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The Cyprus company as a holding and transactional vehicle

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The Jurisdiction

Cyprus is a member of the European Union and the Eurozone. A common law jurisdiction, Cyprus provides an established, stable and solid legislative framework.

Cypriot corporate law has evolved over time, from its origins as a replica of the English Companies Act of 1948 into a sophisticated corporate legal framework that encapsulates international commercial realities, while adhering to the principles of common law and equity.

Cyprus has fully transposed applicable EU Directives into its legal order and features sophisticated, yet simple and business-friendly, corporate law mechanics.

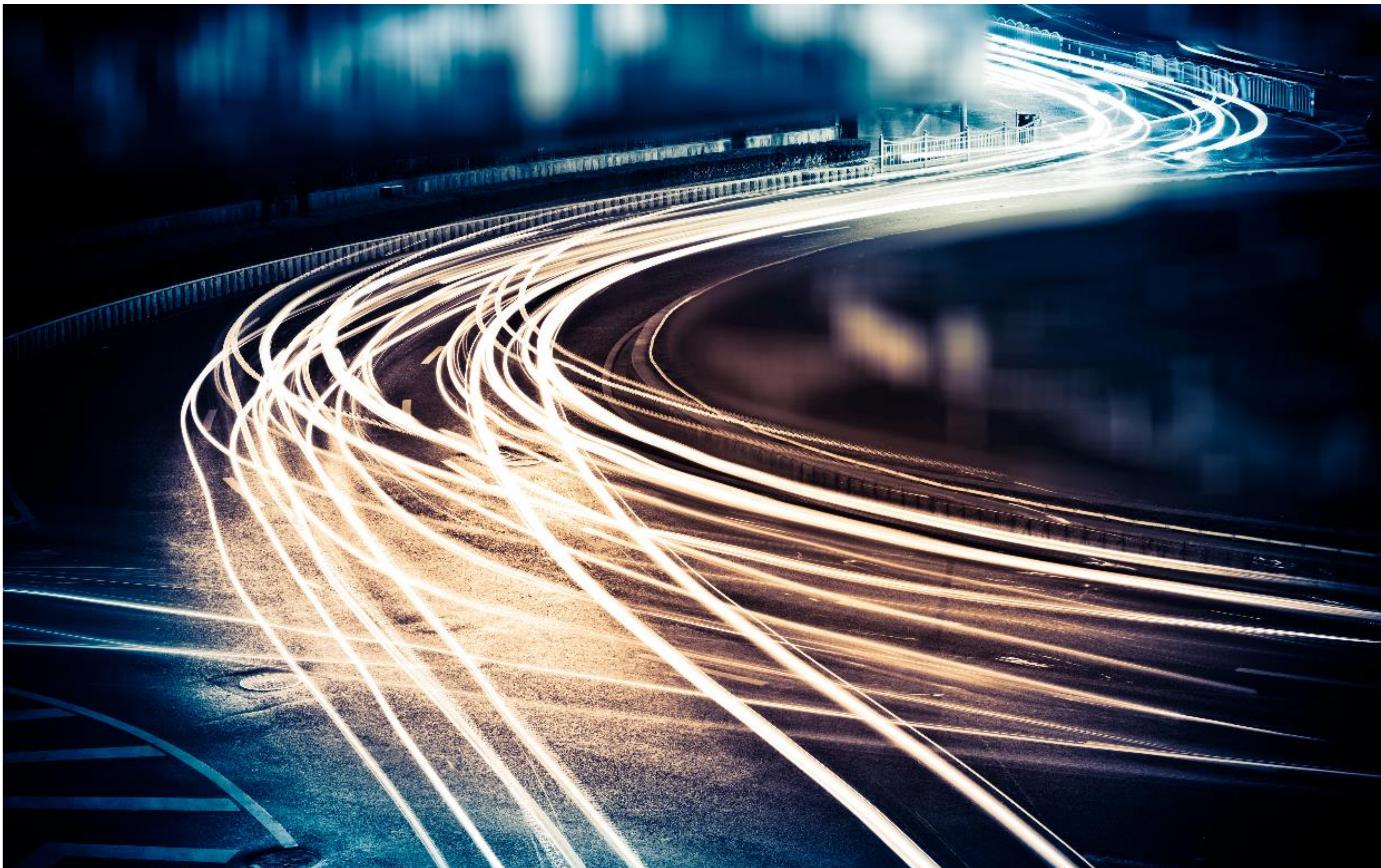
Use of the Cyprus company is widespread in asset management, for intermediary or ultimate holding purposes, corporate finance and transactions.

The jurisdiction features on the ‘white list’ of the OECD and is committed to the highest standards of transparency.

Taxation

Cyprus is considered one of the most tax-efficient jurisdictions in the European Union, for the following reasons:

- it features one of the most attractive corporate tax rates in the EU, at 12.5% on profit
- there is no taxation on the acquisition or disposal of shares and no withholding tax on dividends
- it features an intra-group financing regime which is fully aligned with the OECD’s BEPS
- it affords one of the largest networks of double tax treaties, including the UK, the US, the UAE, India, China and Jersey
- its tax system is fully aligned with EU state aid rules and no tax rulings have been challenged by the European Commission
- reorganisations, such as mergers, demergers, exchanges of shares and transfers of assets can be effected in a tax-neutral manner.



