

Tax Treaty Between Cyprus and Netherlands – Details

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Report from Dr René Offermanns, Principal Associate, IBFD

Details of the [Cyprus - Netherlands Income Tax Treaty \(2021\)](#), signed on 1 June 2021, have become available. The treaty is not only applicable to the European part of the Netherlands, but also to the Caribbean part, specifically the BES-islands consisting of Bonaire, St. Eustatius and Saba. The treaty was concluded in the Dutch, English and Greek languages. In the case of divergence, however, the English text prevails. The treaty will be interpreted in line with the [OECD Model \(2014\)](#) and generally applies from 1 January 2024.

The maximum rates of withholding tax are:

- 15% on dividends, but 0% if the beneficial owner is a company which holds directly at least 5% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend and recognized pension funds. The rate is 15% for dividends paid by an exempt Investment Institution (*Vrijgestelde Beleggingsinstelling*) to beneficial owners resident in Cyprus. The reduced withholding tax rates do not apply to dividends paid to an exempt Investment Institution. The BES Islands are authorized to tax dividends in line with their domestic law;
- 0% on interest; and
- 0% on royalties.

Deviations from the [OECD Model \(2014\)](#) include:

- the MLI provision on splitting-up of contracts. This means that for determining the duration of a building site or construction or installation project, activities carried out by an enterprise of a contracting state in the other contracting state at a building site or construction or installation project for periods exceeding 30 days without exceeding twelve months are combined with connected activities carried on at the same building site or construction or installation project during different periods of time exceeding 30 days by one or more closely related enterprises;
- that income from the (partial) liquidation of a company is treated as dividends;
- an exit tax provision under which dividends paid by a company which under the laws of a contracting state is a resident of that state, to an individual who is a resident of the other contracting state and who upon emigration is taxed on the capital gains, may also be taxed in the source state, but only insofar as the assessment on the capital gains is still outstanding;
- that the provision on capital gains deriving at least 50% of their value from immovable property does not apply to gains derived from alienation of shares or comparable interests:
 - listed on a recognised stock exchange;
 - in the course of a corporate reorganisation such as a qualifying merger, division and similar transaction;
 - where the immovable property from which the shares derived their value is immovable property in which the business is carried on;
 - when the alienator owns, directly or indirectly, either alone or with related persons, 25% or less of the capital or other comparable interests prior to the first alienation of shares; and
 - when the alienator is a recognised pension fund of the first-mentioned state;
- an exit provision for shares, profit sharing certificates, call options and usufruct on shares and profit sharing certificates in a company and debt-claims on a company allowing the departure state after emigration to tax capital gains realized during the period of residence in that state;
- that remuneration derived from an employment exercised aboard a ship or aircraft operated in international traffic will be taxable only in the contracting state in which the place of effective management of the enterprise is situated;
- that pensions, annuities and social security pensions which exceed EUR 15,000 in a fiscal year are also taxable in the source state;
- that any income not covered by another treaty article may be taxed in the source state;
- that the provision on exchange of information will apply to the income-related regulations under the laws of the Netherlands;
- a provision on offshore activities; and
- that the treaty does not contain a provision on assistance in the collection of taxes, but the contracting states will apply all measures for administrative assistance, available under the law of the European Union.

Cyprus applies the credit method for the avoidance of double taxation, while the Netherlands applies the credit and exemption with progression method for the avoidance of double taxation.

The treaty contains a provision on the entitlement to treaty benefits under which treaty benefits are denied if one of the principal purposes of an arrangement or construction was to obtain those benefits unless granting the benefits is in accordance with the object and purpose of the relevant treaty provision.

The protocol contains various criteria for determining the place of establishment of a company including:

- where the senior management of the person is carried on;
 - where the meetings of the board of directors or equivalent body are held;
 - where the chief executive officer and other senior executives usually carry on their activities;
 - where the person's headquarters are located;
 - which state's laws govern the legal status of the person;
 - where the person's accounting records are kept; and
 - the extent and nature of the economic nexus of the person to each state.
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