

LAWORLD

INTERNATIONAL NETWORK OF INDEPENDENT LAW FIRMS

international business **briefing**

Vol 13 • September 2003

Tax reasons for the establishment of a Cyprus holding company

Introduction

Nowadays there is strong competition among the better and more popular jurisdictions for the location of holding companies. Cyprus, a well established international centre, is increasingly regarded as an attractive location for holding companies from, amongst other reasons, a tax perspective. This is due to the accession of Cyprus to the European Union (EU) and the enactment of new tax legislation, which is now compatible with the *acquis communautaire*. Cyprus's laws and practices are now harmonised with the EU Laws and Directives, the Code of Conduct and the Organization for Economic Cooperation and Development's recommendation on Harmful Tax Corporations. This article will outline how Cyprus is an ideal location for establishing an international holding company.

Tax regime

A Cyprus holding company needs to hold only 1% of the share capital of a foreign subsidiary in order to receive the benefits awarded by the new tax legislation. In other European jurisdictions, the percentage to be held locally may be significantly greater.

New legislation

A uniform 10% corporate tax rate, applicable to worldwide income, is now levied on all resident companies from 1 January 2003. This is the lowest corporate tax rate in the European Union.

The new taxation status on Companies is residence-based. A company is only 'res-



Christodoulos Vassiliades, Cyprus

ident in the Republic' if its business is centrally managed and controlled in Cyprus. Therefore, under the new rules, a resident corporation is taxable on its worldwide income accrued or arising from sources both within and outside Cyprus only if it is managed and controlled from Cyprus.

With the new tax legislation, international holding companies operating from Cyprus are now in a much more beneficial position because they can enjoy the benefits deriving from tax exemptions as well as corporate tax benefits.

Tax exemptions

50% of interest receivable

With the new tax legislation 50% of interest received by a corporation is tax exempt, excluding interest received from the recipient's ordinary course of business or closely connected with the recipient's ordinary business.

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Dividends received

Dividends received from abroad are now totally exempt from corporation tax. They are also exempt from the 15% defence contribution provided that the Cyprus holding company owns at least 1% of the share capital of the overseas company.

Restructuring provisions

In view of the incorporation of EC Merger Directive 90/434/EEC into the new tax law, there are tax exemptions on the transfer of assets (including shares) under a reorganisation (merge /de-merger/ transfer of assets).

Gains on shares and Capital Gains Tax

Profits from buying and selling shares are exempt from tax. Furthermore, there is no capital gains tax except for the 20% capital gains tax applying on gains accruing from disposal of fixed property held in Cyprus and shares in non-listed companies which own fixed property in Cyprus.

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Profits from activities of permanent establishment abroad

The profits from a permanent establishment abroad are exempt from taxation. The exemption does not apply if (i) the permanent establishment directly or indirectly has more than 50% of its activities engaged in producing investment income, and (ii) the foreign tax burden is substantially lower than that in Cyprus.

Cyprus branches of companies

With the accession of Cyprus to the EU, double taxation relief will be available to all Cyprus branches of companies resident in other member states in the European Union, since there is no discrimination between the companies resident in a member state and the branches of such companies resident in another member state.

Distributions by Cyprus holding companies

Dividends paid to non-resident shareholders are exempt from withholding tax. In fact, Cyprus does not impose withholding taxes on payments of dividends, interest and royalties (provided the intellectual property rights are not used in Cyprus) to non-resident recipients.

Corporate tax benefits

Carry forward of losses

Tax losses for the year 1997 onwards may be carried forward indefinitely. Losses incurred abroad by a permanent establishment of a Cyprus company can be offset against profits of the Cyprus company.

Group relief

Group relief rules are now in force, providing for group relief of tax losses between a holding company and its subsidiaries where the holding company owns at least 75% of the subsidiary directly or indirectly and/or among companies of the same group for the whole year. However, losses brought forward will not be available for group relief.

