Deloitte Malta
Tax & Legal

Tax Alert

Malta and Moldova sign a tax treaty, while Malta and Russia tax treaty is ratified

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Malta and Moldova

Malta and Moldova signed a new tax treaty on 10 April 2014. Main features of the treaty are summarised below.

Withholding taxes

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

- Dividends paid from Moldova - 5% provided that the dividends are paid to a resident of Malta who is the beneficial owner thereof. In case of Malta, effectively no withholding tax will be levied as any withholding tax on dividends may not exceed the tax chargeable on the distributable profits.
- Interest - 5%.
- Royalties - 5%, where the term ‘royalties’ does not include payments for the use of, or the right to use, industrial, commercial or scientific equipment (i.e., lease income).

Capital gains

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

Elimination of double taxation

Both Malta and Moldova apply the ordinary credit method for purposes of elimination of double taxation.

Limitation of benefits

The treaty does not contain limitation of benefits provisions.

Protocol

Some of the additional provisions stipulated in the protocol to the treaty:

- The term "person" also includes "an investment fund" which means:
  i. *In Malta, a scheme or arrangement which is licensed or otherwise authorised under the Investment Services Act;*
  ii. *In Moldova, a public company, participant of the security market created for attracting funds by offering its own shares and registered under the Domestic Legislation.*
- With respect to "enterprise of a Contracting State", in the case in which an enterprise, operating ships and aircrafts in international traffic, is a resident of neither of the Contracting States, the right to tax will be attributed to the State, under which flag the ship or aircraft operates.

Entry into force

The treaty will enter into force on the date when the second country gives notice that its internal ratification procedures have been completed. The treaty will apply:

- In respect of taxes withheld at source, on income derived on or after 1st January of the calendar year next following the entry into force; and
- In respect of other taxes on income, to taxes chargeable for any tax year beginning on or after 1 January of the calendar year next following the entry into force.

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Malta and Russia

The tax treaty between Malta and Russia, signed on 24 April 2013, has been ratified by both Contracting States.

Some of the main features of the treaty have been reported earlier; a snapshot thereof:

Dividend WHT	In case of Russia: 0% (pension funds); 5% (qualifying companies); 10% in all other cases. In case of Malta: 0%.
Interest WHT	5%.
Royalty WHT	5% (lease income not covered).
Capital gains	Source state may tax alienation of shares or other rights deriving more than 50% of their value directly or indirectly from immovable property situated therein.
LOB	A general LOB, which will not apply where a company is engaged in substantive business operations in the residence state and the relief from taxation is claimed from the source state with respect to income that is connected to such operations.
ThinCap and CFC	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).

Some of the Malta's domestic tax features that may be beneficial in structuring with Russia:

- **Malta's participation exemption regime:** Malta is an attractive jurisdiction for holding shares in foreign entities, whether within or outside the European Union. In terms of Malta's participation exemption regime, any dividends or gains derived from a qualifying 'participating holding' (typically, at least 10% of equity shares or at least €1.2 million equity investment held for more than 183 days) in a company are wholly exempt from tax in Malta, subject to the respective compliance requirements being satisfied. Some additional criteria are imposed in case of dividend distributions received from a non-EU company.
- **Malta's full imputation system:** Any Malta company is generally subject to Malta tax on its worldwide income at the standard tax rate of 35%. However, the application of Malta's full imputation system in conjunction with the possibility of claiming Malta tax refunds by the shareholders would typically result in a Malta effective tax rate, for the company and its shareholder, of 5% or less. That is, a shareholder in receipt of a dividend from a Malta company out of certain profits is entitled to claim a refund of the Malta tax on those profits, provided it is duly registered for this purpose and subject to all other conditions being satisfied. A claim for a refund is paid by the Malta tax authorities within 14 days of a valid application being submitted.
- **Malta's source and remittance basis of taxation:** Any person who is "resident" but not "domiciled" in Malta (e.g., a company incorporated outside Malta but managed and controlled from Malta) is taxable on all chargeable income earned or derived in Malta (i.e., on a source basis) and on all chargeable income arising outside Malta (passive income) to the extent that such income is received in Malta (i.e., on a remittance basis). All capital gains arising outside of Malta are not taxable in Malta irrespective of whether or not these gains are remitted to Malta. This basis of taxation may be used to achieve a Malta effective tax rate of typically 0% with respect to certain foreign source (passive) income, which is not received in Malta, and foreign source capital gains.

In addition to the tax structuring opportunities outlined above, please note that Malta generally does not levy a withholding tax on dividends, interest and royalty payments by a Malta company to non-residents. In addition, there are no CFC rules or thin capitalisation restrictions in Malta.

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