Company formations in Cyprus

Stella Strati is an Advocate at Patrikios Pavlou & Associates LLC

Cyprus as an international financial centre

Cyprus is situated at the crossroads of three continents; Europe, Asia and Africa. This strategic geographic location, together with its excellent infrastructure, the strong pro-business attitude of the Cyprus people, the highly skilled human resources and the comprehensive double tax treaty network, have established Cyprus as a reputable International Financial Centre and an excellent place to establish tax efficient set ups.

The 2004 accession of Cyprus to the European Union (EU) resulted in the reformation of the Cypriot tax system and the relevant legislation; which became EU and OECD compatible. Consequently Cyprus is now recognised as not being a tax heaven, but rather a tax incentive jurisdiction. The corporate tax rate of Cyprus is the lowest in the EU and the Cypriot tax regime secures many exceptions. Furthermore, the island's double taxation treaties with over 40 jurisdictions remain in force and continue to provide ample opportunities for international tax planning whilst also minimizing legally overall taxes for business and individuals. In addition the zero tax on inbound and outgoing dividends enjoyed by non resident ultimate beneficial owners even from non treaty countries is a strong attraction for investors to use Cypriot holding and investment structures.

"The benefits offered by the Cypriot corporate and tax legislation cannot be disregarded by potential international investors, who purport to take advantage of the relevant international tax planning and tax minimizing opportunities"

As a corollary a new gate to international investors has been opened. Cyprus is now firmly established as the ideal gateway for investment both in and out of the EU, something which is realized through the establishment and worldwide use of Cyprus companies.

Cyprus companies legislation

The legal system of the Republic of Cyprus was established when the island was a British colony. The Cypriot laws are heavily influenced by the British legal system; nevertheless, the current applicable legislation has been extensively amended and developed to meet the requirements and needs of the business community.

The legislation relating to company formation is Cyprus Companies Law, Cap. 113, which initially mirrored the provisions of the UK 1948 Companies Act. This law has been amended repeatedly in order to incorporate all relevant European directives; nonetheless it has not followed the subsequent amendments of the UK legislation exclusive to the UK.

The motivation behind many changes made to the said Companies Law was to enhance business efficiency by saving time, simplifying processes and increasing competitiveness. The legal infrastructure of Cyprus is backed up by a modern banking and finance sector, which is able to support multinational enterprises operating here and offers a secure and well regulated environment to businesses.

The Cypriot Companies Law applies to both public (listed and non-listed) and private limited companies and includes a wide range of provisions covering the incorporation, functioning, administration and dissolution of a Cyprus company. It also contains the Table A regulations, which set model Articles of Association that can be fully or partially adopted by either private or public companies.

However when incorporating a company other laws may also be of relevance. For example, the Assessment and Collection of Taxes Law, provides that all newly incorporated companies are required to register with the Cypriot tax authorities immediately after their incorporation or the latest within 60 days from their incorporation.

Moreover since the enactment in 1996 of the Prevention and Suppression of Money Laundering Activities Law, which, as amended, is in conformity with the European Directives in the anti-money laundering field, all law firms, banks, accountants and other service providers in Cyprus have to comply with certain formalities and implement specific strict procedures intended to prevent the use of their services for money laundering. These procedures relate inter alia to new clients identification, especially to new international clients and they are also performed in relation to natural or legal persons purporting to incorporate a new Cypriot corporate entity.

Procedure to incorporate a Cyprus company

The initial step when incorporating a new Cyprus company is to obtain the approval for the name of the company from the Registrar of Companies. The relevant application is filled electronically and the time usually required to obtain the corresponding approval is 3 to 4 working days.

Upon receiving the approval for the name of the company, a hard copy of the Memorandum and Articles of Association, signed by the first shareholders of the company together with forms regarding the company's registered office address, directors and secretary, should be filed with the Registrar of Companies. For this part of a company's registration process the paper filing method is still used. From the date of submission of the above-mentioned documents the time required for the completion of the registration procedure is normally 10 working days.

Once the formation process is concluded the Registrar of Companies issues a full set of corporate certificates, namely certificates of incorporation, shareholders, directors and secretary and registered office, together with the certified original copy of the Memorandum and Articles of Association.

