L.N. 238 of 1998

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income) (Republic of France) (Amendment) Order, 1998

IN exercise of the powers conferred by section 76 of the Income Tax Act, the Minister of Finance has made the following order:—

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of France) (Amendment) Order, 1998, and shall be read and construed as one with the Double Taxation Relief (Taxes on Income) (Republic of France) Order, 1983, hereinafter referred to as "the principal order". Citation. L.N. 5 of 1983.

2. It is hereby declared:— Amends the principal order.

(a) that the amendments to the principal order specified in the Schedule to this order have been made with the Government of the Republic of France with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Republic of France:

(i) the income tax;

(ii) the corporation tax; including any withholding tax, prepayment (precompte) or advanced payment with respect to the aforesaid taxes;

(iii) the solidarity tax on wealth;

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

(c) that the Protocol has entered into force on the 1st September, 1997.

SCHEDULE

PROTOCOL
AMENDING THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF MALTA
AND THE GOVERNMENT OF THE FRENCH REPUBLIC
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME
SIGNED IN VALLETTA ON 25TH JULY 1977.

The Government of Malta and the Government of the French Republic, desiring to amend the Agreement between the two Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Valletta on 25th July 1977 (hereinafter referred to as "the Agreement"), have agreed as follows:

Article 1

In the title and the preamble of the Agreement, and in the preamble of the Protocol of 25th July 1977, the words "with respect to taxes on income and capital" are substituted for the words "with respect to taxes on income".

Article 2

In subparagraph (3)(a) of Article 2 of the Agreement the following subparagraph: "(iii) the solidarity tax on wealth;" is inserted after subparagraph (ii).

Article 3

Paragraph (2) of Article 3 of the Agreement is replaced by the following paragraph:

"(2) As regards the application of the Agreement by a Contracting State, any term not defined therein shall have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies. The meaning of a term under the taxation law of that State shall have priority over the meaning provided for such term in other branches of law of that State.".

Article 4

In Article 6 of the Agreement, a new paragraph is added which reads as follows:

"(5) Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a

Contracting State and held by that company or legal person, income derived by the owner from the direct use, letting or use in any other form of his right of enjoyment may be taxed in that State. The provisions of this paragraph shall apply notwithstanding the provisions of Articles 7 and 14.".

Article 5

In paragraph (1) of Article 13 of the Agreement, the words ", directly or through one or more other companies or legal persons," are inserted after the words "which consist".

Article 6

Paragraph (1) of Article 23 of the Agreement is completed by the following sentence:

"Capital represented by shares or other rights in a company or legal person the assets of which consist principally, directly or through one or more other companies or legal persons, of immovable property situated in a Contracting State or of rights connected with such immovable property may be taxed in that State.".

Article 7

In Article 24 of the Agreement, paragraph (1) is deleted and replaced by the following paragraph:

"(1) In the case of France, double taxation shall be avoided in the following manner:

(a) Income arising in Malta, which may be taxed or shall be taxable only in that State in accordance with the provisions of this Agreement, shall be taken into account for the computation of the French tax where the beneficiary of such income is a resident of France and where such income is not exempted from corporation tax according to French domestic law. In that case, the Malta tax shall not be deductible from such income, but the beneficiary shall be entitled to a tax credit against French tax. Such tax credit shall be equal:

(i) in the case of income which, according to the provisions of the Agreement, shall be taxable only in Malta, to the amount of French tax attributable to such income;

(ii) in the case of income which, according to the provisions of the Agreement, may be taxed in Malta, to the amount of tax paid in Malta in accordance with the provisions of the Agreement; however, such tax credit shall not exceed the amount of French tax attributable to such income.

(b) A resident of France who owns capital which may be taxed in Malta according to the provisions of the Agreement may also be taxed in France in respect of such capital. The French tax shall be computed by allowing a tax credit equal to the amount of the tax paid in Malta on such capital. However, such tax credit shall not exceed the amount of the French tax attributable to such capital.

(c) It is understood that the term "amount of French tax attributable to such income" as used in subparagraph (a) means:

(i) where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;

(ii) where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income.

This interpretation shall apply by analogy to the term "amount of French tax attributable to such capital" as used in subparagraph (b).

(d) (i) It is understood that the term "amount of tax paid in Malta" as used in subparagraphs (a) and (b) means the amount of Malta tax effectively and definitively borne in respect of the income or the items of capital in question, in accordance with the provisions of the Agreement, by the beneficiary or owner thereof who is a resident of France.

(ii) Notwithstanding the provisions of subparagraph (i), in the case of income referred to in Articles 10, 11 and 12, arising in Malta and paid to a beneficiary who is a resident of France by a person to whom the Agreement applies, Malta tax shall be deemed to have been paid as follows:

(aa) on dividends, at the rate of 15 per cent as provided in paragraph 2(b)(ii) of Article 10;

(bb) on interest, at the rate of 10 per cent as provided in paragraph (2) of Article 11; and

(cc) on royalties, other than those referred to in paragraph (3) of Article 12, at the rate of 10 per cent as provided in paragraph (2) of the said Article.

