

Company reorganizations under Cyprus Law*August 2011***A. Introduction**

The Cyprus Tax Law allows for a qualifying company reorganization to be effected tax free at the Cyprus level. These reorganization provisions fully comply with the relevant EU Mergers Directive.

A qualifying company reorganization needs to have a commercial reasoning, other than pure tax reasons, and be one of the prescribed reorganization types as set out in section B below.

B. Types of reorganization

The relevant provisions of the Cyprus tax legislation allow the following types of reorganization:

- i. Merger
- ii. Division
- iii. Partial division
- iv. Transfer of assets
- v. Exchange of shares
- vi. Transfer of registered office

A brief description for each reorganization type is set out below:

i. Merger (3 types)

- a) One or more companies that are dissolved without going into liquidation transfer all their assets and liabilities to another existing company. In exchange, the company receiving these net assets issues shares to the shareholders of the dissolved company/ies.
- b) Two or more companies that are dissolved without going into liquidation transfer all their assets and liabilities to a new company that they form, in exchange for the issue to the shareholders of the company/ies being dissolved of all shares in the new company.
- c) A company on being dissolved without going into liquidation transfers all its assets and liabilities to its 100% holding company.

Any cash payment that may arise as a result of the above transactions should not be more than 10% of the nominal value of the shares or in the absence of a nominal value the accounting value of the said shares.

ii. Division

A company being dissolved without going into liquidation divides and transfers all its assets and liabilities to two or more existing or new companies. The shareholders of the company being dissolved receive pro-rata shares in the companies receiving the assets and the liabilities.

Any cash element should not be more than 10% of the nominal value of the shares or in the absence of a nominal value the accounting value of the said shares.

iii. Partial division

This situation differs from division in the sense that a company without being dissolved transfers branches of its activities in the same manner as in a division but does not transfer at least one branch of its activities. Again the shares received in exchange are received pro-rata by the shareholders of the company being dissolved.

Any cash element should not be more than 10% of the nominal value of the shares or in the absence of a nominal value the accounting value of the said shares.

iv. Transfer of assets

A company without being dissolved transfers one or more branches of its activities to another company in exchange for shares in that company.

v. Exchange of shares

A company acquires a majority voting participation in a company in exchange of its own shares or where a company has acquired a majority participation, acquires further shares in exchange of its own shares.

Any cash element should not be more than 10% of the nominal value of the shares or, in the absence of a nominal value the accounting value of the shares.

vi. Transfer of registered office/seat

A European Company (SE) or a European Cooperative Society (SCE) without being dissolved or establishing a new legal entity, transfers its registered office from one member state to another.

C. Tax Free Reorganization

Incomes and gains resulting from a qualifying company reorganization are specifically exempted from the following types of Cyprus taxes:

- Income Tax
- Capital Gains Tax
- Stamp duty
- Special Defence Contribution
- Value Added Tax
- Land transfer fees
- Mortgage fees

Note: On any issuance of new shares by the Cyprus company Cyprus Capital Duty is payable. Such Capital Duty can be significantly reduced through proper planning (refer to Information Sheet 16: Cyprus Stamp Duty on Share Capital).

D. Procedure for Company Reorganization

The law itself does not require an advance Clearance of the reorganization (a form of Tax Ruling) from the Cyprus tax authorities. However it is strongly recommended that such Clearance is obtained in order to eliminate any inherent risks that may exist in constituting the reorganization as non-qualifying and as a result exposing resulting incomes or gains subject to Cyprus tax.

To apply for a Reorganization Clearance certain official forms need to be duly completed accompanied by a detailed plan (letter) describing the transaction with details and facts and also explaining the commercial business rationale of the reorganization.

Before any application is examined by the Cyprus tax authorities, the involved Cyprus companies must be up to date with their tax filings and tax dues. Also before a Cyprus company is dissolved it must obtain a Cyprus Tax Clearance.

Totalserve Management Ltd can assist with the obtaining of an Advance Reorganization Clearance.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.