# Cyprus

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## TAX AUTHORITIES

**1. What are the main authorities responsible for enforcing taxes on corporate transactions in your jurisdiction?**

The Inland Revenue Department (IRD) is responsible for the:

- Application and enforcement of direct tax legislation.
- Collection of public revenues.
- Double taxation agreements between Cyprus and other countries.

The IRD is headed by the Director of the Inland Revenue, who is also the Commissioner of Income Tax and the Commissioner of Stamp Duty. District collection offices are responsible for the collection of all government direct taxes.

The VAT Service is an independent body within the Department of Customs and Excise which, like the IRD, is under the overall supervision of the Ministry of Finance. It is responsible for the effective implementation of the VAT legislation and collects VAT on imports and taxable transactions. Local district offices carry out day-to-day VAT administration and enforcement.

See box, *The tax authorities*.

**2. Is it possible to apply for tax clearances or obtain guidance from the tax authorities before completing a corporate transaction? If yes, provide brief details, including whether clearance or guidance is binding.**

The Commissioner of Income Tax provides written interpretations of tax law on request. This service is not incorporated in the tax legislation and the guidance is not official, as it is in some other EU member states. However, the interpretations can be binding on the taxpayer and on the tax authorities, if the full facts are disclosed in the request.

## MAIN TAXES ON CORPORATE TRANSACTIONS

**3. What are the main transfer taxes and/or notaries' fees potentially payable on corporate transactions? In relation to each tax/fee identified, explain briefly:**

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

### Land transfer fees

Land transfer fees are payable to the Department of Land and Surveys by a buyer or donee of immovable property in Cyprus when the Department issues the title deed. The fees are based on the acquisition price or market value at the following rates:

- Up to EUR85,430.07 (about US$108,280): 3%.
- EUR85,430.08 to EUR170,860.14 (about US$216,560): 5%.
- EUR170,860.15 and above: 8%.

### Notaries' fees

Notaries' fees are not generally payable on corporate transactions.

### Stamp duty

Stamp duty is payable on written contracts recording transactions relating to assets in Cyprus or matters performed in Cyprus, regardless of where the contract is made. It becomes due on the execution of such contracts, which include:

- Asset purchase agreements.
- Debentures.
- Joint venture agreements.
- Mortgages.
- Share pledges.

- Share purchase agreements.
- Subscription and shareholder agreements.

Instruments transferring shares are exempt from stamp duty.

Parties to a contract can determine which of them is to pay the duty. If the contract is silent, the law usually requires the buyer or borrower to pay.

Stamp duty is charged on the consideration stated in the contract. Contracts stating no monetary value and ancillary corporate documents are charged at a flat rate of EUR34.17 (about US$43). Rates on principal corporate contracts are:

- 0.15% on the first EUR170,860.14 (about US$216,555).
- 0.2% on any consideration above EUR170,860.14, plus EUR256.29 (about US$324.832).

Stamp duty is capped at EUR17,086.01 (about US$21,655.5).

**Stock transfer fees**

Stock transfer fees are payable by the seller on the sale price of shares quoted on the Cyprus Stock Exchange (CSE), at a rate of 1% for sales by corporate entities.

**4. What are the main corporate and/or capital gains taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:**

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

**Capital gains tax (CGT)**

CGT is payable at 20% on gains from the disposal of immovable property in Cyprus and the disposal of shares in companies owning immovable property in Cyprus, unless the shares are listed on a recognised stock exchange.

CGT is not payable on gains subject to corporation tax (*see below, Corporation tax*). Like corporation tax, CGT is payable by reference to the calendar year under a self-assessment system.

A gain on the disposal of immovable property in Cyprus is calculated by deducting from the sale price (or in certain circumstances the market value) the:

- Acquisition cost, or market value at 1 January 1980 if the asset was acquired before that date.
- Expenditure wholly and exclusively incurred in enhancing the asset's value.
- Sale expenses, interest on loans and immovable property tax.

These costs and expenses are adjusted by indexation to take account of inflation. Current year and brought-forward losses can be offset against gains.

Gains on disposals of shares in companies in Cyprus that own immovable property are calculated by determining the amount of the proceeds of the share disposal attributable to immovable property in Cyprus and then calculating the taxable gain as above.

