

Tax Amendments

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Avanzia
Tax and

Newsletter highlights:

Widening of the participation exemption

Step up of the base cost

Incentives to attract qualified foreign employees to strengthen Malta's position as a finance centre especially for Investment Services Companies.

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Introduction

Recent amendments to the Income Tax Act, the Income Tax Management Act and the Duty on Documents and Transfers Act enacted proposals announced in the last budget as well as some other changes intended to clarify and fine tune the tax regime which was introduced in 1994 and amended in 2007. The changes are primarily intended towards companies with foreign shareholders so as to make Malta more attractive by widening the definition of participating holding, extending the applicability of the participation exemption, introducing an exemption on royalty income, step up provisions, and incentives to employees of investment services companies.

The amendments also increase the anti abuse provisions with respect to profits accumulated from the sale of immovable property.

Participating holding and participation exemption

The definition of equity shares within the definition of a participating holding has been amended and only two out of the three existing conditions need to be satisfied.

The new definition of equity shares now reads as follows:

A holding of the share capital in a company which is not a property company, when the shareholding entitles the shareholder to at least any two of the following rights:

- a right to votes;
- a right to profits available for distribution to shareholders; and
- a right to assets available for distribution on a winding up of that company.

This change widens the possibility of the application of the participation exemption for companies resident in Malta on income received from a holding in foreign entities.

Apart from the change in the definition of equity shares, the participation exemption may now be availed of on dividend income and capital gains arising from another Maltese company. This change facilitates exit strategies for structures involving multi tier Maltese companies.

Property Company

A 'Property Company' is defined as a company which owns immovable property situated in Malta, or any rights over such property, or a company which holds directly or indirectly shares or interests in a body of persons which owns immovable property. This definition does not apply to companies that carry on a trade or business in Malta and own a factory, warehouse or office used solely for the purpose of carrying on such trade, provided that such immovable property does not exceed 50% of the total assets of the company.

Various changes have been enacted to ensure that share transfers in property companies are brought to charge and may not benefit from an exemption from income tax in Malta.

Article 12(1)(c) of the Income Tax Act which provides for an exemption from any tax on gains or profits made by a non-resident person on the transfer of shares in a Maltese company has also been amended to exclude the transfer of shares in property companies from such an exemption.

Step up provision

A new article in the Income Tax Act enables individuals who opt to become resident in Malta but were, before such date, not resident or domiciled in Malta, to elect to value the assets at their market value. This step up provision may also be availed of by companies who opt to redomicile to Malta or companies resulting or created after a cross border merger.

Provisions to bring to charge income arising from immovable property

Various provisions of the Income Tax Act have been amended to bring to charge income arising from immovable property.

- The exemption from capital gain upon the transfer of shares in quoted companies does not apply to shareholders who held shares prior to listing;
- Various conditions have been introduced for the election of the group exemption when transferring property between companies that form part of a group. Degrouping provisions have also been introduced to bring to charge the transfer of immovable property (whether directly or indirectly) when companies do not remain part of the group;
- Limitation to the transfer of losses for companies performing work related to immovable property;
- The definition of 'scheme' in the anti avoidance article now includes the increase in share capital to ensure that dilution in share capital through an increase in share capital may be brought to charge under the anti abuse provision.

The provisions of the Duty on Documents and Transfers Act have also been amended to include anti abuse provisions to limit the exemption from duty on documents when transferring immovable property between related parties. A new provision has also been introduced to bring to charge the transfer of real value of shares and to tax the dilution of shareholding in property companies. However, the transfer of real value of shares is exempt from duty on documents when the transfer is made in a company having an exemption from duty on documents or is owned by non residents.





Double Taxation Relief

Relief from double taxation may be claimed even if the underlying tax is paid in Malta, thus extending the applicability of unilateral relief to structures involving multi-tier Maltese companies.

This new provision together with Malta's wide and expanding treaty network provide various opportunities for the elimination of double taxation.

Royalties and similar income

Income derived from patents in respect of inventions is now exempt from income tax. The exemption must be confirmed by the Inland Revenue Department. The exemption will also apply when the income is distributed by way of dividend to the shareholder.

As a result, Malta should become a very attractive jurisdiction for intellectual property companies.

