

FROSIA HOUSE, 4TH Floor, Corner Evagorou & Menandrou Str., 1, 1066 Nicosia
P.O. Box 25570, 1310 Nicosia – Cyprus
Tel.: +357 22 667730, Fax: +357 22 667740
Email: info@eliades.eu
www.eliades.eu

**Notes on
the law applicable in Cyprus
with regard to:**

- **Information Exchange
between Cyprus' and Foreign Tax Authorities on tax matters
(Article 26 of OECD model agreement)**

and

- **The Bank Secrecy Principle**

In May 2008 Cyprus amended its Assessment and Collection of Taxes law in order to incorporate the exchange of information provisions of the OECD Model Treaty (i.e. Article 26) into domestic law. As a result of that, business people and entrepreneurs considering setting up companies or simply establishing and operating bank accounts in Cyprus frequently ask questions relating to above.

Among the questions most frequently asked are the following:

- **What is the content of the OECD model agreement, specifically Art. 26?**

The OECD provides a model DTT - Double Taxation Treaty (for cross-border tax issues) for its 30 member states to be used as a basis for negotiating and concluding DTT between countries.

Cyprus, although not a member of OECD, is one of the countries that voluntarily adopted the OECD model agreement as the basis for its Double Tax Treaties with other countries.

Article 26 of the OECD model agreement provides a definitive ruling on information exchange, i.e. administrative assistance among tax authorities of the signatory countries.

States that have implemented Art.26 in its standard form agree to the exchange of information upon request, but not to the automatic disclosure of information. This means that the country seeking information must produce a substantiated request, naming the taxable person and the specific bank or describing the information requested in sufficient detail.

- ***What will happen now that Cyprus has adopted Art.26 of the OECD's model agreement?***

Bank-client confidentiality, guarantees a confidential relationship between client and bank. Nothing about this will change. Bank-client confidentiality and protection of privacy for domestic and international clients is an important feature of Cyprus as an international business and financial center and is meant to be kept like that in the years to come.

The adoption and application of Art.26 above does not in any way affect the privileged communication of the legal profession (lawyer- client communication).

Article 26 of the OECD Model Agreement deals with bank client confidentiality in taxation matters.

- ***Does Article 26 mean that tax authorities can now make automatic account inquiries or conduct investigations at random?***

No. Only the provisions of the relevant double taxation agreement are authoritative. Information will only be provided by the tax authority of Cyprus upon receipt of a written request from another tax authority. There must be sufficient grounds for the request including an adequate description of the person and the bank in question. "Fishing expeditions" are not permitted under Article 26 in any way.

- ***What are the specific requirements for administrative assistance?***

Under the current regulations, before any request by foreign tax authority is considered by the Cyprus Tax Authorities, the following conditions must be fully satisfied:

- The foreign Authorities must in their request provide the following information:
 - The identity of the person under examination,
 - A description of the information requested and the nature and manner in which the requesting state wishes to receive the information from the Cyprus tax authorities,
 - The tax purpose for requesting the information,
 - The reason for belief that the requested information is held by the Cyprus tax authorities or is found in the possession or under the control of a person within the jurisdiction of Cyprus,
 - The name and address of any person who may hold such requested information to the extent that such information is made available,
 - A declaration that the provision of such information is in accordance with the legislation and the administrative practices of the requesting state and that where the requested information is found within the jurisdiction of the state in question, the relevant authority may obtain the information according to its laws and according to the terms of its ordinary administrative practices,
 - A declaration that the requesting state has exhausted all means at its disposal within its jurisdiction to obtain the requested information, except where resorting to such means would have imposed an excessive burden.

- Once the Cyprus Tax Authorities are satisfied that all above conditions have been fully met they then have to submit such request to a second screening by the Office of the Attorney General of the Republic in order to obtain his written consent. It is only after they obtain such written consent that they can proceed in collecting the information requested.

As the Attorney General's written consent requirement is an additional safety mechanism for the protection of European and international investors and account holders, our practice sought the advice of the Attorney General of the Republic on the conditions under which he would give his written consent for such exchange of information (between Cyprus and foreign tax authorities).

The Office of the Attorney General has advised that such consent will not be given unless the Attorney General is satisfied that the evidence before him establishes a serious possibility that the person for whom information is sought is involved in serious crime. (fraud or other international crime).

The Attorney General further advised that since the adoption of the OECD model agreement and its incorporation into Cyprus legislation, his Office has received no request whatsoever from Cyprus Tax Authorities for his consent as above described.

Taxable persons who do not consent to above administrative assistance being provided by the Cyprus Tax Authorities may appeal against the process.

- ***Will Cyprus lose market share as one of the largest providers of offshore banking services?***

Cyprus is steadily developing into a well known, transparent and respectable financial centre. The core values of the Cyprus system are expertise, stability, and international focus and discretion. All of these values will hold steady as Cyprus pursues its forward strategy. Financial privacy will still be guaranteed to foreign clients. This is a key asset in a world where personal privacy is constantly dwindling. "Fishing expeditions" will also not be permitted under the new double taxation agreements that are negotiated. Administrative assistance will only be provided if there is justified, well founded suspicion that tax fraud has taken place.

- **Was Cyprus the only country to adopt the OECD model agreement? What about other countries with bank-clients confidentiality?**

Cyprus is not the only country to do this. Due to the financial crisis, international pressure has increased on many countries with similar legislation over the last few months. Based on our analysis, many jurisdictions have recently taken similar steps, or indicated that they will soon do so. Examples include Singapore, Austria, Belgium, Luxemburg, Hong Kong, Liechtenstein and Switzerland, which have said they will adopt the content of Article 26 of the OECD's model agreement.

- ***How do other countries react?***

Recent activities in other jurisdictions include:

- Jersey recently signed Tax Information Exchange Agreements with a number of OECD registered countries.
- Singapore was planning to introduce legislation in 2009, allowing the jurisdiction to implement the principles and standards set out the OECD model agreement.
- Hong Kong will introduce a bill in 2009, allowing the jurisdiction to negotiate exchange of information agreements with other nations.
- Liechtenstein has already signed a Tax Information Exchange Agreement (TIEA) with the United States and has announced its acceptance of the OECD standards.
- The Cayman Islands recently signed similar agreements.
- Luxemburg, Liechtenstein and Switzerland have committed themselves to the OECD standards.

- ***What is the position of Cyprus in terms of acknowledgement and acceptability of its overall regime?***

Since the accession of Cyprus into the European Union in 2004 as well as the adoption and application of all relevant OECD and EU treaties on above, Cyprus is enjoying a very good reputation internationally as a safe, credible and reliable jurisdiction to do business with. Its Tax Authorities and banking system and commercial banks enjoy similar reputation and prestige worldwide.