Due to the fact that the process of forming a new Cypriot company requires some time to be completed, as described above, the majority of law firms and service providers in Cyprus maintain ready-made (shelf) companies that can be utilized immediately upon their acquisition. In any case once someone obtains a shelf company, any necessary changes can be effected within a day, while the relevant certificates can be received by the Registrar of Companies in due course.

Therefore in cases of urgency the vehicle of an already incorporated shelf company provides the appropriate solution to those purporting to use a new Cyprus company for a proposed transaction.

Cypriot corporate tax regime

Cyprus has one of the most favourable corporate tax regimes throughout Europe. The corporate tax rate is 10%, which is currently the lowest in the EU, and it is imposed on net profits after deducting all business expenditure incurred. In any case expenses incurred wholly and exclusively for business purposes – such as employees' fees and advertising, promotion and management costs – are allowable for deductions. Note however, that where the company is involved both in activities producing taxable and non taxable income the expenses might be apportioned between the two activities and only partially allowed to be deducted from the taxable income.

Moreover, dividends and other profit distributions received by Cyprus tax resident companies from foreign subsidiaries are exempted from tax. In addition, Cyprus does not impose any withholding tax on dividends paid by a Cyprus company to non-tax resident shareholders, including both individuals and corporations.

Furthermore, any profits arising on the disposal by a Cyprus tax resident company of shares in a foreign company is exempted from any tax in Cyprus provided that the shares disposed qualify as *"titles"* under the relevant provisions of the Cyprus tax legislation. *"Titles"* are defined as shares, bonds, debentures founder and other titles of companies or legal persons and rights thereon. In addition the disposal of the shares in the Cyprus company itself is completely tax exempt save, where the company holds immovable property in Cyprus.

An elaborate network of double taxation treaties usually results in a great leverage to reduce withholding taxes on incoming dividends. A sophisticated network of double taxation treaties is thus a key factor in the ability of a territory to develop as an attractive holding company jurisdiction; Cyprus is considered exactly that. Cypriot holding companies can rely on its extensive and expanding network of now more than 40 double taxation treaties, the effect of which is to obtain a reduction in withholding tax rates on dividends remitted to Cyprus from the jurisdiction of a subsidiary thereof.

"Cyprus is now firmly established as the ideal gateway for investment both in and out of the EU, something which is realized through the establishment and worldwide use of Cyprus companies"

Furthermore the general effect of these treaties is the avoidance of the double taxation of income arising in either of the two countries. Once a Cypriot company obtains a Cyprus Tax Residency Certificate it can utilize such abroad for the purposes of avoiding double taxation.

Nonetheless for a company to take advantage of the corporate tax regime of Cyprus, it should be a Cypriot tax resident. A company is considered to be a Cypriot tax resident when its management and control is exercised in Cyprus. No definition of *"management and control"* is provided by the Cypriot tax legislation, but this is rather a concept that developed through court decisions and the practice of the Cypriot department of income tax. In each case all the relevant facts are taken into consideration to determine where management and control actually is and there is no single requirement that would conclusively decide this.

According to the current criteria the effective management and control of a company is exercised in Cyprus when the majority of the directors are Cypriot residents, when the meetings of the Board of Directors are held in Cyprus, all issues pertaining to the strategic and operational management of the company are resolved here and in general all the significant decisions concerning the company are taken in Cyprus. Moreover additional requirements may include that documents are signed in Cyprus, copies of all documentation are kept in Cyprus and that the company has real substance in Cyprus rather than merely having a postal address.

In any case no real economic activity is required to take place in Cyprus for the company to be considered as a Cypriot tax resident.

Conclusion

The advantages described above indicate that Cyprus is rightfully considered as a reputable international business centre. Besides, the straightforward and undemanding corporate and tax regimes of the island facilitate international investment through the formation and use of Cypriot corporate entities.

The benefits offered by the Cypriot corporate and tax legislation cannot be disregarded by potential international investors, who purport to take advantage of the relevant international tax planning and tax minimizing opportunities; especially amidst the current worldwide economic recession. ■

For more information please contact:

Patrikios Pavlou & Associates LLC
Stavros Pavlou, Senior & Managing Partner
Tel: +357 2587 1599
Fax: +357 2534 4548
Email: info@pavlaw.com
www.pavlaw.com