



Interlegal

Wherever your business takes you.



STARTING AND GROWING A BUSINESS

Legal and tax issues around Cyprus

2021

2nd EDITION

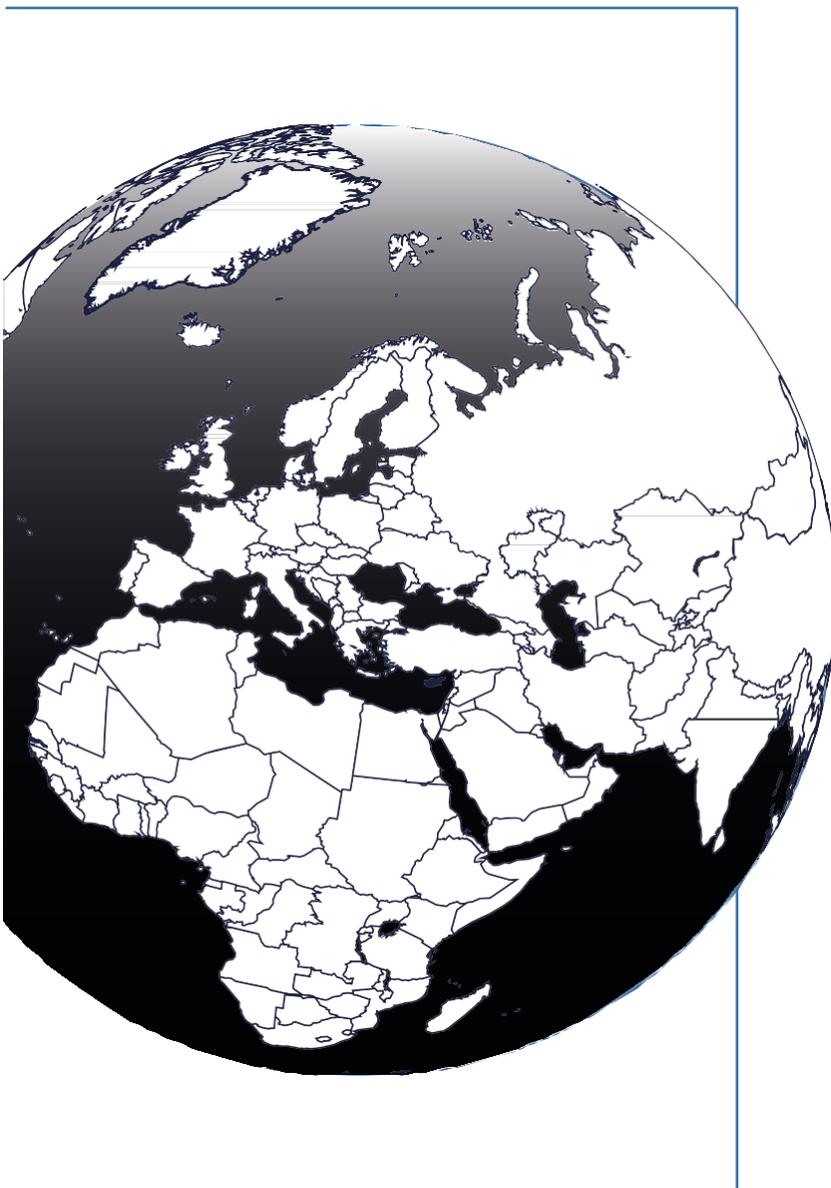
A comprehensive guide written by practising professionals into the legal and tax considerations of forming and financing a business around Cyprus

A joint publication between the Interlegal association of law firms and the EAI International association of accountants and auditors

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Cyprus



 **Capital city:**
Nicosia

 **Area:**
9,251 km²

 **Population:**
1,213,003

 **Language:**
Greek, English

 **Political System:**
Republic

 **GDP/capita 2019:**
USD 32,093

 **Currency:**
Euro (EUR)

 **ISO Code:**
CYP

 **Telephone code:**
+357

 **National day:**
1st April

Legal Overview

Executive Summary

By having one of the most favourable tax systems for corporations in Europe, Cyprus is one of the leading business centers and attracts foreign investors to establish their companies on the island. The company registration procedure is simple and straightforward. Registration of companies and filings may also take place electronically.

