L.N. 146 of 1999

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income) (Kingdom of the Netherlands) (Amendment) Order, 1999

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) (Kingdom of the Netherlands) (Amendment) Order, 1999, and shall be read and construed as one with the Double Taxation Relief (Taxes on Income) (Kingdom of the Netherlands) Order, 1980, hereinafter referred to as "the principal order". Citation. L.N. 90 of 1980.

2. It is hereby declared — Amends 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 Kingdom of the Netherlands with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Kingdom of the Netherlands:

(i) the Income Tax;

(ii) the Wages Tax;

(iii) the Company Tax;

(iv) the Dividend Tax;

(v) the Capital Tax;

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

(c) that the Protocol has entered into force on the 18th March, 1999.

SCHEDULE

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE REPUBLIC OF MALTA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL WITH PROTOCOL, SIGNED AT THE HAGUE ON 18 MAY 1977.

Malta and the Kingdom of the Netherlands, desiring to conclude a Protocol to amend the Agreement between the Republic of Malta and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital with Protocol, signed at The Hague on 18 May 1977, have agreed as follows:

The provisions of the Agreement between the Republic of Malta and the Kingdom of the Netherlands with Protocol, signed at The Hague on 18 May 1977, shall be amended and supplemented as follows:

Article I

The title and preamble of the Agreement shall be amended as follows:

"AGREEMENT BETWEEN MALTA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL.

Malta and the Kingdom of the Netherlands, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:".

Article II

In paragraph 2 of Article 6 of the Agreement the words ", and debt-claims of every kind secured by mortgage on immovable property, excluding bonds or debentures" shall be deleted.

Article III

In paragraph 4 of Article 11 of the Agreement the words "whether or" shall be inserted immediately after the words "and income from debt-claims of every kind".

Article IV

Article 19 of the Agreement shall be deleted and replaced by the following:

"ARTICLE 19

Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment and any annuity shall be taxable only in that State.

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment exercised in the other State, or where instead of the right to annuities a lump sum is paid, this remuneration or this lump sum may be taxed in the State in which it arises.

3. Any pension and other payment paid out under the provisions of a social security system of one of the States to a resident of the other State may be taxed in the first-mentioned State.

4. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.".

Article V

1. In paragraph 2 of Article 25 of the Agreement the words "paragraph 1 of Article 17" shall be deleted and replaced by the following: "paragraph 3 of Article 19".

2. In paragraph 3 of Article 25 of the Agreement the words "and Article 18" shall be deleted and replaced by the following: "paragraph 1 of Article 17, Article 18, and paragraph 2 of Article 19".

3. After paragraph 3 of Article 25 of the Agreement the following shall be inserted:

"4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the tax computed in accordance with the preceding paragraphs of this Article with respect to income which may be taxed in Malta according to Article 7, if such income is subject in Malta to a special regime as meant in Article 30.

The amount of this deduction shall be the lesser of the following amounts:

(i) the amount equal to the Malta tax;

(ii) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph 1 of this Article, as the amount of the said items of income bears to the amount of income which forms the basis referred to in paragraph 1 of this Article.".

4. Paragraphs 4, 5 and 6 of Article 25 of the Agreement shall be renumbered 5, 6 and 7.

Article VI

The following Article shall be inserted immediately after Article 29 of the Agreement:

"ARTICLE 30

Exclusion of Certain Companies or Other Persons

1. This Agreement is not applicable to companies or other persons which are wholly or partly exempted from tax by a special regime under the laws of either one of the States. It is also not applicable to income from such companies or other persons derived by a resident of the other State, nor to shares, 'jouissance' rights or interests in such companies or other persons.

2. The provisions of paragraph 1 of this Article are also applicable in case a company or other person is treated under the administrative practice of that State in the same or similar way as a company or person as meant in that paragraph.

3. The competent authorities of the States shall by mutual agreement decide which special regime is meant in the provisions of paragraph 1 of this Article.

The provisions of paragraph 1 are also applicable to any identical or substantially similar legislation in addition to or replacing such a special regime enacted after 1 January 1993 unless the competent authorities of the States decide otherwise by mutual agreement.".