A company is considered as a member of a group if it is at least a 75% subsidiary of the other, or if two companies are at least 75% subsidiaries of a third company.

Network of double tax treaties

Cyprus combines a low tax regime with a network of double tax treaties. It has concluded 34 double tax treaties, a significant number when compared to the number of treaties concluded by any other offshore jurisdiction. Many of these

treaties are with Central- and Eastern-European countries and Middle-Eastern countries. Most of the Treaties follow the OECD model and all of them have the impact of reducing or eliminating the normal withholding taxes imposed by the contracting states on dividends, interest and royalty payments. This is beneficial for trade with certain Eastern-European countries and Russia because foreign investors investing in Eastern-Europe have the opportunity to channel their investments through a country, such as Cyprus, which has a treaty with the investment recipient country allowing for a reduction and in some cases elimination of the withholding taxes.

Conclusion

Cyprus, one of the smallest European low tax jurisdictions, is a suitable place for locating an intermediary company due to the island's combination of tax treaties and low tax regime. Dividends can flow through the Cyprus company totally tax free and the company can be used to take advantage of an extensive network of double tax treaties.

Article written by Christodoulos Vassiliades from Christodoulos G Vassiliades & Co, the LAWWorld member for Cyprus.

On the move and honoured — Down Under



For only the fourth time in its 144 year history, our Sydney, Australia member firm Makinson & d'Apice has moved to larger offices (see last page of this Newsletter for details) which will facilitate expansion.

Bill d'Apice, the managing partner, who is also the chairman of LAWWorld, has recently been honoured by Pope John Paul II with a papal knighthood. Bill has been appointed a Knight Commander of the Order of St Gregory the Great — a papal honour that dates from the early 19th Century. The knighthood was bestowed on him as a recognition for the pro bono work that he has performed over many years for the Catholic Church in Australia and for other charitable and community organisations.

Bill d'Apice (right), Sydney, Australia, and Sydney's Archbishop Pell ponder the Latin text of the Papal Knighthood

Madrid in May: Site for LAWWorld's 2004 Conference and AGM

From 5–7 May 2004 representatives of firms which are members of LAWWorld will meet in Madrid. This is an ideal time to visit the Spanish capital — when temperatures are pleasant, between the city's "invierno" (winter) and "infierno" (summer). Host will be Jose Suarez, of Suarez de la Dehesa & Sainz Dochado Abogados, LAWWorld's member firm in Madrid.

New identification and reporting regulations against money laundering in the Netherlands

As from 1 June 2003 new regulations have been effective in the Netherlands regarding the obligation to identify clients and to notify the Dutch authorities about unusual financial transactions. These provisions are based on the European Directives regarding money laundering and fraud. These new regulations not only apply to financial institutions, but also to a number of professional groups, including notaries, accountants, tax advisers, real-estate agents and attorneys. A Dutch attorney is obligated to identify the client when giving advice or assistance regarding services such as:

- the sale and/or purchase of real estate
- the administration of money, stock, or any other such items
- the establishing and/or the administration of legal entities
- the sale and/or purchase of companies
- work regarding tax matters

- acting in name and for the account of a client regarding any financial or real estate transaction.

In all these matters, the attorney should establish the identity of the (ultimate) client. As far as legal entities are concerned, a certified excerpt of the registration with the Chamber of Commerce or a notarised certified statement is required. Private individuals should provide a valid passport or driving license. The identification should be determined before the attorney starts to work for the client.

Furthermore, an attorney is obligated to notify the authorities (the so called Unusual Transaction Reporting Office) of any unusual transactions regarding the above-mentioned services. For instance, if an attorney is suspicious that a transaction is related to laundering, he must notify the Reporting Office. Notification is also required if a transaction of _15,000 or more takes place and if the payment is made in cash, by bearer cheque or in any other

similar way.

The attorney is also obligated to notify the Reporting Office in secret. He is not allowed to inform his client (the so-called "tipping-off" prohibition).

