

Tax Briefing



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Issue 2009/1

Cyprus: Definition of securities expanded and very welcomed!

In accordance with the provisions of the Cyprus Income Tax Law, the gain from the disposal of securities is exempt from tax. So far, the definition of the term "securities" was limited to shares, bonds, debentures, founder's securities, other securities of legal entities incorporated in Cyprus or abroad and rights thereon. Accordingly, the need to diversify and expand the definition of the term "securities" under the Cyprus legislation proved desirous.

As a result to the above, it was recently announced by the Commissioner of Income Tax by way of the issue of a circular, that for the purpose of interpreting the term "securities", the following instruments are deemed to qualify as securities within the meaning of the law:

1. Ordinary shares;
2. Founder's shares;
3. Preference shares;
4. Options on titles;
5. Debentures;
6. Bonds;
7. Short positions on titles;
8. Futures/forwards on titles;
9. Swaps on titles;
10. Depositary receipts on titles, such as ADRs and GDRs;
11. Rights of claim on bonds and debentures, excluding the rights on interest of these instruments;
12. Index participations only if they result in titles;
13. Repurchase agreements or Repos on titles;
14. Participations in companies; such as Russian OOO and ZAO, US LLC provided that they are subject to tax on their profits, Romanian SA and SRL and Bulgarian AD and OOD;
15. Units in open-end or closed-end collective investment schemes having been incorporated, registered and operating in accordance with the provisions of the relevant legislation of their country of incorporation.

Examples of such collective investments schemes are:

- * Investment Trusts, Investment Funds, Mutual Funds, Unit Trusts, Real Estate Investment Trusts;
- * International Collective Investment Schemes – ICIS;
- * Undertakings for Collective Investments in Transferable Securities or UCITS;
- * Other similar financial/investment institutions.

The tax treatment and respective application of the favourable Cyprus law provisions on the gains from the disposal of any other instrument not expressly mentioned in the above list may be sought by way of a request for a tax ruling, submitted to the Commissioner of Income Tax.

Further to the above, while the provisions of the circular are intended to apply to tax years from 2003 onwards, it is emphasized that in no way shall an examination of already settled cases take place and neither will a revision of the tax treatment of any gains from the disposal of such instruments in tax returns that have already been submitted prior to the date of issue of the circular for which no objection has been raised on this matter.

As aforementioned, the gains from the disposal of shares are exempt from Cyprus corporate income tax. The extended list of instruments falling within the definition of securities increases the competitiveness of the Cypriot jurisdiction from a tax planning perspective even further given that the ability of investors to reduce or even eliminate their tax liability by the use of a Cyprus holding company in their structure is further enhanced.

Equally, the fact that the exchange of information provisions have now been enacted into legislation in Cyprus, promotes the conclusion of additional Double Tax Treaties as the means of minimising and/or eliminating taxation thus extending the already wide network of treaties currently in force.