



The use of Cyprus structures in international tax planning

Tax and other advantages
Tax planning ideas - structures

Terms of reference

Purpose - basis of preparation - assumptions:

- This presentation briefly sets out a summary of the advantages / features of the Cypriot tax system (pages 4 – 24) which are of particular interest to international clients and professional colleagues, a number of tax structures (pages 25 – 36) currently being used by international clients as well as some practical structuring issues (pages 37 – 39)
- Used as (i) a short “pre-meeting” briefing presentation, usually sent by email, or (ii) as a presentation to be discussed during a meeting with a client or a professional colleague – intermediary or (iii) simply as a short summary for general informational purposes sent to clients or professional colleagues
- Intended to be short. It should only take a few minutes to read. It does not constitute advice and should not form the basis of any structuring decisions, without first obtaining proper professional advice.
- Useful in deciding on whether to use Cyprus legal entities in your / your clients’ tax structures

Terms of reference

Purpose – basis of preparation - assumptions:

- Written in a simple-to-understand language to address clients as well as professional colleagues. Overuse of technical (legal / tax) terminology is avoided
- Assumed throughout that the client has no income from sources within Cyprus (international client case)
- Assumed throughout that the ultimate beneficiaries of the structures are not resident for tax purposes in Cyprus (international client case)
- Only ideas are discussed (in terms of specific structures), not specific solutions which should be discussed with your designated FBS International Tax Partner/s

Tax Advantages

- Lowest corporation income tax rate in the EU (10%) with a number of interesting tax structuring possibilities existing to achieve significantly lower effective rates
- A regime **especially advantageous for holding / investment, finance and royalty routing structures**
- **Sales of securities – trading or investing in shares and other securities is exempt from all taxation** in Cyprus – ideal for dealing and investment structures

Tax Advantages

- **Thin spreads of profit** on all structures / transactions are acceptable by the Cypriot Tax Authorities (spreads on trading, interest and royalty routing transactions)
- **Access to the EU Direct tax directives – no withholding tax on dividends, interest and royalties from EU Member States** (s.t. the Directives' conditions and local anti-avoidance legislation)
- Exciting tax planning potential in a number of international structures
- **Cypriot (Cyprus-registered) Non Resident Companies** are possible. Cyprus companies which are managed and controlled outside Cyprus – A very interesting structure used for **zero-tax trading** (but no access to double tax treaties). Exempt from tax in Cyprus. [*Can also (i) obtain EU VAT number and (ii) become tax resident in any given year – to access Cyprus's treaties - by simply altering the management and control arrangements*]

Tax Advantages

- A wide and in many cases extremely advantageous double tax treaty network (especially with regard to the treaties with Russia, CIS, Central and Eastern Europe and India)
- No exit, liquidation or net worth taxes
- **No withholding taxes**, irrespective of the status of the foreign recipient, on any form of outgoing income (dividends, interest, royalties and other payments)
- Cyprus is an **“ideal entry and exit route” into and out of the EU** in this respect (no withholding taxes)

Tax Advantages

- Tax haven companies are often used “above” and “below” a Cyprus structure
- **No capital gains taxes** (only imposed when Cyprus real estate is disposed of)
- **Exemption of foreign dividend income** (participation exemption) s.t. very “easy-to-satisfy” conditions
- Capital duty that can easily be “structured down” to nominal levels
- Exemption of overseas PE profits (s.t. the same conditions as those applying to dividend income conditions) and PE loss set-off!

Tax Advantages

- Shipping income as well as the emoluments of the officers or crew of a Cyprus ship are tax-free
- The Cyprus International Trusts Law of 1992 and the Trustees Law (modeled on the 1925 UK Trusts Law) provide a vehicle (the **Cyprus International Trust**) which is very useful for tax and non tax purposes.
- A unique and interesting feature of the Cyprus International Trust is that the client can register a Cyprus resident company to act as a trustee, settlor or beneficiary (effectively to indirectly, via the company, act as a trustee).