Registered companies and partnerships

The board of directors of an LLC comprises of a minimum of three and a maximum of 13 members, unless All types of companies and partnerships must be registered at the Company Registrar of Cyprus.

According to the Cyprus Companies Law, legal entities may be registered as limited liability companies, public limited companies or companies limited by guarantee. In Cyprus, partnerships are also allowed in general or limited form.

Any foreign company may establish branches in Cyprus, by presenting relevant documents. The main requirement for the branches is to submit annual financial reports, either in Greek or accompanied by a Greek translation.

A Cyprus company will be a Cyprus tax resident if it is managed and controlled in Cyprus.

Companies incorporated in Cyprus must adhere to rules and regulations for taxation and must pay the corporate tax. The corporate tax in Cyprus has one of the lowest rates in the European Union, at 12.5%.

From a Cyprus Tax perspective, a Cyprus Limited Liability Partnership is not considered as a legal entity with separate legal personality and as such the partners are subject to taxation and not the partnership per se.

In Cyprus there are, among others, the following types of company:

Company Limited by Shares

- **Private Limited Company;**
This is the most commonly used type of company. There are no minimum or maximum share capital requirements.

A private limited liability company must have between one and 50 shareholders. The right to transfer shares is restricted and shares or debentures cannot be subscribed to the public.

- **Public Limited Company**

A public limited liability company must have at least seven members and at least EUR 25.629 share capital. There is no maximum number of shareholders. Shares and debentures may be offered to the public.

Companies that wish to list their shares on the Cyprus Stock Exchange are required to set up a public limited corporation. In addition to the legislation applicable to limited liability companies, they have to conform to the provisions of the Cyprus Stock Exchange and Cyprus Securities and Exchange Commission regulations.

- **Company Limited by Guarantee – Normally incorporated for non-profit purposes.**
- **There are no Companies with unlimited liability.**

Memorandum and articles of association

An LLC must have a board of supervisors, consisting of at least three supervisors. However, a small LLC A Cyprus company has Memorandum of Association and Articles of Association.

The Memorandum of Association must include at least the following information:

- Name of the company;
- Objects of the company: A company may adopt a general short-form objects clause in the memorandum of association which provides that the object of the company is the conduct of any business as a general commercial company;
- That the liability of its members is limited;
- The Share Capital of the company.

The Articles of Association also form part of the company's constitution. A company may choose either to adopt Table A of the Cyprus Companies Law or to tailor Table A in accordance to their specific needs. The form of the Memorandum of Association and Articles of Association is set out in the Cyprus Companies Laws.

Share Capital

The liability of the shareholders is limited to the amount, if any, unpaid on the shares respectively held by them.

Public Offer of Shares

A private limited company is prohibited from inviting the public to subscribe for any shares in the company.

A public limited company may offer its shares to the public. The invitation must be accompanied by a prospectus. Public companies are subject to a tighter regulation.

A public limited company may also list their shares on the Cyprus Stock Exchange.

General Meetings

General Meetings are regulated by both the Cyprus Companies Laws and the articles of association of the company (to the extent permitted by the law). Every company shall call an annual general meeting each year. Public companies shall also hold a statutory meeting shortly after the date that the company is entitled to commence business.

Notice periods for the meetings vary depending on the type of company and the type of the meeting. The articles of association may provide for longer notice periods for meetings but not shorter than the periods provided for by law. Shorter notice may only be given when all the shareholders agree and where the notice concerns an annual general meeting, or where the notice concerns other than an annual general meeting, when 95% of the shareholders agree.

General Meetings may take place by means of telephone conference or by any other means of communication, except as otherwise provided by the company's articles of association. The place of the General Meeting is considered to be the place where the minutes have actually been taken.

Major decisions of the company, such as change of the objects of the company, change of the articles of association, change of name and reduction of capital are only taken by the shareholders of the company elected through the employees' representatives' assembly, the employees' assembly or otherwise.

Directors

The Directors may only act within the powers conferred to them by the Articles of Association. They normally have the power to manage the company on a day to day basis.

A private limited company must have at least one director and one secretary. If there is only one member, that member may act as the director and secretary.

A public limited company must have at least two directors and one secretary.

The director may be of any nationality.

A company may also be appointed as director.

Financing a company

A company may be financed in the following ways:

- Equity Finance – issue shares/capital contribution from shareholders, flotation (public companies);
- Debt Finance – borrow; and
- Grants.