Should an attorney fail to identify his client or fail to report an unusual transaction, then he commits an economic offence and can be sentenced to imprisonment for a maximum of 2 years or fined a maximum of _11,250.

These new regulations have met with severe criticism from attorneys and other legal practitioners. The duty to identify is costly and requires a lot of extra administrative work. The new regulations also seem to infringe on the lawyers' obligation to confidentiality, particularly with respect to the tipping-off prohibition. It will be interesting to see how law firms will deal with these new regulations.



The view outside the offices of
LAWORLD's member in The Netherlands,
Van der Steenhoven Advocaten

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Automobile financing in California

In a victory for automobile dealerships and financial institutions who lend money to California car buyers, lawyers at Christa & Jackson defeated a class action lawsuit challenging the legality of confidential profit-sharing agreements between automobile dealerships and the financial institutions that buy their car loans. The case had been closely watched by corporations owning dealerships in consumer-friendly California.

In *Corbett v. Hayward Dodge, Inc., Bank of America, et al.*, California Superior Court, Case No. H212741-9, the plaintiff asserted class action claims for unfair competition and fraud against an automobile dealership and the financial institution to which it had assigned a used car loan it had made to the plaintiff, Corbett. Although automobile dealers originally agree to finance the purchases of their customers, they then typically attempt to assign the loan to financial institutions. The financial institution often buys the loan at an interest rate which is lower than that the consumer has agreed to pay the dealership. The "profit" differential is usually shared between the dealership and the financial institution, typically under a pre-existing agreement. Corbett argued, on behalf of himself and other borrowers in California, that the profit-sharing arrangement was unfair because it ultimately forced consumers to pay higher interest rates on their loans. The plaintiff's lawyers argued that the profit-sharing arrangement should be disclosed to consumers. On behalf of each consumer who had purchased a vehicle, Corbett sought restitution of the entire "profit" differential. Corbett also sought recovery of all profits the dealership had made over the course of several years from the assignments. A victory for the plain-

tiff would have cost the dealership millions of dollars.

Christa & Jackson persuaded the court to terminate the class action before holding a trial in the case. In the United States, both state court and federal courts employ a procedure to avoid a full-blown trial on the merits if a party can demonstrate that there is no "material" question of fact to be decided during a trial. In that event, the court can decide the matter in advance of trial, as a matter of law. This is usually termed a motion for "summary judgment."

Laura K. Christa and William E. Weinberger of Christa & Jackson, argued on behalf of the automobile dealership that the dealership had not overcharged or deceived its customers: The automotive sales industry is highly regulated and the federal body in charge of regulating financial institutions had declined to require disclosure of the profit-sharing arrangement. The California legislature had never entertained, much less decided to require such a disclosure. Despite this, the court suggested that even if disclosure was not "required,"

wouldn't it nevertheless be "useful" to a customer? This illustrates the difficulty of doing business in an extremely consumer-friendly jurisdiction like California. A business runs the risk its conduct, while not affirmatively illegal, might nevertheless be considered "unfair," because different conduct might benefit consumers. Ultimately, while acknowledging the additional disclosure could well be useful to consumers, the court agreed that the failure to provide the disclosure could not, nevertheless, be decreed illegal under the existing regulatory environment. The court was not inclined to require additional disclosures in the absence of additional legislative requirements. The court granted summary judgment in favor of defendants.

Judge Ronald Sabraw, who decided the Corbett case, also decided a consumer case against Visa and MasterCard a couple of months later. He ordered approximately \$500 million in restitution to cardholders for failure to disclose adequately on their credit card statements that member banks were making a profit on international exchange rate conversions to U.S. Dollars when the customer used his or her card to make a purchase abroad.

Christa & Jackson is the LAWorld member in Los Angeles, California, USA, specializing in litigation.

