Cyprus Tax Authority circular on Non-Return Capital Contributions (NRCCs)

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In this Tax Insights issue, we highlight the Cyprus Tax Authority (CTA) circular (the Circular) that clarifies the tax treatment of NRCCs. We note that an NRCC is a contribution made towards the capital of a company **without** the issuance of shares by the recipient company in exchange for the contribution. The Circular refers to NRCCs made to companies not tax resident in Cyprus and does not touch upon the subject of NRCCs made to Cyprus tax resident companies.

In essence the Circular clarifies that an NRCC made to a company not tax resident in Cyprus will be viewed as an equity investment for the Cyprus contributor, and not as a loan receivable, in cases where **all** of the below criteria are satisfied:

a) **No legal right to reclaim:** At all times the Cyprus contributor must not have any legal right to claim a repayment of the NRCC.

b) **Repayment is possible only via a Capital Reduction or a Dissolution/Liquidation of the recipient company:** Under the legal framework of the recipient jurisdiction repayment of the NRCC is possible only via a Capital Reduction or Dissolution/Liquidation of the recipient, in accordance with how such are to be legally carried out under the recipient's legal framework.

   In criterion (b) we understand that reference to 'Capital Reduction' is to how capital may be legally repaid under the recipient jurisdiction's laws i.e. in essence repayment of the NRCC must only be possible via the same legal route(s) as repayment of capital.

   The Circular further notes that where the legal framework of the recipient's jurisdiction does not require a Capital Reduction for the repayment of capital then criterion (b) does not apply i.e. only the other criteria ((a), (c), (d), and (e)) need to be met.

c) **Minimum holding period:** In cases of repayment of the NRCC to the Cyprus contributor, the repayment must not take place within the same tax year as the contribution itself nor in the next two tax years.

   We note that the tax year in Cyprus is the same as the calendar year.

d) **Direct relationship:** The Cyprus contributor should have a direct interest in the capital of the foreign recipient.

e) **No deemed deductions for tax purposes for the recipient:** The recipient of the NRCC does **not** obtain a deemed deduction for tax purposes in the recipient's tax jurisdiction as a consequence of the NRCC.

Effective date: The Circular has retroactive effect from 1 January 2017 and applies to NRCCs to non-Cyprus tax resident companies existing as at 1 January 2017 and onwards. No grandfathering provisions have been provided for in the Circular. We note that any taxpayer rulings issued by the CTA not under the Circular will not be valid for tax periods as from 1 January 2017 for that part (or whole) of the ruling relating to NRCCs to non-Cyprus tax resident companies.

Let's talk

For a deeper discussion of how this development might affect you or your business, please contact:

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