Commencement of business

Application for name approval and registration of a company may be filed online or by hand at the Registrar of Companies. The approval of the company name takes about two business days (fast track). Registration of the company takes about 3-4 business days after the submission of all the required documents (fast track).

A company needs to register with the Tax Authorities and obtain a tax identification code within 60 days from the date of incorporation.

Mergers and acquisitions

A private limited company may be sold through a share sale, namely, the shares in the company are transferred by the selling shareholder to the purchaser. The purchaser takes all the assets and liabilities of the

company. Instead of a share sale, the purchaser may acquire the business of the company (asset sale). In such a case, the buyer cherry-picks the assets they wish to purchase and the company selling its business does not change hands.

A public limited company may be purchased directly from its shareholders. For listed companies the takeover procedure is regulated by tighter laws and regulations and supervised by the Cyprus Securities and Exchange Commission.

Corporate insolvency

When a company becomes insolvent, there are various rescue mechanisms; Compromise arrangement, examinership and liquidation.

The company or the creditors may apply before the court to convene a meeting to propose a compromise arrangement. A compromise arrangement between the company and its creditors will be binding on all the creditors and the company, if three quarters in value of the creditors approve it at the creditors' meeting and provided the compromise agreement is sanctioned by the Court. No protection from creditors is provided by the Court.

Examinership aims to rescue viable companies. In order to assist in the survival of the company, the company is placed under the protection of the court for four months from the date of the presentation of the petition or on the withdrawal or refusal of the petition, whichever happens first, the company shall be deemed to be under the protection of the Court. During that period no winding up proceedings may be commenced against the company and no receiver may be appointed.

Liquidation: see the next section.

Winding up of companies

A company may be wound up in three ways:

- Compulsory liquidation by the Court;
- Voluntary liquidation; or
- Liquidation subject to the supervision of the Court.

With regard to compulsory liquidation by the Court, a petition may be presented either by the company or by any creditor including any contingent or prospective creditor and/or contributory. The company may be wound up by the Court, if, among others:

The company is unable to pay its debts;

- The Court is of opinion that it is just and equitable that the company should be wound up; or
- The company decides so by a special resolution.

When a winding up order has been made, no action or proceeding shall proceed or be commenced against the company without prior leave of the Court.

Only licensed Insolvency Practitioners may be appointed to act as liquidators.

Contact someone in Cyprus

A.I. Kitsios LLC, is a full-service law firm established in 1985. We represent a broad array of clients ranging from large international corporations to small businesses and individuals. Our members are committed to delivering our clients a practical, client-centered and professional advice. We value our clients and as such our ultimate goal is to act in the clients' best interests by delivering the services offered in an efficient, innovative and professional manner.

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Tax overview

Basis of taxation

A company is tax resident of Cyprus if it is managed and controlled in Cyprus.

All Cyprus tax resident companies are taxed on their income accrued or derived from all chargeable sources in Cyprus and abroad.

A non- Cyprus tax resident company is taxed on income accrued or derived from a business activity which is carried out through a permanent establishment in Cyprus and on certain income arising from sources in Cyprus.

Foreign taxes paid can be credited against the Cyprus corporation tax liability irrespective if there is a Double Tax Treaty in place (unilateral tax credit).

Company registration

As mentioned above, all Cyprus companies must register with the Department of Registrar of Companies and Official Receiver of the Republic of Cyprus. Companies must also register with the Cyprus Tax Department within 60 days from their establishment.

Setting-up taxation

There are no setting-up costs in terms of taxation in Cyprus.

National current benefit taxation

Corporate income tax

Taxable profits of Cyprus tax resident companies and permanent establishments doing business in Cyprus are subject to corporation tax at a flat rate of 12.5%, one of the lowest rates in the European Union.