**Corporation tax**

The worldwide income of a company resident in Cyprus (that is, managed and controlled in Cyprus) is chargeable to corporation tax, subject to double taxation treaty relief. A foreign company's permanent establishment (PE) in Cyprus is liable for corporation tax on Cyprus-source profits in certain circumstances (*see Question 7, Corporate and capital gains taxes*).

The tax is payable at 10% on income including:

- Business profits.
- Interest.
- Profits from the sale of goodwill.
- Rent from real estate.
- Royalties.

Income may be reduced by expenditure incurred in earning the income, capital allowances, credits for unrecovered foreign tax paid and allowable losses. Losses may be transferred between companies under group relief provisions (one company must be the 75% subsidiary (direct or indirect) of the other for the whole of the tax year concerned) or carried forward against future profits.

Taxpayers must self-assess their corporation tax liability and submit a return to the Inland Revenue. The tax year is the calendar year.

**Special defence contribution (SDC)**

The SDC is payable at 15% on unearned income from:

- Dividends from a Cypriot portfolio shareholding which does not exceed 1% of the issued share capital of the company paying the dividend.
- Passive dividends paid by a company situated in a low-tax jurisdiction.
- Investment interest.
- Rent.

The SDC is not charged on dividends that one Cypriot-resident company pays to another. Under deemed distribution provisions, a company that does not distribute a dividend to its resident shareholders within two years from the end of the relevant accounting period is liable to pay the SDC on 70% of its accounting profits after corporation tax.

The Inland Revenue has confirmed that the deemed dividend rules, and therefore the SDC, apply to the following corporate transactions involving distributable profits:

- Distributions to shareholders by redemption of redeemable preference shares.
- Transfers to non-distributable reserves under a cancellation of the company's own shares.
- Repayments to shareholders under a capital reduction scheme.

There are no exemptions from the SDC.

**5. What are the main value added and/or sales taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:**

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

### Value added tax (VAT)

VAT is charged on:

- Goods and services supplied in Cyprus by businesses with an annual turnover above the registration limit, which is currently EUR15,600 a year (about US$19,770).
- Imported goods.
- The notional provision in Cyprus of certain services received from abroad.

The standard rate is 15% and there are lower rates for certain items (for example, 5% on hotel services and 0% on books). Some goods and services, such as financial services, are exempt from VAT.

VAT may be chargeable on a corporate transaction if it involves the transfer of Cypriot assets.

If certain conditions are met, no VAT is charged on transactions with persons or businesses in other EU member states.

Particular corporate transactions, such as the transfer of a business as a going concern, the issue of shares or the disposal of Cypriot immovable property, are either outside the scope of VAT or do not give rise to a supply.

There are no other sales taxes in Cyprus.

**6. Are any other taxes potentially payable on corporate transactions? In relation to each tax identified, explain briefly:**

- **Its key characteristics.**
- **What triggers it.**
- **Who is liable.**
- **The applicable rate(s).**

### Capital duty

Companies must pay capital duty at 0.6% on their authorised share capital on incorporation and on any subsequent increase in their authorised share capital.

### Tonnage tax

Tonnage tax is payable on the first registration of a merchant ship in Cyprus and annually while it remains on the register. The tax is levied on the gross tonnage of the ship, the rate depending on the type and age of the ship.

### Vessel registration fees

These fees are payable on the transfer of ownership and the mortgage of a ship to another Cypriot company, at various rates depending on the tonnage of the ship.

**7. In what circumstances will the taxes identified in *Questions 3* to *6* be applicable to foreign companies (in other words, what "presence" is required to give rise to tax liability)?**

### Transfer taxes and notaries' fees

**Land transfer fees.** Non-resident companies are liable to pay land transfer fees on the acquisition of immovable property in Cyprus (*see Question 3, Land transfer fees*).

**Stamp duty.** Non-resident companies that complete corporate transactions relating to property in Cyprus or matters performed in Cyprus may be liable to stamp duty on any written agreement recording the transaction (*see Question 3, Stamp duty*).

### Corporate and capital gains taxes

**Corporation tax.** A foreign company is subject to corporation tax if it is resident in Cyprus (that is, managed and controlled from Cyprus). Non-resident companies are indirectly liable to corporation tax on:

- Business profits attributable to a PE in Cyprus.
- Consideration for the sale of goodwill, reduced by the expenditure on the goodwill.
- Rents from immovable property in Cyprus.

