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Amendments to the 50% exemption of Article 8(23A) of the Cyprus Income Tax Law

In brief

On 30 June 2023 amendments to the 50% exemption provided in Article 8(23A) of the Cyprus Income Tax Law ("CITL") were published in the official Cyprus Government Gazette (the "Law Amendment").

It is noted that Article 8(23A) was introduced during 2022, with effect from 1 January 2022, within the context of the Cyprus Government's policy to attract talent to Cyprus. Please refer to our relevant **newsletter**.

In detail

"Old" Article 8 (23A)

Prior to the Law Amendment, Article 8(23A) of the CITL (the "old" Article 8(23A)) provided for a 50% exemption on remuneration, applicable as from 1 January 2022, for first employments commencing as from 1 January 2022, exercised in Cyprus, and with remuneration exceeding EUR 55.000 p.a., by employees who were not tax residents of Cyprus for a period of at least 10 consecutive tax years immediately prior to the commencement of their employment in Cyprus. The term "first employment", for the purposes of the "old" Article 8(23A), meant that the employee:

- had never worked in Cyprus before (with some small relaxations); **and**
- would not change employer once the "first employment" started.

Subject to certain conditions, employees whose employment in Cyprus commenced prior to 1 January 2022 were also eligible to transition into the exemption provided for in the "old" Article 8(23A).

Certain clarifications with respect to the applicability of the "old" Article 8(23A) were included in **Circular** 10/2022 issued by the Cyprus tax authorities on 1 November 2022.

Main amendments introduced through the "new" Article 8(23A)

Increase in the number of minimum years of non-Cyprus tax residence immediately prior to commencement of employment in Cyprus

The Law Amendment increases this from 10 to 15 years.

Definition of "first employment"

As reiterated above, the term "first employment", for the purposes of the "old" Article 8(23A), meant that the employee:

- had never worked in Cyprus before (with some small relaxations with respect to employment which was considered as "occasional"); **and**
- would not change employers once the "first employment" started.

The Law Amendment provides for a new definition of what is considered as "first employment" for the purposes of the "new" Article 8(23A). Per the Law Amendment, an employee will be considered as exercising "first employment" in Cyprus if the said employee did not exercise any salaried services (which includes also occasional employment) in Cyprus (whether for a local or foreign employer) for a 15-year consecutive period immediately prior to the aforesaid employee taking up employment in Cyprus (whether for a local or foreign employer).

In other words, following the Law Amendment, "first employment" is no longer a condition for maintaining the benefits of the "new" Article 8(23A) but rather it is only a condition for ascertaining whether the employee is able to enter into the regime in the first place. As a result, once an employee is initially assessed as eligible for the exemption of the "new" Article 8(23A), the said employee can change employer and continue to benefit from the relevant exemption (provided the other conditions are met).

Other amendments introduced through the "new" Article 8 (23A)

- Exemption applies for a period of 17 tax years from the tax year of commencement of employment, or up until the relevant legislative provision is repealed (whichever comes first);

- Contrary to what the "old" Article 8(23A) stated, the 50% exemption can no longer be claimed in the tax year of termination of employment, or the tax year during which the 17-year period elapses, even if the remuneration of the employee exceeded EUR 55.000 during the twelve month period immediately preceding either of the above dates (unless the remuneration exceeded EUR 55.000 within the same tax year). On the other hand, and similarly to the "old" Article 8(23A), the exemption can be claimed during the first year of an employee's employment if, during the first twelve month period following the commencement of the employee's employment, the remuneration exceeds EUR 55.000.

Transitional Rules of the Law Amendment

Similarly to the "old" Article 8(23A), the "new" Article 8(23A) provides for transitional rules for years preceding its year of application (i.e. prior to 2022).

