



**CYPRUS AND INDIA, the ideal match!**



**Indian cross border transactions benefiting from being conducted through Cyprus**

**Why choose Cyprus?**

**Bilateral relations between Cyprus and India have always been excellent, even prior to their independence, both countries being under British rule and a part of the Commonwealth.**

**Both Nations, under the rule of their momentous legendary leaders. Ghandi and Archbishop Makarios, stood up for global political and economic prosperity, a movement known then as the Non Aligned Movement.**

**Consequently, having a similar historic background in the 19<sup>th</sup> and 20<sup>th</sup> centuries, India and Cyprus share similar values, common law legal system, an exceptional command of the English language and many other similar traditions.**

**On the back of this alone, a platform for a fruitful cooperation is laid. Add to this sound business and tax considerations, and hence the match is ideal!**

**Cyprus has been privileged, these past several decades, to be among the selective few prestigious and efficient international business centers in the world. The key advantages being as follows:**

- Location – Cyprus is situated in one of the most strategic geographical spots in the world, being situated in the Eastern Mediterranean, at the crossroads of Europe, Asia and Africa, Cyprus is a centre of Democracy and stability where businessmen from all nations are able to conduct their affairs in a harmonious, stable and friendly environment,
- A democratic country with a free market economy,
- A member of European Union and the Eurozone ,
- English is a formal language and is widely spoken.
- Cyprus has modern and efficient legal, accounting and banking services based on English practices and Common Law
- extremely favorable tax regime especially for holding companies, investments and capital gains
- double tax treaties with 43 countries and in constant negotiations for increasing them
- bilateral investment agreements with 16 countries



- low set up and operating costs
- highly qualified managerial, clerical and technical staff
- excellent telecommunications
- direct dialing to over 200 countries
- typical Mediterranean climate with warm and sunny days, beautiful beaches and cool mountains, many places of interest, and especially the famous Cyprus wine and food

## **CYPRUS - TAXATION and LAW**

The Cypriot tax system is structured in such a way that it provides tax effective provisions for international transactions. The tax and legal system comply with the EU and OECD requirements.