Tax Advantages at a glance

- Unilateral credit relief
- Group relief for losses and unlimited loss carry forward
- Absence of CFC legislation
- Absence of Thin Capitalisation Rules
- No substance requirements
- No specific anti-avoidance provisions

Tax Advantages

- Simplicity of system – not a lot of “flaws” requiring further “structuring out”. No need for complex tax structuring, leaving time for proper company administration & management
- Simple & tax effective exit strategies available
- Possibility to elect any functional currency
- Stamp duty capped at low levels
- Easy migration of legal entities into and out of Cyprus from/to other jurisdictions

Adoption of EU Directives into Cyprus Law

[Tax Advantages]

Parent-subsidiary Directive

- No withholding tax on the payment of dividends to any non residents
- Foreign dividends exempt - s.t. very “easy-to-satisfy” conditions
- No transitional period needed – immediate effect
- No minimum participation/shareholding

Adoption of EU Directives into Cyprus Law

[Tax Advantages]

Parent-subsidiary Directive

- No minimum holding period rules
- Tax credit for tax withheld abroad and underlying profits tax
- Tax credit for underlying taxes paid by EU subsidiary or ANY lower level EU subsidiaries

Adoption of EU Directives into Cyprus Law

[Tax Advantages]

Interest / Royalties Directive

- No withholding tax on the payment of interest to any non residents
- No transitional period needed – immediate effect
- 25% minimum participation/shareholding required in the case of royalties
- No minimum holding period rules
- Interest taxed depending on nature

Adoption of EU Directives into Cyprus Law

[Tax Advantages]

Interest / Royalties Directive

- Active interest income is subject to corporation tax (10%) and passive interest income at a 15% effective rate
- Group finance activities are deemed as active interest income and are subject to corporation tax (10%)
- Royalties are subject to corporation tax (10%)
- Tax credit for tax withheld abroad

Adoption of EU Directives into Cyprus Law

[Tax Advantages at a glance]

Merger Directive

- Applies to any reorganisation
 - Merger
 - Division (incl. partial division)
 - Transfer of assets
 - Exchange of shares

- Involves companies resident and not resident

Other Advantages

- Member of the European Union
- Full OECD and EU compliance
- A tax system that is stable (last tax reform in 2002) and “here to stay” without any further changes on the horizon
- Not a tax haven
- UK legal system (ex British Colony)
- Flexible and modern Legislation

Other Advantages

- Excellent and mature professional and commercial infrastructure
- Mature financial and banking sector
- Investor-friendly tax authorities
- Low operation costs
- Very large expatriate community

Definitions and tax base

“Tax Residence”

- When applied to a company, means one whose *management and control* is exercised in Cyprus

Definitions and tax base

“Management and control”

➤ No definition exists in the law

➤ In practice, as a minimum:

- the place where the majority of the members of the BOD reside (FBS can provide Cypriot directors)

- the place where the majority of the board meetings take place and the significant decisions taken (a number – all, if possible - of the BOD meetings should be organised in Cyprus every year with the foreign directors flying in to attend)

Definitions and tax base

“Management and control” – cont’d

- BOD to be a decision making forum
- No dominant directors or shareholders
- No general powers of attorney (based on case law amount to “migration of control” as well as posing a risk of establishing a dependant agent permanent establishment in the country of the attorney)

Definitions and tax base

“Management and control” – cont’d

- Bear in mind that the challenge here on the tax residence is going to come from outside Cyprus, so “reinforcing” tax residence by establishing proper management and control in Cyprus is essential
- **Substance, business purpose and proper company operation – administration issues** (*such as but not limited to proper books and records, financial statements and tax and other returns prepared/submitted in Cyprus in a timely fashion, actual payment of tax in Cyprus*) **should also be considered in conjunction with management and control** in your structures

Definitions and tax base

“Management and control” – cont’d

- All the above are very important (especially *post – Cadbury Schweppes*) if we need EC Treaty protection in our structures
- FBS can provide expert advice on all the above issues

Imposition of tax

Tax resident companies

On income accruing or arising from sources both within and outside Cyprus
(worldwide basis)

Non-resident companies

On income accruing or arising from income within Cyprus only

Corporation income tax rates

- Companies 10% (lowest in the EU)
- Ship management companies 4.25% (or, by election, special shipmanagement tonnage tax)

Tax planning ideas – structures

Introduction - background

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- In 2003, Cyprus had a respectable 30 year history as an international financial centre. However, it did not quite yet have the history, reputation and image of the traditional European tax planning jurisdictions (e.g. Switzerland, Luxembourg, The Netherlands)
- However, since its EU accession and the enacted tax reform of 2002 *Cyprus is “catching up” pretty fast on its rivals...* (also in many cases Cyprus entities are used “together” with other entities, mainly Dutch or Luxembourg entities, in order to achieve the objectives of the structures / optimise the tax position of a Dutch or Lux structure)