A non-resident company is generally treated as having a Cypriot PE if it maintains a fixed place of business or management (such as an office or factory) in Cyprus, or if it has a dependant agent

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acting on the company's behalf in Cyprus. An independent agent acting in the ordinary course of its business or a representative office of a non-resident company does not create a taxable presence in Cyprus. Profits attributable to a company's foreign PE are determined on the basis that the foreign PE is a distinct and separate enterprise, which deals independent of the non-resident company (*see Question 4, Corporation tax*).

**CGT.** Non-resident companies are liable to CGT on gains on their disposal of taxable assets situated in Cyprus (*see Question 4, Capital gains tax (CGT)*).

**SDC.** Non-resident companies are not liable to the SDC (*see Question 4, Special defence contribution (SDC)*).

### VAT

Liability for VAT generally depends on where the supply of goods or services takes place rather than the tax residence of the supplier, although the place of supply sometimes depends on where the supplier has established its business or has a fixed establishment. A non-resident company that supplies goods or services in Cyprus may be required to register for VAT in Cyprus (*see Question 5*).

### Capital duty

Capital duty is payable only by Cypriot-registered companies (*see Question 6, Capital duty*).

### Tonnage tax

Non-resident companies are liable to tonnage tax on Cypriot-registered vessels (*see Question 6, Tonnage tax*).

## DIVIDENDS

**8. Is there a requirement to withhold tax on dividends or other distributions? If yes, provide brief details.**

Dividends payable by Cyprus-resident companies to Cyprus-resident individuals are subject to a withholding tax at source in the form of the SDC at 15%.

## SHARE ACQUISITIONS AND DISPOSALS

**9. What taxes are potentially payable on a share acquisition/ share disposal?**

### Transfer taxes

Stamp duty is levied on a share purchase agreement (SPA) or other contractual document relating to the disposal or acquisition of a Cypriot company's shares (*see Question 3, Stamp duty*).

Stock transfer fees are payable on the disposal of CSE-listed shares (*see Question 3, Stock transfer fees*).

### Corporate and capital gains taxes

**Corporation tax.** Under the transactions in securities exemption, corporation tax is not charged on a capital gain from the disposal of securities (including shares, debentures, bonds and loan stock) of a Cypriot or foreign company (*see Question 4, Corporation tax*).

**CGT.** Gains from the disposal of Cypriot or foreign entity securities are also outside the scope of CGT, except to the extent that the company whose shares are being sold owns immovable property in Cyprus (*see Question 4, Capital gains tax (CGT)*).

### VAT

VAT is not charged on the sale of shares or other securities (*see Question 5*).

### Capital duty

If new shares are created to provide consideration for a share acquisition by share exchange, capital duty is payable on the increase in authorised capital (*see Question 6*).

**10. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.**

### Stamp duty

It is generally impossible to avoid stamp duty on a contract recording a share disposal, unless the disposal can be structured as a corporate reorganisation that qualifies for reorganisation relief (*see Questions 20* and *25 to 27*).

### Corporate and capital gains taxes

**Transactions in securities.** Transactions in securities are exempt from corporation tax (*see Question 9, Corporate and capital gains taxes: Corporation tax*).

**Reorganisation relief.** A company, whether resident or non-resident, that disposes of shares in a company owning immovable property in Cyprus by means of a share exchange may benefit from the CGT exemption given by reorganisation relief (*see Questions 25 to 27*).

**11. Please set out the tax advantages and disadvantages of a share acquisition for the buyer.**

### Advantages

The tax advantages for a buyer of shares include the:

- Preservation of losses carried forward by a target company, which may reduce future corporation tax liability.
- Avoidance of VAT charged on an asset sale, if it is not a transfer of a going concern.

### Disadvantages

A disadvantage may be that the buyer is acquiring the target company with its historic and potentially undisclosed tax or other liabilities (*see Question 4*).

**12. Please set out the tax advantages and disadvantages of a share disposal for the seller.**

### Advantages

The main tax advantage for a seller of shares is the transaction in securities exemption. Most sellers prefer to dispose of shares rather than assets.