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Outgoing Dividends

There are no withholding taxes on dividend payments from Cyprus companies to persons not resident in Cyprus, irrespective of where they reside or whether a double tax treaty is in place with the jurisdiction of residence.

Notional interest deduction (NID)

The NID is deductible against the company's taxable profits that arise as a result of the newly introduced capital and cannot exceed 80% of the taxable profit as calculated before allowing for this deduction.

The NID is available on new qualifying equity issued by a Cyprus company. It is calculated by multiplying the new qualifying equity amount by a reference interest rate.

Incoming dividends

Dividends received into a Cyprus company are taxed at 17%, however, an exemption mechanism (satisfied in the majority of cases) results in zero taxation of incoming foreign dividends.

Capital Gains

There is no taxation on capital gains other than on gains accruing from the disposal of immovable property held in Cyprus or shares in companies the property of which consists of immovable property held in Cyprus.

Royalties

Cyprus affords a regime under which 80% of qualifying profits generated from qualifying assets will be deemed to be tax deductible expenses. Qualifying assets are those:

- acquired, developed or exploited by a person in the course of its business
- that relate to intellectual property
- that result from research and development expenditure, and
- for which the person is the economic owner, excluding any rights relating to marketing.

Intra-EU Transactions

In instances where the transaction in relation to which a Cyprus holding company is used is purely intra-EU, the provisions of the EU Parent/Subsidiary Directive operate to effectively eliminate taxation on the transaction entirely.

Group Relief

Tax relief at a corporate group level is allowed for at least seventy-five per cent (75%) of the relevant group holdings and is applicable only on the results of the current financial year.

Losses incurred by a Cyprus company in relation to business carried on outside Cyprus can be deemed as deductible against taxable profits generated by that company in the current year.

Losses that cannot be utilised in the current year, are carried forward for a period of five (5) years, commencing from the end of the year to which the losses relate.

Double Tax Treaties

Amongst other advantages, a Cyprus holding company can achieve low or zero withholding tax rates when extracting dividends from underlying subsidiaries by relying on either:

- an applicable double tax treaty, or
- the provisions of the Parent-Subsidiary Directive.

Cyprus has concluded over 50 agreements for the avoidance of double taxation and has one of the largest collections of treaties globally, including with the UK, the US, Canada, India, China, Switzerland, the UAE and Jersey.

Cyprus – UK Double Tax Treaty of 2018

The 2018 double tax treaty between Cyprus and the UK is effective, providing for zero withholding tax on payments of dividends, interest and royalties (subject to exceptions).

The disposal of shares made by Cyprus tax resident companies is taxed in Cyprus, except where, inter alia, the shares derive more than 50% of their value (directly or indirectly) from immovable property situated in the UK.

Interest Income

Interest income connected with the carrying on of a trade or business of the company is subject to the corporate tax rate of 12.5%.

Interest income not connected to the company's business is exempt from corporate income tax and taxed separately at the Special Contribution for Defence rate.

Intra-Group Loans

Cyprus adheres fully to the OECD Transfer Pricing Guidelines on the application of the 'arm's length principle', which represents the international consensus on the valuation, for income tax purposes, of cross-border transactions between associated enterprises.

As a result, adequate interest rate profit margins must apply to intra-group financing transactions. For holding companies with physical and economic substance in Cyprus, a simplified method applies. In all other cases, intra-group financing would need to be supported by a transfer pricing study.

Transactions

Cyprus features versatile corporate structuring and financing legal tools, such as redeemable preference shares.

Redeemable preference shares

Redeemable preference shares (**RPS**) under Cyprus law facilitate financing in private equity and other corporate transactions.

Cyprus law affords substantial flexibility vis-à-vis the terms of redemption, allowing for:

- redemption at the option of the company
- redemption at the option of the shareholder
- redemption at any time or on the occurrence of a particular event.

Effectively, where RPS are redeemed, they are treated as cancelled. The amount of the company's issued share capital is diminished by the nominal value of the shares redeemed whereas the company's authorised share capital is unaffected by the redemption.

Shareholder rights and share classes

Investors can benefit from tailored rights through classes of shares as well as private shareholders agreements to regulate their affairs.

Private shareholder agreements can be concluded to regulate the relationship between shareholders in a Cyprus holding company and their respective rights. Such shareholders agreements need not be disclosed to any authority or third party.

Being a common law jurisdiction, Cyprus affords legal certainty regarding shareholder relationships, board accountability and directors' fiduciary duties.

This summary of the advantages of the Cyprus holding company illustrates how it is the optimal vehicle for use in corporate structuring and cross-border transactions, as well as for managing and holding assets and investments worldwide.

Read more on our corporate law practice.