Relief from French tax by virtue of this subparagraph (ii) shall be given for a period of ten years only, beginning with the date on which the Protocol of the 8th of July 1994 entered into force. This period may, however, be extended by agreement between the Contracting States.".

Article 8

Paragraph (1) of Article 25 of the Agreement is completed by the following sentence:

"It is understood that an individual, legal person, partnership or association who is a resident of a Contracting State is not placed in the same circumstances as an individual, legal person, partnership or association who is not a resident of that State, even if, in the case of legal persons, partnerships or associations, those entities are considered, under subparagraph (f) of paragraph (1) of Article 3, as nationals of the Contracting State of which they are residents.".

Article 9

The following paragraph is inserted in the Protocol of 25th July 1977 before paragraphs V and VI, which become respectively paragraphs VI and VII:

"V. In respect of Article 10, it is understood that the term "dividends" also includes income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident.".

Article 10

The following paragraph VIII is added to the Protocol of 25th July 1977:

"VIII. (a) The provisions of the Agreement and of this Protocol – other than the provisions of this paragraph – shall not apply to persons entitled to any special tax benefit under:

(i) a law of either one of the Contracting States which has been identified in an exchange of letters between the Contracting States; or

(ii) any substantially similar law subsequently enacted.

(b) Without prejudice to the provisions of subparagraph (a), the provisions of the Agreement and of this Protocol – other than the provisions of this paragraph – shall not apply to:

(i) dividends paid by persons referred to in subparagraph (a); and

(ii) other items of income derived from persons referred to in subparagraph (a) by associated enterprises as defined in subparagraphs (a) or (b) of Article 9; and

(iii) shares or rights in persons referred to in subparagraph (a).".

Article 11

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the first day of the second month following the month in which the latter of these notifications has been received.

(2) The provisions of the Protocol shall apply for the first time:

(a) in respect of taxes withheld at source, to amounts taxable on or after the date of entry into force of the Protocol;

(b) in respect of taxes on income which are not withheld at source, to income relating to the calendar year or accounting period, as the case may be, during which the Protocol enters into force;

(c) in respect of the other taxes, to taxation the taxable event of which will occur on or after the date of entry into force of the Protocol.

(3) The provisions of the Protocol shall remain in force as long as the Agreement shall remain in force.

In witness whereof, the undersigned, duly authorised thereto, have signed this Protocol.

Done at Valletta this eighth day of July 1994, in duplicate, in the French and English languages, both texts being equally authentic.

GUIDO DE MARCO
For the Government of Malta

ALAIN LAMASSOURE
For the Government of the French Republic

MINISTRY OF FOREIGN AFFAIRS REPUBLIC OF FRANCE

The Minister

EXCHANGE OF LETTERS

Your Excellency,

I have the honour to refer to the Protocol, which has been signed today, amending the Agreement between the Government of the French Republic and the Government of Malta for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income and capital signed at Valletta on 25th July 1977 and to propose on behalf of the Government of the French Republic to agree that the persons referred to in subparagraph (a) of paragraph VIII of the Protocol of 25th July 1977, as amended by the Protocol which has been signed today, are the following:

(i) persons who are entitled to a special tax benefit under the Malta International Business Activities Act 1988 and subsequent amendments, except for those persons who opt under section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap. 123); or

(ii) persons who and to the extent to which under the provisions of the Merchant Shipping Act 1973 and subsequent amendments are not subject to tax on the profits derived from the operation of ships in international traffic; or

(iii) persons entitled to any special tax benefit in respect of distributions by a trust subject to the provisions of the Offshore Trusts Act 1988 and subsequent amendments, given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under the Agreement in its own right.

If the foregoing proposals are acceptable to the Government of Malta, I have the honour to suggest that the present letter and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Protocol which has been signed today.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Valletta, 8th July 1994

A. LAMASSOURE

B 1934

MINISTRY OF FOREIGN AFFAIRS MALTA

The Deputy Prime Minister

EXCHANGE OF LETTERS

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's letter of today which reads as follows:

"I have the honour to refer to the Protocol, which has been signed today, amending the Agreement between the Government of the French Republic and the Government of Malta for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income and capital signed at Valletta on 25th July 1977 and to propose on behalf of the Government of the French Republic to agree that the persons referred to in subparagraph (a) of paragraph VIII of the Protocol of 25th July 1977, as amended by the Protocol which has been signed today, are the following:

(i) persons who are entitled to a special tax benefit under the Malta International Business Activities Act 1988 and subsequent amendments, except for those persons who opt under section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap. 123); or

(ii) persons who and to the extent to which under the provisions of the Merchant Shipping Act 1973 and subsequent amendments are not subject to tax on the profits derived from the operation of ships in international traffic; or

(iii) persons entitled to any special tax benefit in respect of distributions by a trust subject to the provisions of the Offshore Trusts Act 1988 and subsequent amendments, given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under the Agreement in its own right.

If the foregoing proposals are acceptable to the Government of Malta, I have the honour to suggest that the present letter and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Protocol which has been signed today.".

The foregoing proposals being acceptable to the Government of Malta, I have the honour to confirm that Your Excellency's letter and this Reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of this Protocol.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Valletta, 8th July 1994

GUIDO DE MARCO