### Disadvantages

Potential disadvantages include the unavailability of capital losses on a share disposal and the CGT charge on a disposal of shares in a company which owns immovable property in Cyprus.

**13. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.**

Minimising the following duties/charges depends on whether the share transaction can be structured as a reorganisation:

- Stamp duty on an SPA or other contract recording a share disposal.
- CGT on the disposal of shares in a company which owns immovable property in Cyprus.

The minimisation of either of these charges depends on whether the share transaction can be structured as a reorganisation (*see Questions 25 to 27*).

If shares have to be issued as consideration for an acquisition or any other transaction, it may be possible to issue them at a premium to minimise the increase in nominal share capital and consequent capital duty.

## ASSET ACQUISITIONS AND DISPOSALS

**14. What taxes are potentially payable on an asset acquisition/ asset disposal?**

### Transfer taxes

Stamp duty is payable on an asset purchase agreement or other contractual document recording the disposal of assets situated in Cyprus (*see Question 3, Stamp duty*).

A buyer is also liable for land transfer fees on the acquisition of immovable property in Cyprus (*see Question 3, Land transfer fees*).

### Corporate and capital gains taxes

**Intangible assets.** A seller is liable for corporation tax on gains from the disposal of goodwill and intellectual property. The gain on goodwill is computed by deducting the cost from the disposal proceeds. Profits from the disposal of intellectual property are treated as trading income for corporation tax purposes (*see Question 4, Corporation tax*).

**Capital allowances balancing charge.** If the consideration for an asset on the disposal of a business exceeds its written down value for tax purposes after deduction of capital allowances (*see Question 15, Corporate and capital gains taxes: Capital allowances*), the excess is subject to corporation tax in the hands of the seller.

**Stock and work in progress.** The net proceeds of the disposal of trading stock or work in progress are treated for corporation tax purposes as trading income in the hands of the seller.

**Trade debtors.** If the amounts subsequently collected from trade debts exceed the price paid for those debts, the excess in the hands of the buyer of the debts is treated as profit chargeable to corporation tax.

**Immovable property in Cyprus.** A seller of immovable property in Cyprus is subject to CGT on any gain (*see Question 4, Capital gains tax (CGT)*). The proceeds of a sale of immovable property in Cyprus held as trading stock are treated as trading income and are subject to corporation tax.

**Foreign company's PE.** A foreign company's PE is liable to pay corporation tax on gains arising from the disposal of assets used in carrying out its trade (*see Question 7, Corporate and capital gains taxes: Corporation tax*).

### VAT

VAT is generally chargeable on a supply of business assets, unless the disposal is of a business as a going concern (*see Question 5*).

### Other taxes

If new shares are created to provide consideration for the acquisition of an asset, capital duty is payable on any increase in the company's authorised share capital (*see Question 6*).

**15. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.**

### Transfer taxes

It is generally impossible to avoid stamp duty or land transfer fees unless the asset disposal is a reorganisation (*see Questions 25 to 27*). Stamp duty relief may be available for documents that secure finance (for example, ship mortgage deeds or other security documents for a Cypriot-flagged vessel).

### Corporate and capital gains taxes

**Reorganisation relief.** A resident or non-resident seller of assets constituting one or more parts of its business to another company in exchange for shares in the transferee company, so that the transferee becomes a subsidiary of the seller, can take advantage of reorganisation relief (*see Questions 20* and *25 to 27*).

**Capital allowances.** A buyer of business assets is entitled to annual capital allowances of:

- 3% on commercial buildings.
- 4% on industrial buildings from the first use of the building.

- 6% on new passenger vessels.
- 8% on new cargo vessels.
- 10% or 25% on qualifying expenditure on plant and machinery.

The allowances are claimed on a straight-line basis.

**Amortisation relief.** A buyer who is within the scope of Cypriot corporation tax, including a foreign company's PE, can claim this relief on the acquisition cost of second-hand cargo and passenger ships.

**Capital allowances balancing allowance.** If the consideration for an asset on the disposal of a business is less than its written down value for tax purposes, the shortfall can be offset against the seller's trading income to reduce its corporation tax.

**Trading stock.** A tax deduction may be available to a buyer for sums paid for stock, provided that the stock is appropriated to the company's trading stock.

