

## Non-Domiciled Tax Residence Status, Tax Residency Rules and Other Tax Advantages for individuals now becoming Cyprus Tax Residents

### Introduction

Following recent changes to the Cyprus tax legislation for the improvement and simplification of the Cyprus tax system, as well as to remain a highly compliant and attractive jurisdiction, a number of new laws have passed in July 2015, one of which is the introduction of the concept of the **Non-Domiciled Tax Resident** Individual status.

The introduction of the **Non-Domiciled Tax Resident Individual** status could be considered as a viable solution for high-earners (both EU and non-EU) to optimize their taxes, relocate to Cyprus and use Cyprus as their business center, thus creating real substance.

Furthermore, irrespective of domicile, foreigners becoming Cyprus tax residents enjoy an array of other significant tax advantages; with the main ones being outlined below.

### Benefits of being Non-Domiciled Tax Resident

According to the provisions of the Cyprus tax laws, an individual who is a tax resident of Cyprus under the provisions of the Income Tax Law (either under the 183 days rule or the 60 days rule, explained below) but is "non-domiciled" in the Republic of Cyprus, will be exempt from Special Defense Contribution (SDC).

As per the SDC law, dividends and interest income earned by individuals who are tax residents and domiciled in Cyprus, are subject to tax at the rate of 17% and 30% respectively, regardless of the source of the income (i.e. from Cyprus or from abroad). Rental income is also subject to tax at the rate of 3% on 75% of the gross amount. Therefore, **tax residents but non-domiciled individuals will enjoy dividend, interest and rental income free from SDC tax in Cyprus (tax may arise in the other country, subject to the double tax treaty in place with the country from which the dividends and interest are paid out of).**

#### *Domiciled tax resident individual*

Type of Income	Income Tax	SDC
Dividends	Exempt	Taxable – 17%
Passive Interest Income	Exempt	Taxable – 30%
Rental Income	Taxable (Normal rates)	Taxable at 3% on 75% of gross rental income

***Non Domiciled tax resident individual***

Type of Income	Income Tax	SDC
Dividends	Exempt	Exempt
Passive Interest Income	Exempt	Exempt
Rental Income (*)	Taxable (Normal rates)	Exempt

\*: Any rental income from Cyprus or abroad: rental income from property situated in Cyprus will be exempt from defense tax but is still taxable under income tax for individuals (certain deductions available); rental income from property situated outside Cyprus is tax free in Cyprus.

The SDC law also included provisions for the deemed distribution of profits of Cypriot tax resident companies where the shareholders (beneficiaries) of such companies are also Cyprus tax resident individuals, as well as domiciled in Cyprus. Therefore non-domiciled resident individuals can benefit from this new status in the following respect also.

**Non-Domiciled persons**

In order to understand the concept of 'domiciled in Cyprus', one must look to the Wills and Succession Law Cap. 195. In accordance with the Wills and Succession Law, can be considered as domiciled based on the two following cases:

- **Domicile of origin** (i.e. the domicile received by an individual at birth. More specifically, for a legitimate child, who was born when the father was alive, the domicile of origin of the child is the domicile of origin of the father, at the time the child was born); and,
- **Domicile of choice** (i.e. the domicile acquired by an individual by establishing physical presence in a particular country with the intention of a permanent or indefinite residence in such a country)

A person who has a **domicile of origin** in Cyprus, will be treated as "domiciled in Cyprus" for SDC purposes, with the exception of:

- An individual who has obtained and maintained a **domicile of choice** outside Cyprus under the provisions of the Wills and Succession Law, provided that this individual was not a Cyprus tax resident for a period of at least 20 consecutive years prior to the tax year in question; or
- An individual who was not a Cyprus tax resident for a period of at least 20 consecutive years immediately prior to the entry into force of the introduced provisions (i.e. prior to 16/07/2015, between the years 1995 and 2014 inclusive).

Irrespective of his/her domicile of origin, an individual who remains a tax resident of Cyprus for a period of at least 17 years out of the last 20 years prior to the tax year in question, shall be deemed as domiciled in Cyprus for the purposes of the SDC Law from the 18th year.

## Tax Residency rules for Individuals

### The "183 day rule"

Cyprus has adopted a residency-based system of taxation, whereby physical presence in Cyprus exceeding 183 days in a tax year (1<sup>st</sup> January to 31<sup>st</sup> December) will constitute tax residency for individuals. Therefore, if an individual is physically present in Cyprus for more than 183 days in a tax year, s/he will be considered a tax resident of Cyprus in that tax year. Consequently, if the individual is physically present in Cyprus for less than 183 days in a tax year, he/she will be considered to be a non-Cyprus tax resident in that tax year.