Aircrafts and aircraft engines

Income attributable to aircrafts and aircraft engines is deemed to arise outside Malta irrespective of whether the operation takes place in Malta or abroad. This provision is intended to make Malta an attractive jurisdiction for aircraft registration in particular to private aircrafts. Malta has also adopted the Cape Town Convention on International Interests in Mobile Equipment and the Aircraft Protocol.

Mutual Agreement Procedures

No additional tax is due by a person who has taken action under Mutual Agreement Procedure. This applies for the period when the Mutual Agreement Procedure is initiated up to the date when the issue is concluded under the said procedure.

Incentives to individuals

Employees of investment services companies

Employees of investment services companies whose activities consist of the provision of management, administration, safekeeping or investment advice to collective investment schemes are now eligible to certain exemptions from income tax for the first ten years on certain fringe benefits such as removal costs, accommodation, travelling, use of car, medical expenses and school expenses.

This provision applies only to individuals who are either not ordinarily resident or not domiciled in Malta or has not been resident in Malta for at least three years and has been engaged on full time basis in a similar position outside Malta.

Qualifying contract of employment

An individual in receipt of employment income under a qualifying contract of employment, who is not deemed to be ordinarily resident in Malta, is brought to charge at a flat rate of 15%. The Inland Revenue Department will be issuing guidelines to clarify and define the term 'qualifying contract of employment'.

Payments made for furtherance of studies

An individual may deduct fees incurred for the furtherance of his own studies provided he has proof of the fees paid. The fees are allowable and may therefore be deducted from the total income in arriving at the chargeable income.

Alimony payments

Alimony payments received from an estranged spouse under the authority of a foreign court (as approved by the Inland Revenue Department) are exempt from income tax.

On the other hand, the alimony payments to an estranged spouse under the authority of a foreign court (as approved by the Inland Revenue Department) are allowable and may be deducted from the total income of the taxpayer in arriving at the chargeable income.

Some of these benefits should entice more foreigners to work in Malta within the growing financial services industry.

“employment income is brought to charge at a flat rate of 15%”



Administrative changes

Changes made in the Income Tax Management Act enhance the powers granted to the Commissioner of Inland Revenue during the assessment stage. Notices published in the Government Gazette by the Commissioner of Inland Revenue will be considered as duly notified to individuals whose address is unknown. Furthermore, any information requested by the Commissioner of Inland Revenue but not made available before issuing a best of judgement assessment may not be produced as evidence to the Board of Special Commissioners during appeal.

Changes in the tax refund provisions

As announced during the budget speech, no tax refund will be paid unless all income tax and any Value Added Tax due up to date of the period when the income tax refund is being claimed has been settled.

The tax refund available under Article 48(4)(a) to shareholders in receipt of dividend from an international trading company or from a dividend distribution from the Foreign Income Account has been extended to shareholders registered with the Inland Revenue Department and not only non residents. This new provision will facilitate the use of structures involving multi tier Maltese companies. The applicable refund is equivalent to two thirds of the tax at source on

dividend distributed. The refunds under Article 48(4) have also been extended to companies who opt to convert under the new regime.

The powers of the Commissioner of Inland Revenue have been extended to facilitate and widen the circumstances under which companies registered before 1 January 2007 may opt to be treated as companies registered after 1 January 2007 and entitle shareholders in receipt of dividend from such companies to various types of income tax refunds. Conversion is now available to companies operating the Foreign Income Account, companies not subject to tax but likely to have income allocated to the Foreign Income Account as well as

dividend feeder companies, shipping companies and companies benefiting from the Business Promotion Act and Regulations.

The provision stipulating the period within which the tax refund by the tax authorities is repaid has been set at fifteen days from when the tax refund claim together with other documentation is submitted, rather than within fifteen days from the month end. This is beneficial to all concerned since there is no longer the need to submit a tax refund claim towards the end of a particular month but may now be submitted any time.



....within fifteen days from when the refund claim is submitted..



Taxand's Take

Clients who are already using Maltese entities in their structures should look at the new definition of a participating holding and the widening of the participation exemption. Income and capital gains which may not have qualified for the participation exemption in the past may now be eligible for such exemption.

Clients who are in the process of setting up a Maltese company may be more interested in exploiting the benefit of the step up provision.

Individuals employed with investment services companies are advised to review their salary package with a view to benefit from the new exemptions from fringe benefits and potential reduced tax rate on their employment income.



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