Per the Law Amendment the transitional rules apply to employees who:

a) have continuous employment in Cyprus from the year of commencement of employment to tax year 2021; **and**
b) were not tax resident in Cyprus for a 15-year period immediately prior to the start of their employment in Cyprus; **and**
    i) benefited from the exemption provided in Article 8(23) of the CITL (i.e. the 50% exemption for employment income exceeding €100,000); or
    ii) their first employment started between the years 2016-2021 with remuneration exceeding EUR 55.000 p.a.; or
    iii) their employment started between the years 2016-2021 with remuneration which did not exceed EUR 55.000 p.a. and within 6 months from the date of publication of the "old" Article 8(23A) (the publication date is 26 July 2022) the employees' remuneration exceeded EUR 55.000 p.a.

Similarly to the general rule, the transitional rules apply for a period of 17 tax years from the tax year of commencement of employment or up until the relevant legislative provision is repealed (whichever comes first).
Note: We understand that individuals who have taken up employment in Cyprus between 1 January 2022 to 25 July 2022 may be able (under certain circumstances) to benefit from the transitional rules of the "old" and (potentially) the "new" Article 8(23A). Each individual case will need to be assessed on its own merits.

Interaction of the "old" and "new" Article 8(23A)

Employees who are not able to benefit from the provisions of the "new" Article 8(23A) (for example because they do not fulfill the 15-year thresholds stipulated in the "new" Article 8(23A)) but were eligible for the exemption provided in the "old" Article 8(23A) can continue to benefit from the provisions of the "old" Article 8(23A) for as long as the relevant conditions are applicable to them.

Other Comments

Same as with the "old" Article 8(23A), the exemption provided in the "new" Article 8(23A):

- can be granted only once in an employee's lifetime;
- cannot be granted in conjunction with the exemptions provided in articles 8(21), 8(21A), 8(23), or the "old" 8(23A) of the CITL;
- applies for any tax year that the remuneration of the employee exceeds EUR 55.000; any fluctuations to the employee's remuneration do not affect the employee's entitlement to the relevant exemption provided that (i) during the first or second 12-month periods following the date of first employment the remuneration of the employee exceeded EUR 55.000 and (ii) the Commissioner of Taxation is satisfied that the fluctuation is not a result of an arrangement put in place in order for the said employee to benefit from the exemption;
- applies for tax year 2022 onwards.

Comparison of "old" and "new" Article 8 (23A)

Below you will find a comparison of the main elements of the two versions of Article 8(23A):

	"old" Article 8(23A)	"new" Article 8(23A)
Tax year of application	**1 January 2022** (cannot be applied for employees commencing employment from 30 June 2023 onwards)	**1 January 2022**
Tax residence not in Cyprus immediately prior to commencement of first employment	**10 years**	**15 years**
"First employment" requirement for entering the regime	**Yes** "first employment" applies to employment exercised by the employee in Cyprus at any point in time, other than occasional employment	**Yes** "first employment" applies only to employment exercised by the employee in Cyprus (whether occasional or not) within the 15-year period immediately preceding the start of employment
"First employment" requirement for maintaining benefits under the regime	**Yes** (not allowing the change of employer)	**No** (allowing the change of employer)
Special provisions allowing application of the exemption at the start and/or termination of employment	**Yes** Both for the start and termination of employment	**Yes** Only for the start of employment
Transitional rules	**Yes** (continuous employment necessary only for employees benefiting from Article 8(23)	**Yes** (continuous employment necessary for all employees seeking to benefit from the transitional rules)

2022 Income Tax Return submission

The Cyprus Tax Department has through its **announcement** issued on 4 July 2023 indicated that the provisions of the Law Amendment will be taken into account in the 2022 TD1 form, the deadline for submission of which has been extended to 2 October 2023 (please see relevant **newsletter**).

The takeaway

Taking into consideration the retrospective effect of the Law Amendment, affected individuals should assess the impact of the Law Amendment on their respective facts and circumstances; this is especially important for employees who were not able to benefit from the provisions of the “old” Article 8(23A) merely for the reason that the said employees have worked for more than one employer in Cyprus.

Lets talk

For a deeper discussion of how this issue might affect your structures involving Cyprus and how we may assist you in navigating through these proposed changes, please contact:

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