**Allowable losses.** Current year and brought-forward corporation tax losses, including losses from the disposal of business assets chargeable to corporation tax and losses transferred between group companies, can be offset against income arising on the sale of a business, unless both the ownership of the company and the nature of the trade have significantly changed. Current year and brought-forward CGT losses can also be offset against a capital gain from the disposal of immovable property in Cyprus as part of the business.

**Asset base cost step up.** As the buyer effectively acquires a market value base cost in the taxable asset, the profits from a subsequent disposal of the asset are calculated by reference to the increase in value after the business acquisition.

### VAT

If a seller transfers all or part of its business as a going concern to a buyer which intends to use the assets to carry on the same kind of business, the supply generally falls outside the scope of VAT. The land and building element of such a sale is also outside the scope of VAT (*see Question 5*).

**16. Please set out the tax advantages and disadvantages of an asset acquisition for the buyer.**

### Advantages

The main tax advantages are:

- Capital allowances and depreciation relief for the cost of the asset purchased, particularly intellectual property.
- The immediate tax deduction of any amount paid for stock.
- The potential acquisition of a market value base cost.

No depreciation is available on a purchase of shares and therefore buyers may prefer an asset sale if significant allowances are available (*see Question 15, Corporate and capital gains taxes*).

### Disadvantages

Possible disadvantages include the extinguishing of trading losses in the business, whereas existing losses continue to be available in a share sale.

**17. Please set out the tax advantages and disadvantages of an asset disposal for the seller.**

### Advantages

The main advantages are:

- The ability to carry forward losses on corporation tax and immovable property in Cyprus, to reduce or extinguish corporation tax and CGT liability.
- Balancing allowances.
- Any dividend exemption that avoids double taxation when the seller's profits are extracted.

### Disadvantages

An asset disposal may be disadvantageous because:

- Gains are chargeable to corporation tax.
- Balancing charges on capital allowances for assets may arise.
- Disposals of immovable property in Cyprus may give rise to a CGT charge.

(See *Question 15, Corporate and capital gains taxes*.)

**18. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.**

### Hive down

Corporation tax may be minimised or avoided on the disposal of the assets of a branch of a business by repackaging the assets through a:

- Hive down to a newly formed subsidiary (Subsidiary) in exchange for shares in the Subsidiary.
- Subsequent disposal of the Subsidiary's shares.

Reorganisation relief may reduce corporation tax and CGT arising on the hive down, and allow branch losses to be carried over, if the hive down forms part of a transfer of assets reorganisation (*see Questions 25 to 27*).

An asset hive down generally allows a seller to avoid corporation tax on the disposal of immovable property business assets outside Cyprus (*see Question 9*) by converting an asset sale into a share sale with the benefit of the transactions in securities exemption (*see Question 9, Corporate and capital gains taxes: Corporation* *tax*). However, this does not avoid CGT on the Subsidiary's disposal of immovable property in Cyprus (*see Question 4, Capital gains tax (CGT)*). The share disposal requires careful planning to:

- Preserve any tax losses hived down with the branch assets.
- Avoid the use of the substance over form doctrine by the IRD to recharacterise the share disposal as an asset disposal liable to corporation tax if, for example, the time between the asset hive down and the share disposal is too short or there are no commercial reasons for the transaction.

**EU influence: transfer pricing**

Cypriot tax law does not contain thin capitalisation rules, but it does contain transfer pricing rules applying to transactions between connected companies, including asset transfers and intra-group services. These rules permit the IRD to adjust the profits or losses of a Cyprus-resident company or Cypriot company's foreign PE for corporation tax purposes, if transactions are deemed not to have been carried out at arm's length.

Therefore, before deciding whether all branches of the business should be held in one company or separate special purpose vehicle subsidiary companies (SPVs), an undertaking with various branches must compare the cost of arm's-length transactions between SPVs within the group with the potential corporation tax liability on subsequent disposals of assets rather than SPV shares.

There are no CGT transfer pricing rules relating to immovable property in Cyprus.

**Share premium**

This can be used to avoid excessive capital duty (*see Question 13*).

## LEGAL MERGERS

**19. What taxes are potentially payable on a legal merger?**

Cypriot corporate law permits legal mergers between Cypriot public companies or between one or more EU-based public companies and a Cypriot public company to form a European company (*Societas Europaea*). Cypriot corporate law also permits a wide variety of merger options, using an arrangement with shareholders.