### The "60 day rule"

As of 1<sup>st</sup> January 2017, the above tax residency rules have been amended to also provide that, an individual who:

- i) Does not reside in any other country, for one or more periods exceeding in aggregate 183 days in the same tax year **and**
- ii) Is not tax resident in any other country for the same year, **and**
- iii) Stays in Cyprus for at least 60 days in the tax year, **and**
- iv) Exercises a business and/or is employed in Cyprus and/or holds an office with a Cyprus tax resident company (as a director) at any time during the tax year, ***provided that such is not terminated during the tax year (see below), and***
- v) Maintains in the tax year a permanent residential property in Cyprus which is either owned or rented by the individual.

**Is deemed as a resident in Cyprus in that tax year, in accordance to the "60-day rule".**

The law is further amended to clarify that an individual that cumulatively meets all the above conditions shall not be treated as a Cyprus tax resident in the tax year, if during that year the exercise of any kind of business in Cyprus and/or employment in Cyprus and/or holding of an office with a tax resident person in Cyprus, is terminated.

For the purposes of both the "60 day rule" and the "183 day rule", days in and out of Cyprus are calculated as follows:

- The day of departure from the Republic is deemed to be a day outside of the Republic;
- The day of arrival in the Republic is deemed to be a day in the Republic;
- The arrival in the Republic and the departure from the Republic in the same day is deemed to be a day in the Republic;
- The departure from the Republic and the arrival in the Republic in the same day is deemed to be a day outside the Republic;

## Other tax advantages for individuals who now become Cyprus Tax Residents

### Exemptions regarding employment income

Individuals who were based overseas and who were not Cyprus tax-residents before the commencement of their employment in Cyprus, may be entitled to one (but not both simultaneously) of the following exemptions:

#### The 50% exemption rule

- Individuals who take up employment in Cyprus, commencing as from 1 January 2012 onwards, with an annual gross income in excess of €100.000 will be eligible for an exemption from taxation of 50% of their gross income for a period of 10 years, commencing from the year of employment.

Note: For employments commencing as of 1 January 2015, the exemption does not apply:

- In case the said individual was a Cyprus tax resident for 3 (or more) tax years out of the 5 tax years immediately prior to the tax year of commencement of the employment or
- In the case the employee was Cyprus tax resident in the year preceding the tax year of the commencement of employment.

#### The 20% exemption rule

- Individuals who take up employment in Cyprus and were not tax resident in Cyprus prior to commencing such employment, will be eligible for an exemption from taxation of 20% of their income or €8.550 (whichever is lower) from any employment which is exercised in Cyprus (*This exemption is usually used for employments with remuneration less than €100.000, as the 50% exemption cannot be used together with the 20% exemption rule*).

Note: This exemption applies for a period of five (5) years commencing from 1<sup>st</sup> January of the year following the year of commencement of such employment and notwithstanding this, it is applied up to and until the year 2020 (included).

### Overseas Pensions

- Pension received in respect of past employment outside Cyprus are exempt from tax up to €3.420 and taxed at 5% thereafter. The taxpayer may opt to be taxed in the normal way, where this special mode of taxation of income results to a higher tax liability (this selection can be made from year to year).

### Other Considerations

- 100% exemption on remuneration for salaried services rendered outside Cyprus for more than 90 days in a tax year to a non-Cyprus resident employer.
- 100% exemption on lump sum repayments from life insurance schemes or from approved provident funds.
- No inheritance and gift taxes.
- No wealth taxes.
- No immovable property taxes.
- In case of Cyprus immovable property acquired up to 31st December 2016, profit from subsequent future disposal of such property will be exempt from the 20% Capital Gains Tax.
- Capital gains from the sale of immovable property situated outside Cyprus is exempt from tax.

- Capital gains tax is only imposed on the sale of immovable property situated in Cyprus as well as on the sale of shares directly or indirectly held in companies (other than listed shares) in which the underlying asset is immovable property situated in Cyprus.

### **Anti-avoidance provisions**

In case where an individual domiciled in Cyprus transfers assets to an individual non-domiciled in Cyprus who is a relative up to the third degree, and the Commissioner considers that one of the main reasons for the transfer was to avoid the payment of defense tax, then the income arising from such assets will be subject to defense tax, which can be collected either from the transferor or from the transferee.

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