Article VII

Articles 30, 31, 32 and 33 of the Agreement shall be renumbered 31, 32, 33 and 34.

Article VIII

1. In paragraph 1 of the renumbered Article 32 of the Agreement the words ", if that country" shall be deleted and replaced by the following: "or Aruba, if the country concerned".

2. In paragraph 2 of the renumbered Article 32 of the Agreement the words "or Aruba" shall be inserted immediately after the words "to the Netherlands Antilles".

Article IX

The present text of Part IV of the Protocol shall be numbered as IV. 2.

The following new paragraph shall be inserted immediately before the paragraph numbered as IV. 2:

"1. The provisions of sub-paragraph (a) of paragraph 2 of Article 10 shall not apply if the relation between the two companies has been arranged or is maintained primarily with the intention of securing this reduction.".

Article X

Part VI of the Protocol shall be deleted and replaced by the following:

"VI. AD ARTICLES 24 AND 25

The provisions on the taxation of capital in Article 24 and the provisions with respect to the elimination of double taxation with respect to capital in paragraph 2 of Article 25 of the Agreement will not apply as long as Malta does not levy a tax on capital.".

Article XI

Part VIII of the Protocol shall be deleted and replaced by the following:

"VIII. AD ARTICLE 25

Notwithstanding Article 34 of the Agreement the provision of paragraph 5 of Article 25 shall cease to have effect after the last day of December, 1997, unless the competent authorities decide otherwise in mutual agreement.".

Article XII

The following shall be added as Part IX to the Protocol:

"IX. AD ARTICLES 28 AND 30

1. It is understood that provisions on confidentiality in a special regime as meant in Article 30 or such provisions in any identical or substantially similar enactment in addition to or replacing this special regime, shall not impose any restrictions on the exchange of information as meant in Article 28 of the Agreement in those cases where the Maltese competent authority and the relative authority vested with the administration of such special regime agree that sufficient evidence exists to warrant criminal proceedings.

2. It is also understood that provisions in legislation enacted after 1 January, 1994 on confidentiality, identical to or replacing provisions on confidentiality in the special regime as meant in Article 30 of the Agreement, shall not impose any restrictions on the exchange of information as meant in Article 28 of the Agreement in case of suspicion of tax avoidance or tax evasion.".

Article XIII

Entry into force

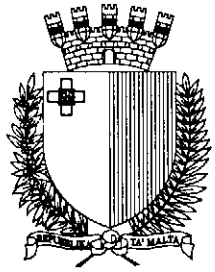
This Protocol shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after 1 January 1994.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE at The Hague, this 18th day of July, 1995, in duplicate, in the English and Netherlands languages, both texts being equally authentic.

For the Government of Malta
NOEL BUTTIGIEG SCICLUNA

For the Kingdom of the Netherlands
J. K. T. POSTMA



18 July 1999

Your Excellency,

With reference to the Protocol, signed today, amending the Agreement between the Republic of Malta and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital with protocol, signed at The Hague on 18 May 1977, I have the honour to state on behalf of the Government of Malta, the following:

The Malta International Business Activities Act, 1988 (the MIBA Act) is considered to be a special regime as meant in the provisions of paragraph 1 of Article 30 of the amended Agreement. However, the provisions of paragraph 1 of Article 30 are not applicable to companies and other persons who are subject to tax on their total income to the full rate in accordance with the provisions of the Income Tax Act (Cap. 123) and who have waived irrevocably their rights to protection under section 38 of the MIBA Act.

The transitional period during which new registrations under the MIBA Act regime can be made will end as per 31 December 1996.

During the negotiations it was acknowledged that following the confidentiality provisions in the MIBA Act, Malta will not be able to fulfil its obligations for the exchange of information as meant in article 28 of the Agreement with respect to companies that are registered under the MIBA Act before 23 September 1994. This situation will be finished as per 23 September 2004, or so much earlier as the guarantees on confidentiality under the MIBA Act will have elapsed.