**Transfer taxes**

Land transfer fees are payable on the transfer of immovable property in Cyprus in a merger transaction (*see Question 3, Land transfer fees*).

Stamp duty is payable on a contract recording a merger transaction (*see Question 3, Stamp duty*).

**Corporate and capital gains taxes**

**Corporation tax.** A merger involving the disposal of shares does not attract corporation tax due to the transactions in securities exemption, but the disposal of assets and liabilities may do so, unless it qualifies for reorganisation relief (*see Questions 4, Corporation tax and 14*).

**CGT.** A merger involving the disposal of immovable property in Cyprus or shares in a company owning immovable property in Cyprus may attract CGT (*see Question 4, Capital gains tax (CGT)*).

**VAT**

A sale of assets as a going concern is outside the scope of VAT, but piecemeal disposals of surplus assets under a merger transaction are subject to VAT (*see Question 5*).

**Capital duty**

Capital duty is levied on any increase in authorised share capital required for the issue of shares as consideration in a merger (*see Question 6, Capital duty*).

**20. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.**

**Reorganisation relief**

A merger is generally characterised as a reorganisation under which a company that is dissolved without going into liquidation (dissolved company) can transfer all its assets and liabilities in:

- A sideways merger to an existing company that issues to the dissolved company's shareholders:
  - its own shares;
  - a payment representing 10% of the nominal or accounting value of the dissolved company's shares (10% Payment) (in certain circumstances).
- An amalgamation merger to a new company that issues to the shareholders of two or more dissolved companies:
  - its own shares;
  - a 10% Payment (in certain circumstances).
- An absorption merger to its parent company with a shareholding exceeding 90% which is not required to issue shares in respect of the merger.

A merger characterised as a reorganisation may benefit from reorganisation relief (*see Questions 25 to 27*) which applies to any company regardless of residence.

**21. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.**

The transaction structures used vary and must be analysed on a case-by-case basis.

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## JOINT VENTURES

**22. What taxes are potentially payable on establishing a joint venture company (JVC)?**

### Transfer taxes

Stamp duty is payable on a joint venture (JV) agreement (*see Question 3, Stamp duty*).

Land transfer fees are payable if a JV agreement involves the transfer of immovable property in Cyprus by a founding member of the JV to a JVC (*see Question 3, Land transfer fees*).

### Corporate and capital gains taxes

**Corporation tax.** There is no liability for corporation tax if the JV involves the transfer of shares (*see Questions 9 to 13*). However, corporation tax may be payable if there is a transfer of capital assets to the JVC, for example as part of a business (*see Questions 4, Corporation tax* and *14 to 18*).

If the transfer of immovable property outside Cyprus to a connected JVC is not at arm's length, the transfer pricing rules permit the IRD to adjust the profits (or losses) of both companies to an arm's-length basis (*see Question 18, EU influence: transfer pricing*).

Transfer pricing may also be relevant to the funding of a JVC. If the JVC and the lender are connected or the loan is guaranteed by a JV party and the interest charged is excessive because of the rate of interest or the amount of the loan, any interest payments over a reasonable amount are non-deductible.

**CGT.** If a JVC owns immovable property in Cyprus and the JVC founders transfer JVC shares to new members, CGT is payable on the gain attributable to that property. CGT may also be payable if immovable property in Cyprus is contributed to the JVC by a founding member (*see Question 4, Capital gains tax (CGT)*).

### VAT

No VAT arises on the transfer of any shares or assets packaged together and transferred as a going concern to the JVC (*see Question 15*), but VAT may arise on the piecemeal transfer of other assets (*see Question 14*).

### Capital duty

Capital duty is levied on the authorised share capital of a newly incorporated JVC or on any increase in its authorised capital (*see Question 6*).

**23. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.**

### Transfer taxes

It is generally impossible to avoid the land transfer fees and stamp duty payable on a JV arrangement (*see Question 3*), unless the JV can be set up as a reorganisation (*see Questions 25 to 27*).