The following sources of income are fully or partially exempt from corporation tax:

Source of income	Exemption
Profit from disposal of "titles" (defined to include shares, bonds, debentures and other securities of companies or other legal persons incorporated in Cyprus or abroad, and options thereon).	100%
Dividend income not treated as a tax allowable deduction for the paying company	100%
Interest income not arising from the ordinary activities or closely related to the ordinary activities of the company (but taxed under Special Defence Contribution).	100%
Profits arising from a foreign permanent establishment of a Cyprus company, under certain conditions (taxpayers may elect to tax such profits, with a tax credit for foreign taxes incurred on the said foreign profits).	100%
Foreign exchange (forex) gains / losses with the exception of forex arising from trading in foreign currencies and related derivatives	100%

Various tax deductions

- From 1 January 2015, a notional interest deduction ('NID') on new equity in the form of paid-up share capital or share premium (calculated as the new equity multiplied by the NID reference interest rate) is granted. Such new equity should be invested into a Cyprus company for the purposes of carrying on its taxable activities. The reference interest rate is the yield on 10-year government bonds (as at 31 December of the prior tax year) of the country where the funds are employed in the business of the company plus a 5% premium.

The NID deduction which a company is eligible to obtain cannot exceed 80% of the taxable profit derived from the assets financed by the new equity (as calculated prior to granting the deduction).

- Annual capital allowances are granted as a percentage on the cost of acquisition of eligible assets and are deducted from the chargeable income.
- Tax amortization is also granted on any expenditure of a capital nature for the acquisition or development of IP, with no recapturing at IP disposal.
- Companies which derive income from the use or disposal of qualifying intangible assets or intellectual property rights can deduct an amount equal to 80% of the net profit as calculated using the modified nexus fraction.

In addition to corporation tax, Special Defence Contribution ('SDC') is imposed on income earned by Cyprus tax resident companies as follows:

Source of income	Tax Rate
Passive interest income (i.e. Interest income not arising from the ordinary activities or closely related to the ordinary activities of the company).	30%
Dividends received from Cyprus tax resident companies	Nil
Dividends received from non-Cyprus tax resident companies are exempt from SDC unless both of the following conditions are met: - More than 50% of the paying company's activities result directly or indirectly in investment income, and - the foreign tax burden on the income of the paying company is lower than 6.25%.	Nil (17% if not exempt)
Rental income (25% of such income is exempted)	3%

In case of Cyprus tax residents and domiciled individuals, SDC at 17% is payable on dividend income (both from Cyprus and foreign paying companies).

- Special type of companies - Shipping companies

The Merchant Shipping Legislation (fully approved by the EU up to 31 December 2029) provides for exemption from all direct taxes, and taxation under tonnage tax regime of qualifying shipowners, charterers and ship managers, from the operation of qualifying community ships (ships flying a flag of an EU member state or of a country in the European Economic Area) and foreign (non-community) ships (under conditions), in qualifying activities.

- Trade tax (local profits tax)
- There is no local profits tax in Cyprus

Other taxes (VAT, property taxes)

VAT

VAT is levied at a standard rate of 19% for most goods or services. A reduced rate of 5% applies to food, books and certain other necessities and 9% on transportation, restaurants and accommodation services. The leasing of ships/aircraft and the services which relate to the immediate needs of the ships or aircraft are subject to zero VAT. Certain medical, financial and educational services are exempt from VAT.

VAT is charged on the transaction value and the VAT collected by the business from its customers is paid to the Cyprus tax department based on the VAT returns submitted, which are filed monthly, quarterly or annually. A business can claim the VAT charged on the goods or services received from local suppliers which is deductible from the VAT payable. Where the business does not have a VAT liability, the negative balance of these amounts is refunded to the business. A foreign company may reclaim Cyprus VAT under certain conditions.

Capital Gains Tax ('GCT')

Capital gains tax at the rate of 20% is imposed on any gains arising from the disposal of immovable property located in Cyprus including gains from the disposal of shares in companies which directly own such immovable property. Further, shares of companies which indirectly own immovable property located in Cyprus and at least 50% of the market value of the said shares derive from such immovable property are also subject to CGT upon disposal.

Shares listed on any recognized stock exchange are excluded from the above provisions i.e. CGT should not apply.

An exemption from CGT is granted on gains from disposal of immovable property acquired at market value between 16 July 2015 and 31 December 2016 provided that:

- The property consists of land, buildings or land and buildings;
- It is acquired from an independent third party; and
- It is not acquired through an exchange of property or through donation/gift.

Transfer fees are imposed by the Department of Land and Surveys for transfers of Cyprus immovable property at the applicable rates. No transfer fees are payable if VAT is applicable upon purchasing the immovable property.

