



MALTA DOUBLE TAX TREATIES

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L.N. 14 of 2011**INCOME TAX ACT
(CAP. 123)****Double Taxation Relief (Taxes on Income) (Republic of Italy)
(Amendment) Order, 2011**

IN exercise of the powers conferred by article 76 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following Order:-

Citation.

S.L.123.16

Amendments to
have effect.

1. The title of this Order is the Double Taxation Relief (Taxes on Income) (Republic of Italy) (Amendment) Order, 2011 and this Order shall be read and construed as one with the Double Taxation Relief (Taxes on Income) (Republic of Italy) Order, hereinafter referred to as "the principal Order".

2. It is hereby declared:

(a) that the amendments to the principal Order, as specified in the Schedule to this Order, have been made with the Government of the Republic of Italy with a view to affording relief from double taxation and preventing fiscal evasion in relation to the following taxes imposed by the laws of the Republic of Italy:

- (i) the personal income tax;
- (ii) the corporate income tax;
- (iii) the regional tax on productive activities;

(b) that it is expedient that those amendments should have effect;

(c) that the Protocol specified in the Schedule to this Order has entered into force on 24 November, 2010.

SCHEDULE

PROTOCOL

TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF FISCAL EVASION

The Government of Malta and the Government of the Italian Republic, desiring to conclude a Protocol to amend the Agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion, with Additional Protocol and Exchange of Notes, signed at Valletta on 16th July, 1981 (hereinafter referred to as "the Agreement"),

have agreed as follows:

ARTICLE I

Paragraph (3) of Article 2 "Taxes Covered", shall be deleted and replaced by the following:

"(3) The existing taxes to which this Agreement shall apply are:

(a) in the case of Italy:

(i) the personal income tax;

(ii) the corporate income tax;

(iii) the regional tax on productive activities;

even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax");

(b) in the case of Malta:

the income tax,

(hereinafter referred to as "Malta tax")."

ARTICLE II

With reference to Article 3 "General definitions", letter (i), subparagraph (i) of paragraph (1) shall be replaced by the following:

"(i) in the case of Italy, the Ministry of Economy and Finance;"

ARTICLE III

1. With reference to Article 22 "Elimination of double taxation", paragraph (2) shall be deleted and replaced by the following:

"(2) If a resident of Italy owns items of income which are taxable in Malta, Italy, in determining its income taxes specified in Article 2 of this Agreement, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Agreement otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the income tax paid in Malta but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

The tax paid in Malta for which deduction is granted is only the pro rata amount corresponding to the foreign income which is included in the aggregate income.

However, no deduction shall be granted if the item of income is subjected in Italy to a substitute tax or to a final withholding tax, or to substitute taxation at the same rate as the final withholding tax, also by request of the recipient, in accordance with Italian law."

2. Paragraph 4 of Article 22 shall be deleted.

ARTICLE IV

Article 25 "Exchange of information" shall be deleted and replaced by the following:

"(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political or administrative subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement as well as to prevent fiscal evasion and tax avoidance. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph (1) by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in

public court proceedings or in judicial decisions.

(3) In no case shall the provisions of paragraph (1) and (2) be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph (3) be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE V

Each Contracting State shall notify to the other the completion of the procedures required by its domestic law for the entry into force of this Protocol. This Protocol shall enter into force on the date of the receipt of the later of these notifications and its provisions shall thereupon have effect in both States.

This Protocol shall remain into force as long as the Agreement remains into force.

In Witness thereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

Done in duplicate in Rome this 13th day of March 2009 in the English and Italian languages, all texts being equally authentic.

Tonio Borg
For the Government
of Malta

Vincenzo Scotti
For the Government
of the Italian Republic