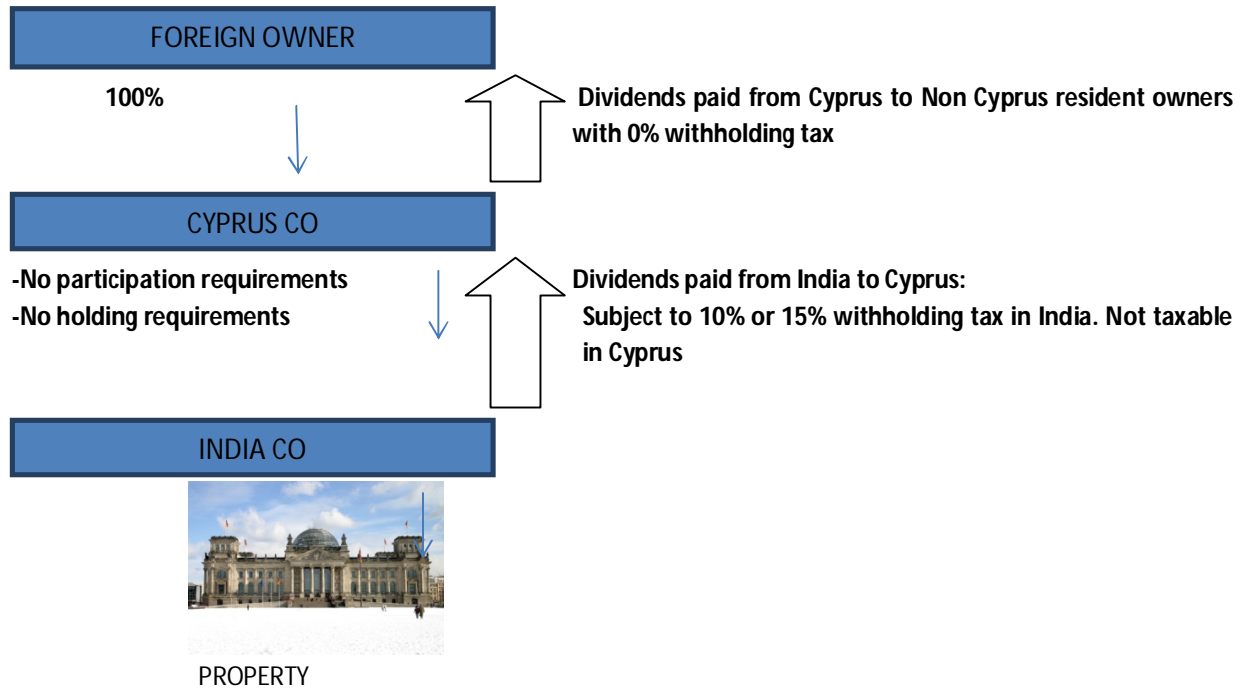
- Cyprus corporation tax rate is 10% and is the lowest in the EU. Certain types of income are even exempt from tax.
- Dividends received from abroad are also exempt. This exemption does not apply if 50% of the income of a company paying the dividend, arises from investment income **and** the foreign tax levied on the company's profit is significantly lower than the tax payable from the company receiving the dividend in Cyprus. In such case, a defense tax of 17% is payable. However the end result is usually **nil** (0%), the reason being that any tax paid directly or indirectly on the dividend in a foreign country (which normally is the case), can be used as a deduction from this tax.
- Interest and dividends paid from Cyprus to non-residents is free of any withhold tax.
- Profits from the sale of shares, bonds, debentures and stocks, are exempt from taxation.
- Capital gains tax is payable only on the sale of immovable property in Cyprus or shares of a company which owns immovable property in Cyprus.
- There are no thin capitalization rules in the Cyprus tax legislation.
- Cyprus' accession in the EU has lead to the ratification and inclusion of the EU directives and their integration into national law. These include the Parent Subsidiary Directive, the Merger Directive, the Interest and royalties Directive and Tax Savings Directive. Most of these provisions have been adopted for all the other countries as well
- The Double Tax Treaty Network of Cyprus and specifically the double tax treaties with Russia, Ukraine, the former CIS countries, India and South Africa have put Cyprus on the "International Business Centre map". Cyprus is ranked amongst the top 5 foreign investor list in several countries.
- Royalties earned from sources within Cyprus by a company which is not a resident of Cyprus, are liable to ten percent (10%) withholding tax. If however, such Royalties are granted to a Cyprus company for use outside Cyprus, then there is no withholding tax and the corporate rate is applied only on the profit margin retained by the Cyprus Company.
- Cyprus also provides for tax credits on income taxed in other countries even though there is no DTT with such countries.
- In addition, to the tax benefits, it is important to reiterate that Cyprus is a common law jurisdiction and that Cyprus Company Law is based on the UK Companies Act of 1948.

## **CYPRUS - INDIA DOUBLE TAX TREATY**

- The Double Tax Treaty (DTT) concluded between Cyprus and India, benefits the treatment of dividends, interests, royalties and especially capital gains. The DTT was signed and became effective ever since 1994.
- As per the DTT, dividends paid to the “other country” are subject to 10% withholding tax if received by a person holding more than 10% of the voting power. In all other cases, a withholding tax of 15% shall apply. It should be noted that dividends paid from Cyprus to India are not subject to withholding tax since Cyprus tax law exempts them. So the above provision applies in situations where an Indian company pays a Cyprus Company dividends. **SEE EXAMPLE STRUCTURE A BELOW.**
- Interest paid to the other country is subject to 10% withholding tax (Nil if paid to the Government bank or financial institution). It is worth mentioning that the normal rate of withholding tax for interest paid out of India is 20%, is reduced to 10% under the DTT. Also as in the case of dividends above, interest paid from Cyprus to India is not subject to withholding tax in Cyprus since Cyprus law does not impose any tax. **SEE EXAMPLE STRUCTURE B BELOW**
- The withholding tax provided as per the DTT for is 15% on the gross amount of royalties earned in the country. Cyprus domestic legislation provides for 10% withholding tax on royalties rights earned in Cyprus and paid abroad. So in the case where an Indian company earns royalties within Cyprus it will become subject to the lower 10% provided by domestic legislation. **SEE EXAMPLE STRUCTURE C BELOW**
- The capital gains provision in the DTT is the most attractive provision therein! It provides for capital gains tax on profit from sale of immovable property in the country where the property is situated. It also provides for any tax on the profit from the sale of securities and shares to be taxed where the owner of those shares is resident. As per Cyprus tax law the sale of shares and other company titles is exempt from tax. So one could have a Cyprus company selling shares in an Indian company at a profit without having to pay any capital gains tax! **SEE EXAMPLE STRUCTURE A BELOW.**