Tax planning ideas – structures

Introduction - background

- Cyprus's tax system is specifically structured so as to maximise the tax advantages while remaining EU and OECD compliant
- In other words, although there are significant “non tax factors” to Cyprus's favour, Cyprus's competitive advantage in relation to its rival jurisdictions remains based predominantly on the “technical superiority” of its tax system
- **In this sense, we are confident in saying that Cyprus entities can usefully be employed in almost every structure**
- ...And in cases where Cypriot entities cannot be used *directly*, simple further structuring can easily achieve the desired results ensuring that Cypriot entities are used together with other entities as part of an overall structure

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- Use a Cypriot company as a “**top holding company**” to invest in treaty or EU subsidiaries (foreign dividends exempt from tax, no capital gains, no withholding taxes, access to double tax treaties and EU Directives, favourable PE provisions – see also other tax advantages suited to holding companies). **Result: zero or minimum tax leakages = maximum post-tax return on investment**
- Use a Cypriot company as an “**intermediate holding company**” to invest in treaty or EU subsidiaries (foreign dividends exempt from tax, no capital gains, no withholding taxes, access to double tax treaties and EU Directives, favourable PE provisions – see also other tax advantages suited to holding companies). **Result: zero or minimum tax leakages = maximum post-tax return on investment**

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cypriot Construction companies** performing construction or related activities in other countries in order to take advantage of the PE article of the treaty between Cyprus and that other country (period before a PE is constituted) and which aim to perform work of a duration less than the *critical period*, essentially giving Cyprus the taxing right to that income and no taxing right to the country where the work is performed.
- In this case (and if the PE project lasts for > 3 months) the profits are also exempt in Cyprus (Cyprus tax law). In addition, there is no withholding tax on the outgoing dividends, interest or royalties from Cyprus to the ultimate investor.
- **Result = 0% tax.**

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cypriot Real Estate Companies** owning foreign subsidiaries in other countries (which in turn hold foreign real estate) – using the double tax treaty provisions of the treaty between Cyprus and that other country to exempt from tax the profit on the disposal of shares in the subsidiary – the subsidiary is sold rather than *the property* (essentially giving Cyprus the taxing right to that gain on the sale of shares and no taxing right to the country where the gain is realised).
- In Cyprus, the profit on disposal of shares is tax exempt. In addition, there is no withholding tax on the outgoing dividends, interest or royalties from Cyprus to the ultimate investor.
- **Result = 0% tax.**
- *(“Company per property” structures are widely used*
- *(Depending on local CGT rules 2 tier structures may be necessary)*

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cypriot Employment Companies** - Cyprus company employs staff, charges arm's length at a cost plus and arranges for the staff to work in a high tax operating company **Result: 1. Profits/tax reduced in operating high tax country 2. Employee costs are reduced as employees pay less tax and social insurance contributions**
- Careful consideration should be given to employment contracts and local rules in the country of performance of work

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cyprus Royalty Companies** – Used usually as intermediary licensing vehicles to ultimately license IP to high-tax operating treaty or EU companies. Use of treaty network / EU Directives. Credit relief for withholding taxes. In addition, there is no withholding tax on the outgoing dividends, interest or royalties from Cyprus to the ultimate licensor / investor. **Result: Profits / taxes are reduced in the operating country leaving a very small margin to be taxed at 10% in Cyprus = minimum tax leakages = maximum post-tax return on investment**

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cyprus Group Financing Companies** – Used usually as intermediary financing vehicles to ultimately finance high-tax operating treaty or EU companies. Use of treaty network / EU Directives. Credit relief for interest withholding taxes. In addition, there is no withholding tax on the outgoing dividends, interest or royalties from Cyprus to the ultimate investor - lender. **Result: Profits / taxes are reduced in the operating country leaving a very small margin to be taxed at 10% in Cyprus = minimum tax leakages = maximum post-tax return on investment**

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cypriot Company trading in shares and other securities** (trading or investment activities) - Profit / gain is exempt from tax in Cyprus.
- Use of treaty network / EU Directives for dividend income and capital gains: using the provisions of the double tax treaty between Cyprus and other countries to exempt from tax the profit on the disposal of shares (essentially giving Cyprus the taxing right to the gains and no taxing right to the country where the shares are registered – source country).
- In Cyprus, the profit on disposal of shares is tax exempt. Credit relief is available for any dividend withholding taxes. In addition, there is no withholding tax on the outgoing dividends, interest or royalties from Cyprus to the ultimate investor.
- **Result: 0% tax in Cyprus for the gains = minimum tax leakages = maximum post-tax return on investment**

