation of shares – *"sourced based taxation"*

The current provisions of the double tax treaty between India and Cyprus provide for the taxation of gains from the alienation of shares only in the State where the alienator is tax resident. Under this provision, gains derived by a company tax resident in Cyprus, from the disposal of shares in a company tax resident in India, were only taxable in Cyprus.

The new protocol will amend this provision to allow for source based taxation of such gains. As a result of the change, any gains derived from the disposal of shares by a Cyprus tax resident company, in a company tax resident in India, may be taxed in India.

Grandfathering provisions

The new Protocol that has been agreed upon includes grandfathering provisions. More specifically, for any investments in shares concluded before 1 April 2017, any gains made from the alienation of such shares will be taxable only in the State where the alienator is tax resident. As such, for any investment in shares of an Indian tax resident company, concluded by a Cyprus tax resident company before 1 April 2017, any gains resulting from the subsequent disposal of such shares at any future date, will continue to be taxable in Cyprus.

Limitation of benefits and withholding taxes

The new protocol does not include any provision for a Limitation of Benefits Clause. Furthermore, the current withholding tax rates remain unchanged.

More specifically, the following withholding tax rates will continue to apply:

- **Dividend payments** – distributions of dividends are subject to a withholding tax rate of 15% in India. This is further reduced to 10% where the recipient is a company which holds at least 10% of the share capital of the dividend paying company
- **Interest payments** – are subject to a withholding tax rate of 10% in India
- **Royalty & service fee payments** – are subject to a withholding tax rate of 15% in India. Payments of a technical, managerial or consulting nature are subject to a withholding tax rate of 10% in India.

"Cyprus remains an attractive jurisdiction for investments in and out of India"

The signing of the new Protocol will put an end to any uncertainty which existed in the treatment of bilateral investments currently in existence, or for any to be concluded before 1 April 2017. In addition, Cyprus will maintain its position as an attractive jurisdiction for routing investments in and out of India.

In concluding its statement, the Ministry of Finance of Cyprus stated that *"Upgrading and expanding the network of Double Tax Conventions is of high economic and political importance and aims to further strengthen and attract foreign investment in Cyprus as its standing as an international business centre is elevated."*

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