During the negotiations it was further acknowleged that for example the following information can be exchanged between the competent authorities of both states upon request in case this information could be relevant for Netherlands or Maltese tax purposes:

a. The changes in a bank account of a taxpayer, including interest receipts and deposits made;

b. Names and addresses of shareholders of foreign companies;

c. Amounts of commissions or similar payments and names and addresses of receivers of these payments;

d. Verification whether a person is registered with the tax administration, whether he has filed a tax return and paid the tax due;

e. Verification whether income of a taxpayer which is exempted from tax or for which a credit is given on the basis of the bilateral tax treaty has effectively been taxed in the other state;

f. Information to judge whether or not transfer prices for deliveries or services between Maltese and Netherlands companies have been calculated correctly (for example if goods have been sold shortly after having been bought and at what price);

g. The contents of an advance revenue ruling.

During the negotiations it was finally acknowledged that a trust, registered under the Offshore Trusts Act, 1988, respectively a unit trust and a tax exempt open-ended corporate vehicle with variable share capital (SICAV), registered under the proposed Investment Services Act will not qualify as a resident of one of the states for the application of the Agreement.

If the foregoing is acceptable to the Government of the Kingdom of the Netherlands, I have the honour to propose that this letter and your letter in reply shall constitute an Agreement between Malta and the Kingdom of the Netherlands which shall take effect on the date of entry into force of the above-mentioned Protocol.

Permit me, Excellency, to renew to you the assurances of my highest consideration.

For the Government of Malta,
DR NOEL BUTTIGIEG SCICLUNA

His Excellency
dr. W.A.F.G. Vermeend
State Secretary for Finance
of the Netherlands

B 1217

STAATSSECRETARIS
VAN
FINANCIËN

The Hague, 18 ta' July, 1995

Excellency,

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

"With reference to the Protocol, signed today, amending the Agreement between the Republic of Malta and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital with protocol, signed at The Hague on 18 May 1977, I have the honour to state, on behalf of the Government of Malta, the following:

The Malta International Business Activities Act, 1988 (the MIBA Act) is considered to be a special regime as meant in the provisions of paragraph 1 of Article 30 of the amended Agreement. However, the provisions of paragraph 1 of Article 30 are not applicable to companies and other persons who are subject to tax on their total income to the full rate in accordance with the provisions of the Income Tax Act (Cap. 123) and who have waived irrevocably their rights to protection under section 38 of the MIBA Act.

The transitional period during which new registrations under the MIBA Act regime can be made will end as per 31 December 1996.

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During the negotiations it was further acknowledged that for example the following information can be exchanged between the competent authorities of both states upon request in case this information could be relevant for Netherlands or Maltese tax purposes:

a. The changes in a bank account of a taxpayer, including interest receipts and deposits made;

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d. Verification whether a person is registered with the tax administration, whether he has filed a tax return and paid the tax due;

e. Verification whether income of a taxpayer which is exempted from tax or for which a credit is given on the basis of the bilateral tax treaty has effectively been taxed in the other state;

f. Information to judge whether or not transfer prices for deliveries or services between Maltese and Netherlands companies have been calculated correctly (for example if goods have been sold shortly after having been bought and at what price);

g. The contents of an advance revenue ruling.

During the negotiations it was finally acknowledged that a trust, registered under the Offshore Trusts Act, 1988, respectively a unit trust and a tax exempt open-ended corporate vehicle with variable share capital (SICAV), registered under the proposed Investment Services Act will not qualify as a resident of one of the states for the application of the Agreement.

If the foregoing is acceptable to the Government of the Kingdom of the Netherlands, I have the honour to propose that this letter and your letter in reply shall constitute an Agreement between Malta and the Kingdom of the Netherlands which shall take effect on the date of entry into force of the above-mentioned Protocol."

I have the honour to inform your Excellency that the foregoing is acceptable to the Government of the Kingdom of the Netherlands and I have the honour to confirm on behalf of the Government that your letter and this letter in reply shall constitute an Agreement between the Kingdom of the Netherlands and Malta which shall take effect on the date of entry into force of the abovementioned Protocol.

Please accept, Excellency, the assurances of my highest consideration.

For the Government of the Netherlands,
J.K.T. POSTMA
for the State Secretary for Finance

His Excellency
Dr Noel Buttigieg Scicluna
Ambassador Extraordinary and
Plenipotentiary of Malta