ANTONIOU McCOLLUM &CO.

Cross-border acquisitions and corporate financing through Cyprus

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A transactions hub

Cyprus is an EU member state which is increasingly becoming a jurisdiction of choice for the structuring of corporate transactions.

This is the case for a number of reasons:

- it features one of the most attractive transactional tax regimes in the EU
- there is no taxation on the acquisition or disposal of shares and no withholding tax on dividends
- its common law system affords certainty and clarity in acquisitions and corporate finance
- the Cypriot corporate law framework is modelled after English company law
- Cyprus features versatile financing legal tools, such as redeemable preference shares
- investors can benefit from tailored rights through classes of shares as well as private shareholders agreements to regulate their affairs
- it affords an intragroup financing framework which is fully aligned with the OECD's BEPS
- it is a member of the Eurozone and has the euro as its currency
- it adheres to the highest anti-money laundering standards and features on the white list of the OECD
- it features one of the largest networks of double tax treaties, including the UK, the US, the UAE, India and China
- 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

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

RPS can be issued by private companies limited by shares. They are issued at a nominal value but can also carry a premium.

RPS must be issued as such from the outset, it is not possible to convert existing equity into RPS.

In order to be redeemed, RPS must be fully paid.

The terms attaching to the RPS can regulate matters such as, inter alia:

- timing and/or conditions of redemption
- repayment of capital
- participation in surplus assets and profits
- voting rights
- priorities of payment on dividends

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.

Whenever a company is considering issuing RPS, care must be taken to assess any adverse tax considerations, both in relation to the issuing company as well as the holder of the RPS.

Private equity acquisitions and corporate financing transactions are increasingly relying on RPS issued by Cypriot special purpose vehicles due to their versatility.

Taxation

12.5% tax on profit

Tax-resident companies are taxed on their profit at 12.5%, which is one of the lowest tax rates in the EU.

No withholding tax on dividends

There are no withholding taxes on dividend payments from Cyprus companies to non-resident legal or natural persons.

At the core of the benefits that Cyprus affords to tax-resident companies is the possibility of extracting dividends from underlying subsidiaries without tax, by relying on either a double tax treaty, or the EU Parent Subsidiary Directive.

Cyprus has concluded over 50 treaties for the avoidance of double taxation, including treaties with the USA, the UK, Canada, India, China, Jersey and the UAE.

Deduction on new equity

Qualifying equity issued by a Cyprus company may qualify for considerable tax deductions through notional interest deduction (NID). The NID is deductible against the company's taxable profits that arise as a result of new capital introduced.

Interest expense deduction

Interest expense incurred for the direct or indirect acquisition of the share capital of another company can be treated as deductible for tax purposes where the subsidiary acquired does not own assets that are not used in the business.

Where the subsidiary owns assets not used in the business, the interest expense deduction is restricted to the amount relating to those assets which are used in the business.

No capital gains tax

Other than in the case of disposing of real estate, there is no taxation on capital gains in Cyprus.

Group relief

Tax relief at a corporate group level is allowed for at least seventy-five percent (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 same financial year. Losses that cannot be utilised in the current year, may be carried forward for a period of 5 years.

Intra-EU transactions

Where a corporate transaction is purely intra-EU, the provisions of the EU Parent-Subsidiary Directive operate to effectively eliminate taxation on the transaction.

Reorganisations

Reorganisations, such as mergers, demergers, exchanges of shares and transfers of assets or liabilities may be effected in a tax neutral manner and tax losses may be carried forward by the receiving entity.

Contact us to discuss your requirements.