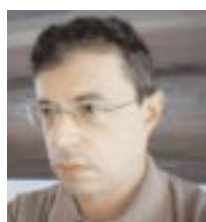
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Laura Christa and Bill Wienberger, Los Angeles, California



Claus H. Lenz, managing partner of LAWorld's Cologne, Germany member firm Lungerich & Lenz, has recently been elected as chairman of the Court of Arbitration of the West-German Hockey Association. Claus, who has represented Germany in the sport, is still an active field hockey player.



Yoav Salomon, a partner with LAWorld's Haifa, Israel member Avniel, Salomon & Co, has been nominated by the prestigious guide European Legal Experts as one of 42 Israeli legal experts in litigation and arbitration.

New Finnish Domain Names Act

The Finnish Parliament adopted the Domain Names Act on 17 January 2003. The Finnish Communications Regulatory Authority's (www.ficora.fi) administrative regulations will be replaced by this new act, which creates a more flexible domain name registration system for the domestic top-level domain '.fi'. The aims of the new act are to ensure the equitable distribution of Finnish domain names and to promote the provision of social information services. Top-level domain names will be granted by the Authority in the future.

The act entered into force on 1 September 2003. It will not affect currently registered domain names. New top-level domain names can be reserved only after the act has entered into force. Applications submitted before that date will be processed according to the current administrative regulations.

Rules on form requirements, the allocation and administration of domain names are included in the act. It also contains provisions on the revocation and disconnection of domain names, as well as on dispute resolution and domain name service providers.

The most significant change is the renouncement of the pre-examination of the right to a name. Top-level domains are granted on a first come, first served basis. Consequently, a registered right (e.g. a trade name or trademark) to the requested name will no longer be a prerequisite for the grant of a top-level domain name. The applicant shall, though, warrant that the requested domain name does not infringe intellec-

tual property rights, such as registered trademarks or trade names of other entities.

A top-level domain name may be granted to:

- Legal entities and sole proprietors registered in Finland
- Finnish public corporations and state owned businesses
- Government institutions and associations
- Foreign embassies.

Foreign legal entities (unless they have registered a branch office in Finland) or private persons are not allowed to register .fi domain names according to the new act. This issue might, however, change in the future as Parliament has advised the government to start preparing legislation that would enable private persons to apply for top-level domain names.

The domain names will be granted for an initial period of three years and can thereafter be renewed indefinitely for subsequent three-year periods.

If the domain name is abused it can be disconnected and the right to a domain name revoked. The Authority may disconnect a domain name for a maximum period of one year; this period can be extended in exceptional cases.

Disconnection is possible, e.g., at the request of the law enforcement authorities or a right holder. This is in case there is cause to suspect that the domain name is a protected trade name or trademark, and the domain name holder fails to provide acceptable



Janne Jokinen, Helsinki, Finland

grounds justifying its claim within two weeks. Under certain circumstances, a top-level domain may also be disconnected if it is derived from a protected name or trademark.

Revocation of the right to a domain name is a permanent measure.

Revocation requires slightly more aggravated grounds than disconnection. For example the Authority may revoke the right to a domain where a domain name application contains materially insufficient or incorrect information. If a domain name infringes a protected name or trademark of a third party, the right to the domain name may, in clear cases and subject to certain requirements, be revoked if the right holder so requests. Revocation is also possible by court order.

The Authority will act in the first instance for dispute resolution in domain name matters. Decisions of the Authority can be appealed to the Administrative Court of Helsinki. The Authority also supervises service providers offering .fi top-level domains.

Jokinen & Associates is the LAWWorld member for Finland.

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In an unprecedented ruling a Madrid Criminal Court has ordered that access to the web pages Edonkeymania.com and Donkeymania.com be blocked for not less than six months, effective 5 August 2003. Both these web pages promoted the exchange of copyright protected files, using p2p software, making available the identification and search of files lodged in individual computers around the world. It is the first time that a European court has adopted such a decision, against the usual pretence of the owners of the pages, who claimed that both web pages only made available the contact, not the exchange.

J.A. Suarez, of LAWWorld's member in Madrid, Suarez de la Dehesa & Sainz Dochado, acted as counsel for the plaintiff.

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