Treaties for the avoidance of double taxation

Cyprus has a wide range of double tax treaties. Under the domestic legislation, there is no withholding tax ('WHT') on the payment of dividends, interest and royalties to non-resident persons, except in the case of royalties earned on rights used within Cyprus, which are subject to a WHT of 10% (5% in the case of cinematographic films).

As at the date of this publication, Cyprus has concluded double tax treaties with 66 countries, including but not limited to France, Switzerland, China, Germany, India, Italy, Russia, Ukraine, the United Kingdom, the United States of America, Belgium, Denmark, Luxembourg, Netherlands, Canada, Greece, Hungary, Qatar, Saudi Arabia, United Arab Emirates and Malta. An exemption from withholding tax may be available for payments between associated companies, if the conditions for the application of the EU parent-subsidiary directive and the EU interest and royalty's directive are satisfied.

Benefit distribution

Under the domestic legislation, there is no WHT on the payment of dividends, interest and royalties to non-resident persons, except in the case of royalties earned on rights used within Cyprus, which are subject to WHT of 10% (5% in the case of cinematographic films). Such WHT can be reduced or eliminated as per the provisions of a Double Tax Treaty and/or EU Directive (if applicable).

Tax treatment of losses

Tax losses arising in a tax year and which cannot be offset against other taxable profits in the same tax year, may be carried forward and offset against future profits for a period of 5 years from the year to which

the losses relate.

A trading loss of a tax year can be offset against trading profits of another group company for the same tax year, provided that both companies were Cyprus tax resident companies of a group throughout the entire tax year. From 1 January 2012, in the event that a company is incorporated during a tax year, the company will be considered as a member of the group for the whole tax year for the purpose of surrendering losses between group companies.

Two companies are considered to form a company group for group relief purposes if one Cyprus tax resident company holds directly or in- directly at least 75% of the voting shares of another Cyprus tax resident company, or both Cyprus tax resident companies are at least 75% (voting shares) held, directly or indirectly, by a third company.

As from 1 January 2015 interposition of a non- Cyprus tax resident company(ies) will not affect the eligibility for group relief as long as such company(ies) is/are tax resident of either an EU country or in a country with which Cyprus has a tax treaty or an exchange of information agreement (bilateral or multilateral).

From 1 January 2015, tax losses can also be surrendered to a Cyprus

company by a group company located in another EU Member State, provided that the surrendering company has exercised all available options for group relief, or the carry forward of losses in its Member State or in another Member State where an intermediary holding company is located (if applicable).

Losses of an exempt foreign permanent establishment can be set off with profits of the Cyprus head office. In such case, future profits of the exempt foreign permanent establishment abroad are taxable up to the amount of the losses allowed.

Employer obligations (salary taxes, social security)

An employer must deduct tax, social insurance and related contributions (including General Health System 'GHS' contributions) from the salaried income of each of its employees and pay this to the relevant authorities by the end of the month following the month in which the salary was paid.

The employer is also liable to pay social security and related contributions on the salaried income of each employee. The contributions are payable to the relevant authorities by the end of the month following the month in which the salary was paid. These contributions should be tax deductible in the employer's tax computations if paid within the relevant deadlines.

The social security contributions are as follows:

	Employer	Employee
Social insurance	8.3%	8.3%
Redundancy Fund	1.2%	-
Industrial Training Fund	0.5%	-
Social Cohesion Fund	2%*	-
General Health Scheme contributions (please refer to relevant section for more details)	2.9%	2.65%
Health Scheme From 01/03/2020	2.9%	2.65%

The contributions are restricted to a maximum income level. The maximum level of income is as follows:

Per Week (Euro)	Per Month (Euro)	Per Annum (Euro)
1,104	4,784	57,408

Note: The contributions to the social cohesion fund have no upper limits.

General Healthcare System

Contributions relating to the implementation of the General Health System are as follows.

It is noted that GHS contributions are capped at EUR 180,000 total annual incomes.

	Current rates
Every employee on his emoluments	2.65%
Every employer on his employee's emoluments	2.90%
Every self-employed on his emoluments	4.00%
On the pension income of every pensioner	2.65%
On the emoluments of any person who holds or exercises an office	2.65%
A person earning income (e.g. dividends, rent, interest etc.)	2.65%
Any physical or legal person or the Government who is responsible for paying the emoluments of a person who holds an office	2.90%

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