



# MALTA Amendments to the Income Tax Act

---

03<sup>rd</sup> May 2010

The Maltese parliament has recently approved a series of amendments to the Maltese Income Tax Act. Whilst some of these amendments have been structured to curb tax avoidance on a local scenario, of particular relevance are the number of amendments which have been introduced to continue enhancing Malta lucrative regime in the context of international tax planning. This shows the continuous commitment by the Maltese government to make Malta an excellent centre of financial services and particularly a favourite EU jurisdiction to foreign investors doing international business.

## Changes to the definition of 'Equity Holding'

The definition of equity holding has been widened to include shareholdings which previously did not qualify under this provision. Under the new rules a holding will be deemed to constitute an equity holding when the shareholding entitles the shareholder to, at least any two (2) of the following rights:

- A Right to vote
- A Right to profits available for distribution (to shareholders)
- A Right to assets available for distribution on a winding up of that company

More importantly, the new rules have adopted a substance approach and clarified that an equity holding may still exist even where the shareholding:

- Is not a holding of share capital in a company; OR
- Does not consist solely of a holding of share capital.

A Maltese company is now entitled to demonstrate that in substance there is at any time an entitlement to, at least two (2) of the rights required for the holding to be qualified as an equity holding.

This amendment will undoubtedly make it possible for new structures to qualify for the Maltese participation exemption regime.

## Changes to the 'Participating Holding' Regime

Under the new rules a participating holding (which consequently entitles the right to claim a participating exemption) is now deemed to exist if a Maltese company holds directly at least 10% of the equity shares of a company, where such holding confers an entitlement to at least 10% of any two (2) of the following:

- Right to vote
- Profits available for distribution
- Assets available for distribution on a winding up



## **Changes to the Participation Exemption Regime**

The participation exemption regime has been extended to include the disposal of shares in a Maltese company. Previously, a major bottleneck in the so-called Malta 'double structures' involving multiple Maltese operating companies, it is now possible for a Maltese holding company to transfer the shares in a Maltese operating / trading company without any incidence of taxation in Malta. Malta companies holding shares in another Maltese company owning certain types immovable property situated in Malta may still be eligible for the participation exemption.

## **Increase in Step-Up Cost of Assets**

Under the new amendments, it is now permissible for a foreign company to increase the base cost of its assets (held outside Malta) on obtaining tax residence or being re-domiciled to Malta. The re-valued base-cost which should be notified to the Commissioner of Inland Revenue and which should not exceed the market value of the asset, will constitute the (new) acquisition cost of the asset for the purpose of calculating any subsequent gain in terms of Maltese tax law. The step-up in base cost will also apply to a Maltese company which is created as result of a cross-border merger.

## **Exemption on Royalty Income**

Royalties and similar income derived from patents in respect of inventions are now exempted from tax in Malta. The exemption on royalties which was previously only applicable to royalties paid to non-residents will now be also applicable to Maltese companies deriving such income. Any royalty income distributed by way of dividend will also be exempt at the level of the shareholders.

## **Extension of Malta's Unilateral Double Tax Relief**

Malta's unilateral relief regime has been amended to include double tax relief on the tax paid in Malta. This amendment proposes a valid solution (previously not available) to claim double tax relief in multi-tier structures involving Maltese companies interposed at two or more levels of the structure.



## Income from the Operation of Aircrafts

In an effort to promote the aviation industry in Malta, the Maltese Government has clarified his position on income derived from aircrafts which may have called at or operated from any airport in Malta. A new provision has been enacted contemplating that any income derived by a person from ownership, operation or leasing of aircrafts used for or employed in the international transport of passengers or goods is deemed to constitute income arising outside Malta. This position will still uphold if such aircraft may have called upon at or operated from any airport in Malta. Under Malta's remittance basis of taxation, income deemed to arise outside Malta will be completely exempted from tax on the basis that such income is not remitted to Malta. Accordingly, it is now possible to shift the tax residence of an aircraft company to Malta and benefit from an outright tax exemption, even if such aircraft calls at a Maltese airport. This clarification has been complemented with an attractive Bill on Aircraft Registration in Malta (The Aircraft Registration Act) and which is expected to be ratified in Parliament in the coming months.

### Disclaimer

The above information is only intended to provide general guidance. It should not be construed or interpreted in any manner whatsoever as to give any advice or recommendations on any aspects of Maltese Law.

*For further information kindly contact:*

Mr. Franco Falzon LL.M  
*Director - International Tax Services*

*Email: [francof@3a.com.mt](mailto:francof@3a.com.mt)*

### 3a Accountants

*The Penthouse Palazzo Ca' Brugnera,  
Valley Road B'Kara BKR 9024, Malta.*

*Tel + 356 2757 2757  
Fax + 356 2757 2758  
<http://www.3a.com.mt>*