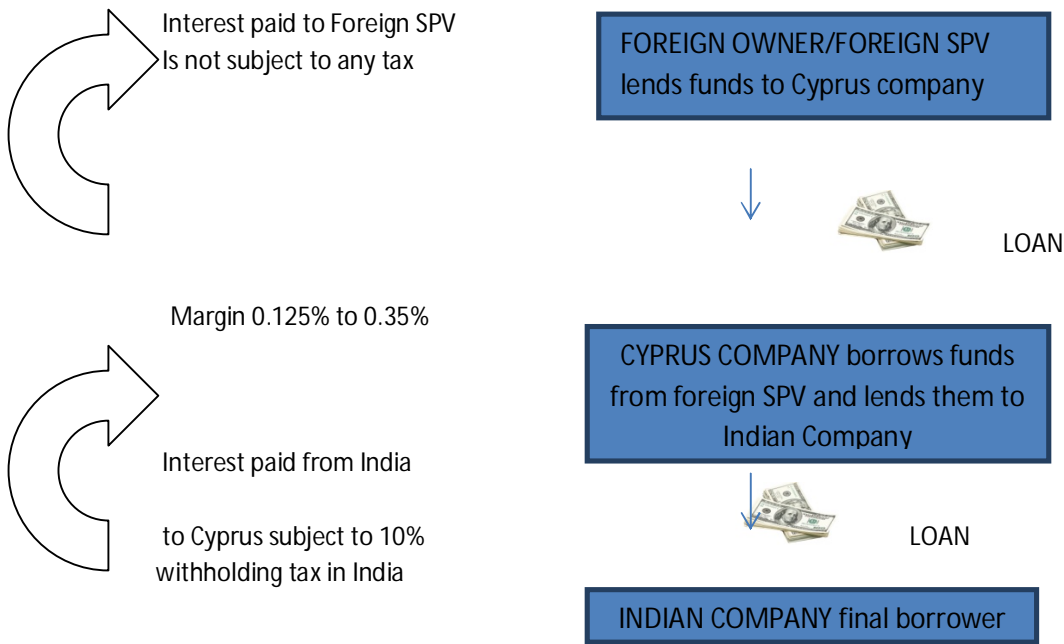
**EXAMPLES OF STRUCTURES:**

**A. CYPRUS HOLDING COMPANY STRUCTURE**



- A Cyprus company is a 100% shareholder in an Indian company, which in turn owns an immovable property in India. No minimum participation or holding requirements exist in order to obtain tax advantages.
- Dividends paid from India to Cyprus are taxable in India with a withholding tax of 10% since the Cyprus Company has more than 10% of the voting power. In Cyprus the dividends received are exempt from Corporation tax. Dividends are taxed under the Special Defense Contribution (SDC) tax but may be exempted provided that both the following provisions apply:
  - a) No more than 50% of the activities of the Indian Company lead to Investment Income, and
  - b) The corresponding Indian tax obligations amount to at least half of the tax normally imposed by Cyprus i.e. 5%.
 Since the tax in India is more than 5%. the Dividends **will be exempt** from the SDC as well.
- If the owner decides to sell the shares of the Indian company, then according to the DTT, any tax payable will be paid where the owner of those shares is resident i.e in Cyprus. Cyprus law provides that profit from sale of shares **is not taxable** in Cyprus.