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cypriot (Cyprus registered) Non Resident Company** – A very interesting structure used for zero-tax trading (but no access to double tax treaties). **Managed and controlled outside Cyprus** (FBS can provide advice on how to achieve that).
- Exempt from tax in Cyprus.
- Can register for VAT and use an EU VAT number and the reputation of Cyprus (EU Member State).
- *[Can also become tax resident in any given year – to access Cyprus’s treaties - by altering the management and control arrangements]*
- **Result: 0% tax in Cyprus + better status than just a simple “tax haven” company + EU VAT registration.**

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **UK (UK registered) Non Resident Company** – UK company managed from Cyprus (Cyprus tax resident company). A very interesting structure used in order to combine UK's prestige status with Cyprus's tax advantages (a "UK face" with Cypriot tax benefits).
- Managed and controlled in Cyprus via the setting up of a branch in Cyprus (the "managing branch") and other appropriate structuring (FBS can provide advice on how to precisely achieve that). Taxed in Cyprus on worldwide income (and in the UK for UK-source income).
- Legal basis found in UK domestic law (FA s.249-251) and the Cyprus – UK tax treaty (tie-breaker clause).
- **Result: UK status combined with Cypriot low-tax burden.**

Tax planning ideas - structures

{For further information please ask us for FBS-issued brochures & reports focusing on specific structures / areas OR discuss your needs specifically with your designated FBS International Tax Partner}

- **Cypriot Nominee Structures** – Used for trading and other activities. These structures typically involve a Cypriot company acting as a nominee – undisclosed agent of an overseas principal (usually registered in a “tax haven” jurisdiction) in international trading transactions.
- Cypriot tax is paid only on the commissions charged by the Cypriot nominee company to the “tax haven” principal, usually expressed as a small % of revenue. The rest of the profit from the transactions ends up in the books of the principal, taxed at much lower rates (or often 0%)
- Careful consideration in accessing treaties (re: treaty benefits) as they are not strictly speaking the beneficiaries of the income
- **Result: Very low effective tax burden, significantly lower than 10%**

Structuring issues – the Cypriot perspective

**FBS'S methodology (our quality control system: expert professional staff aided also by the use of relevant checklists and proper review procedures) ensures that all the items below that are marked by an asterisk are addressed properly*

- **Plan ahead** (avoid “last minute” structuring or administration)

- Planning stage - * Address adequately all company law issues - financial assistance issues, memorandum and articles issues to expressly give power to the company to effect the intended transactions, *ultra vires* issues relating to the specific transactions, director power issues, proper registration of charges and pledges, to name but a few

- Planning stage - * Address adequately all financial reporting (group consolidation issues) and practical issues as well as transactional tax issues for the intended transactions (e.g. capital duty, stamp duty)

Structuring issues – the Cypriot perspective

·FBS'S methodology (our quality control system: expert professional staff aided also by the use of relevant checklists and proper review procedures) ensures that all the items below that are marked by an asterisk are addressed properly

- Planning stage - Substance arrangements – requirements should also be seriously considered, especially post – Cadbury Schweppes, depending on the jurisdiction where a potential challenge is most likely to come from
- Planning stage - Management & control is key and due consideration should be given – see details on slides 18 - 22
- Planning stage - Business & economic purpose of entities should be given due consideration
- *Implementation – operation – corporate secretarial: Proper execution and documentation of all aspects is a must

Structuring issues – the Cypriot perspective

**FBS'S methodology (our quality control system: expert professional staff aided also by the use of relevant checklists and proper review procedures) ensures that all the items below that are marked by an asterisk are addressed properly*

- *Proper company operation and administration
- *Compliance with all relevant Company Law, Tax Law, Social Security & other Law and Regulation provisions / deadlines
- *Keep proper books and records, submit audited accounts – financial statements and tax returns
- Pay tax
- **Be reasonable!...**

{Review the structure periodically and implement any necessary changes necessitated by changes in laws, treaties, regulations or new developments affecting the company and/or the transactions}

Registration Procedures, Fees & Other Questions

- Details on www.fbscopyprus.com (our site)
- Discuss your specific needs with your designated FBS International Tax Partner OR Aris Kotsomitis (0035722456363 / aris.kotsomitis@fbscopyprus.com)
- **Professional Intermediaries** - Contact Aris Kotsomitis (0035722456363 / aris.kotsomitis@fbscopyprus.com) for details of our intermediary program / terms of business
- Contact Ms Elena Charalambous (0035722456363 / elena.charalambous@fbscopyprus.com) – Manager / Client Liaison Dept. {to apply for Cypriot company registration}