International Tax

Malta Tax Alert

8 May 2013

New treaty signed with Russia

Malta and Russia signed a new tax treaty on 24 April 2013 to replace the pending tax treaty signed between the countries in 2000. It is expected that the entry into force of the new treaty will contribute to the development of cross-border trade, as well as finance and investment relationships between the treaty partners.

The treaty generally is in line with Russia's model tax treaty.

The significant features of the newly proposed treaty are as follows:

Withholding taxes: The treaty provides for withholding at source at the following rates:

- *Dividends paid from Russia*:
  a) 0% on dividends paid to a pension fund resident in Malta provided the dividends are derived from investments that are made out of assets of the pension fund;
  b) 5% on dividends paid to a company (other than a partnership) that holds directly at least 25% of the capital of the distributing company and the holding amounts to at least EUR 100,000; and
  c) 10% in all other cases.

  From a Maltese perspective, any withholding tax on dividends may not exceed the tax chargeable on the profits out of which the dividends are paid, i.e. effectively no withholding tax will be levied.

  It should be noted that the term "dividends" is defined to include income paid in the form of interest, which is subject to the same tax treatment as income from shares by the source state (see below regarding the applicability of domestic thin capitalization rules), as well as any payments on units of mutual investment funds or similar collective investment vehicles or schemes.

- *Interest*: The rate on interest will be 5%. However, the term 'interest' is defined to specifically exclude interest regarded as a dividend under the treaty (see above).

- *Royalties*: The rate on royalties will be 5%. However, the term 'royalties' does not include payments for the use of, or the right to use, industrial, commercial or scientific equipment.

Contacts

Nick Captur
ncaptur@deloitte.com.mt

Conrad Cassar Torregiani
ctorregiani@deloitte.com.mt

Jevgenija Pavlova
jpavlova@deloitte.com.mt

In addition to a limitation of benefits provision that will apply to all payments of dividends, interest and royalties, the reduced withholding tax rates also will not be applicable at the level of the recipient in triangular situations (i.e. a permanent establishment of the recipient in a third state).

Capital gains: The source state may tax gains derived by a resident of the other state from the alienation of shares or other rights deriving more than 50% of their value directly or indirectly from immovable property situated in the source state.

Elimination of double taxation: Both states apply the ordinary credit method for purposes of elimination of double taxation.

Limitation of benefits: The treaty contains a general limitation of benefits provision, which will not apply where a company is engaged in substantive business operations in the residence state and the relief from the taxation is claimed from the source state with respect to income that is connected to such operations.

Protocol: The protocol to the treaty authorizes the treaty partners to apply the provisions of their national thin capitalization rules or controlled foreign company rules (if any).

Entry into force: The treaty will enter into force 30 days after the second country gives notice that its internal ratification procedures have been completed. The treaty will apply in respect of income derived during taxable years beginning on or after 1 January of the year following the year in which the treaty enters into force.