### Corporate and capital gains taxes

**Corporation tax.** There are no specific exemptions or reliefs on the transfer of assets from a JV party to a JVC other than those for other transfers of assets (*see Question 15*). Group relief is available for any company holding 75% of the JV company. The transaction in securities exemption also applies to a disposal of shares (*see Question 9, Corporate and capital gains taxes: Corporation tax*).

**CGT.** There is no specific exemption or relief for the transfer of immovable property in Cyprus or shares in companies owning immovable property in Cyprus, unless the JV can be set up as a reorganisation (*see Questions 25 to 27*).

### VAT

Transfers of shares and immovable property in Cyprus to a JVC are outside the scope of VAT. VAT is charged on transfers of other tangible assets, unless the transfer is of a going concern (*see Question 5*).

**24. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.**

### Hive down

If a business is to be transferred by a JV member to the JVC with assets and corporation tax losses, it may be better for those assets and losses to be hived down to a Subsidiary that becomes the JVC in exchange for the issue of Subsidiary or JVC shares to the seller. The other JV members can then acquire Subsidiary or JVC shares by subscription or issue in consideration for contributing other assets or cash to the Subsidiary or JVC.

Reorganisation relief applies to the hive down to protect against corporation tax and/or CGT liability, and permits tax losses to be carried over to the JVC (*see Questions 25 to 27*). The JVC can also carry forward the carried over tax losses to set against future profits, provided that new JV members do not take a controlling stake in the JVC and the nature of the trade hived down to the Subsidiary or JVC remains substantially the same.

The transaction in securities exemption protects against corporation tax on the disposal of Subsidiary or JVC shares. Other issues affect the tax treatment of the hive down (*see Questions 18, 25 and 26*).

### Share premium

Excessive capital duty can be avoided (*see Question 13*).

## COMPANY REORGANISATIONS

**25. What taxes are potentially payable on a company reorganisation?**

Cypriot corporate law permits:

- Corporate reorganisation involving, for example, a transfer of assets and liabilities in a division or share exchange, or a conversion of capital.

- Group reorganisation involving, for example, an exchange of shares in different group companies or a hive down of a subsidiary's assets in exchange for shares.

**Transfer taxes**

Land transfer fees are payable on a reorganisation that involves the disposal of immovable property in Cyprus (*see Question 3, Land transfer fees*).

Stamp duty is levied on contracts recording the reorganisation of a company (*see Question 3, Stamp duty*).

**Corporate and capital gains taxes**

**Corporation tax.** A disposal of shares or conversion of securities from loan stock to equity under a scheme of reorganisation is not subject to corporation tax under the transactions in securities exemption (*see Questions 9 to 13*). However, corporation tax can arise on the disposal of a chargeable asset (*see Question 14, Corporate and capital gains taxes*).

**CGT.** This can arise on the disposal of immovable property in Cyprus or shares in companies owning immovable property in Cyprus (*see Question 4, Capital gains tax (CGT)*).

**VAT**

Transactions in shares are exempt from VAT and the disposal of either immovable property in Cyprus or assets packaged together as a going concern are outside the scope of VAT (*see Question 5*). However, VAT may arise on the piecemeal disposal of business assets (*see Questions 14 to 18*).

**Capital duty**

Capital duty is payable on any increase in authorised share capital, if new shares are created and issued under a scheme of reorganisation (*see Question 6, Capital duty*).

**26. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.**

**Reorganisation relief**

In addition to mergers (*see Question 20*) reorganisations include:

- Divisions, where the dissolved company transfers all its assets and liabilities to two or more existing or new companies that issue their own shares (and possibly a 10% payment) pro rata to the shareholders of the dissolved company.

- Transfers of assets, where a company without being dissolved transfers one or more branches of its activity in exchange for shares in the transferee company (*see Questions 18 and 24*).

- Exchange of shares, where a company acquires a controlling stake in another company (the target) in exchange for an issue of shares in the acquiring company to the target's shareholders and possibly a 10% Payment (*see Question 10*).

**27. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.**

The range of possible structures is very wide. Every transaction must be carefully considered in relation to its purpose and structured to take advantage of the reliefs and exemptions available (*see Question 26*).

Shares can be issued at a premium to avoid excessive capital duty (*see Question 18, Share premium*).

## RESTRUCTURING AND INSOLVENCY

**28. What are the key tax implications of the business insolvency and restructuring procedures in your jurisdiction?**

Companies are not liable to tax merely because they restructure or enter insolvency procedures.