**B. FINANCING STRUCTURES**



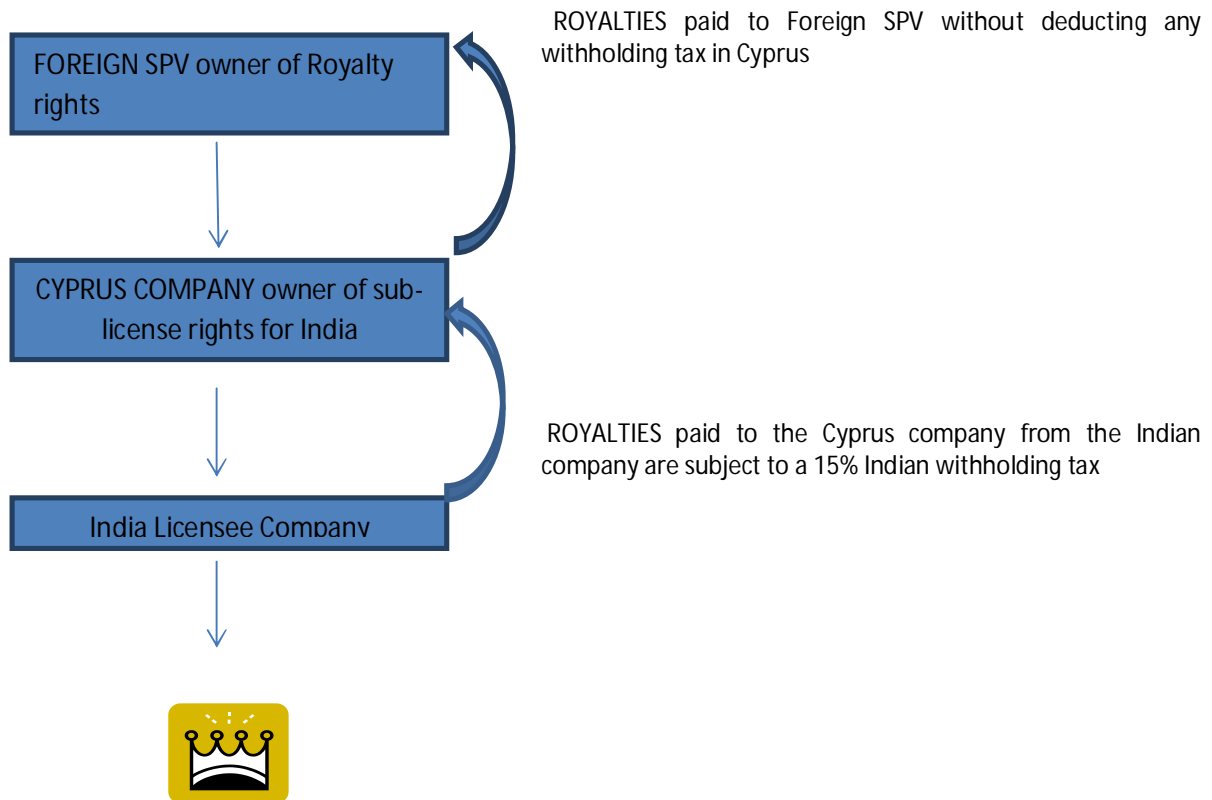
A foreign owner who wishes to finance his business establishment in India, can use a Cyprus company in the structure. This can offer him both tax and legal benefits.

In this scenario, a foreign SPV can finance the Cyprus Company which in turn will finance the Indian Company. The interest payable from India to Cyprus will be subject to Indian withholding tax of a maximum 10% as per the DTT. A minimum interest margin / spread of 0.125%-0.35% should be retained in the Cyprus company when the Cyprus company lends the money to the Indian company. The larger the loan, the smaller the margin.

At first, it would appear that there will be corporate tax of 10% on the margin in Cyprus, however, this will not apply, since as per Cyprus law and the DTT provisions, one is entitled to claim as a tax credit, the foreign tax paid on the same income. Therefore the 10% withholding tax paid in India is in fact the final tax paid. In other structures, where there is no withholding tax (such as with countries other than India), the 10% corporation tax will apply on the margin, which is left after deducting the interest paid and expenses incurred from the interest received.

Both the Holding and Financing structures can be combined providing for a very attractive group structure. This can be legally beneficial as well since if financing is also provided by banks, the Cyprus company shares could be pledged or a charge could be put on them as a collateral to the bank.

**C. ROYALTIES STRUCTURE COMPANY**



As per the structure above the owner of the Royalties rights is a foreign SPV which sub-licenses the rights to a Cyprus company which in turn contacts a sub-license to an Indian company.

The Royalties payable from India to Cyprus will be subject to Indian withholding tax of a maximum of 15% as per the DTT. A Minimum margin spread should exist between the royalties paid and royalties received. The larger the royalties rights are, the smaller the margin required.

As in the case of the financing structure, the existence of the margin, will make it appear as though there will be corporate tax of 10%. This, however, will not be the case. The tax will not apply, since according to Cyprus law and the DTT provisions, one is entitled to claim, as a tax credit, the foreign tax paid on the same income. Therefore the 15% withholding tax paid in India is the final tax paid. In other structures where there is no withholding tax (with countries other than India), the 10% corporation tax will apply on the margin which remains after deducting the royalties paid and expenses from the royalties received.