Contracts that companies entered into before administration or liquidation are not terminated by entering into the procedure itself. Therefore, companies in the process of restructuring and insolvency are liable to pay the normal corporate tax (*see Question 4, Corporation tax*) on any profits generated until the final dissolution of the company or the end of the restructuring process.

However, it is very common for contracts to include provisions for the contract to be automatically dissolved in the event of administration or liquidation. In addition, liquidators have the right to cancel unilaterally an onerous contract to fulfil their duties and proceed with the liquidation of the company (an administrator does not have this right).

Companies that restructure or enter into a voluntary arrangement suffer no tax implications on contracts already entered into, subject to the terms of the agreed scheme of arrangement.

## SHARE BUYBACKS

**29. What taxes are potentially payable on a share buyback?**

Under Cypriot corporate law companies can redeem preference shares and repurchase ordinary shares out of distributable profits.

Where there is a reduction of a company's capital, any amounts paid or payable to the shareholders, up to the amount of undistributable chargeable income of any year arrived at before the deduction of carried-forward losses from previous years, are deemed to be distributed dividends subject to SDC (*see Question 8*). These dividends are reduced by any deemed dividend distributions, which apply where a Cypriot company fails to distribute profits within certain time limits.

**30. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.**

There are no specific exemptions or reliefs available in respect of SDC on share buybacks.

**31. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.**

Share buybacks are relatively new in Cyprus and potential avoidance structures have yet to be tested.

## PRIVATE EQUITY FINANCED TRANSACTIONS: MBOS

**32. What taxes are potentially payable on a management buyout (MBO)?**

The seller in a normal MBO sells a company or business (target) to the existing management, who usually effect the purchase through a Subsidiary that they own. A Cypriot MBO is more likely to involve a Cypriot Subsidiary acquiring a foreign target. The management usually arranges for the Subsidiary to receive debt finance from one or more banks and venture capital funds to partly fund the share or asset acquisition. Venture capital funds usually take a stake in the Subsidiary by means of convertible preference shares or convertible loan stock.

### Stamp duty

Stamp duty is levied on a contract recording an MBO (*see Question 3, Stamp duty*).

### Corporate and capital gains taxes

The tax issues arising on a standard share or business sale apply to an MBO (*see Questions 9 to 18*).

**Interest deductions.** It is important for the Subsidiary to ensure that it obtains relief for interest payments to a third party. This should not be difficult if the borrowing is on arm's-length terms.

**Group relief**. The Subsidiary generally does not have any taxable profits of its own, and its ability to pass group relief losses on to the target (which requires the target to be a 75% subsidiary of the Subsidiary) reduces the target's corporation tax liability.

**Employment income.** The personal income tax implications of awarding shares or options to management need to be carefully considered.

### VAT

This is potentially payable on the sale of business assets, but not if the sale is of a business as a going concern (*see Questions 14 to 18*).

### Capital duty

Capital duty is payable on the authorised share capital of the Subsidiary (*see Question 6, Capital duty*).

**33. Are any exemptions or reliefs available to the liable party? If yes, provide brief details.**

There are no specific exemptions or reliefs applicable to an MBO. An MBO involving the transfer of a going concern does not give rise to VAT.

## THE TAX AUTHORITIES

### Inland Revenue Department

**Head.** George Poufos (Director)

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### VAT Service

**Head.** Zeta Emilianidou (Director of the Customs and Excise Department and VAT Commissioner)

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**34. What transaction structures (if any) are commonly used to minimise the tax burden? Give brief details of the effect of each structure.**

### Absorption merger

The Subsidiary can absorb the target to avoid problems with passing group relief losses to the target (*see Question 35*). Such a transaction may be tax neutral under reorganisation relief if the Subsidiary holds a 90% stake in the target (*see Questions 20 and 26*).

### Share premium

Excessive capital duty can be avoided by issuing shares at a premium (*see Question 13*).

**35. Please summarise any proposals for reform that will impact on the taxation of corporate transactions.**

The Cypriot tax regime was overhauled in 2002 in order to join the EU. It is generally agreed to be up to date and effective, and there are currently no specific proposals for its reform.

## CONTRIBUTOR DETAILS

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