L.N. 83 of 2003

INCOME TAX ACT
(CAP.123)

Double Taxation Relief (Taxes on Income) (Kingdom of Belgium) (Amendment) Order, 2003

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

Citation.

1. The title of this order is the Double Taxation Relief (Taxes on Income) (Kingdom of Belgium) (Amendment) Order, 2003, and it shall be read and construed as one with the Double Taxation Relief (Taxes on Income) (Kingdom of Belgium) Order, 1976, hereinafter referred to as "the principal order".

L.N. 108 of 1976.

Supplementary Agreement and Protocol.

2. It is hereby declared:-

(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 Belgium with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Kingdom of Belgium:

(i) the individual income tax;

(ii) the corporate income tax;

(iii) the income tax on legal entities;

(iv) the income tax on non-residents;

(v) the special levy assimilated to the individual income tax;

including the prepayments, the surcharges on such taxes and prepayments, and the supplements to the individual income tax;

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

(c) that the Supplementary Agreement specified in the Schedule to this order has entered into force on the 17th October, 2002.

SCHEDULE

SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE STATE OF MALTA AND THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION, AND THE PROTOCOL, SIGNED AT BRUSSELS ON JUNE 28, 1974

The Government of the State of Malta and the Government of the Kingdom of Belgium, desiring to conclude a Supplementary Agreement to amend the Agreement between the Kingdom of Belgium and the State of Malta for the avoidance of double taxation and the prevention of fiscal evasion, and the Protocol, signed at Brussels on June 28, 1974 (hereinafter respectively referred to as "the Agreement" and "the Protocol"), have agreed as follows:

Article I

Paragraph (3) of Article 2 of the Agreement shall be deleted and replaced by the following :

"(3) The existing taxes to which this agreement shall apply are, in particular :

(a) In Belgium :

(i) the individual income tax ;
(ii) the corporate income tax ;
(iii) the income tax on legal entities ;
(iv) the income tax on non-residents ;
(v) the special levy assimilated to the individual income tax ;

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax, (hereinafter referred to as "Belgian tax").

(b) In Malta :

the income tax, including prepayments of tax whether made by deduction at source or otherwise, (hereinafter referred to as "Malta tax")."

Article II

The following subparagraph (c) shall be added in paragraph (3) of Article 11 of the Agreement :

"(c) interest on commercial debt-claims - including debt-claims represented by negotiable instruments - resulting from deferred payments for goods, merchandise or services supplied by an enterprise of a Contracting State shall be exempt from tax in the other Contracting State."

Article III

The title and the text of Article 16 of the Agreement shall be deleted and replaced by the following :

"COMPANY MANAGERS

(1) Directors' fees and other similar payments derived by a resident of a contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

This provision shall also apply to payment derived in respect of the discharge of functions which, under the law of the Contracting State of which the company is a resident, are regarded as functions of a similar nature as those performed by a person referred to in the said provision.

(2) Remuneration derived by a person referred to in paragraph (1) from the company in respect of the discharge of day-to-day functions of a managerial or technical nature and remuneration received by a resident of a Contracting State in respect of his personal activity as a partner of a company, other than a company with share capital, which is a resident of the other Contracting State, may be taxed in accordance with the provisions of Article 15, as if the remuneration were remuneration of an employee in respect of an employment and as if references to the employer were references to the company."

Article IV

The text of Article 18 of the Agreement shall be deleted and replaced by the following :

"(1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

(2) However, pensions and other allowances, periodic or non periodic, paid under the social security legislation of a Contracting State or under a public scheme

organised by a Contracting State in order to supplement the benefits of that legislation shall be taxed in that State."

Article V

Subparagraphs (a), (b) and (c) of paragraph (1) of Article 23 of the Agreement shall be deleted and replaced by the following:

"(a) Where a resident of Belgium derives income or owns items of capital which may be taxed in Malta in accordance with the provisions of this Agreement, other than those of subparagraph (b) of paragraph (2) of Article 10, of paragraphs (2) and (7) of Article 11 and of paragraphs (2) and (5) of Article 12, Belgium shall exempt such income or such items of capital from tax but may, in calculating the amount of tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if such income or items of capital had not been exempted.

(b) (i) Subject to the provisions of the Belgian law regarding the allowance as a credit against Belgian tax of taxes paid abroad, when a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph (2) (b) of Article 10, not exempt from Belgian tax in accordance with subparagraph (c) hereof, or interest taxable in accordance with paragraphs (2) or (7) of Article 11, or royalties taxable in accordance with paragraphs (2) or (5) of Article 12, the Malta tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.

(ii) Belgium shall also allow the credit provided for in (i) of this subparagraph in respect of tax chargeable on dividends or interest derived from direct investment which are taxable in Malta by virtue of the Agreement and the general law of Malta where such tax is temporarily remitted or reduced under special provisions designed to promote the economic development of Malta.

Such credit shall apply for the first five years for which the Supplementary Agreement is effective; however the competent authorities of the Contracting States may consult each other to determine whether this period of time shall be extended or not.

The term "dividends or interest derived from direct investment" means dividends paid in respect of shares or interest paid in respect of debt-claims which are directly and durably connected with industrial or commercial development projects in Malta.

(c) Where a company which is a resident of Belgium owns shares in a company which is a resident of Malta, dividends which are paid to it by the latter company and which may be taxed in Malta in accordance with subparagraph (b) of paragraph (2) of Article 10, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law."

Article VI

Paragraph (2) of the Protocol is deleted. Consequently the numbering of paragraph (1) has to be eliminated.

Article VII

(1) This Supplementary Agreement shall be ratified and the instruments of ratification shall be exchanged at Brussels as soon as possible.

(2) The Supplementary Agreement shall enter into force 30 days after the date of exchange of instruments of ratification, and its provisions shall have effect:

(a) In Belgium:

(i) with respect to taxes due at source on income credited or payable on or after the 1st of January 1993 ;

(ii) with respect to taxes other than taxes due at source, on income of any taxable period ending on or after the 31st day of December 1992.

(b) In Malta, with respect to taxes which are levied for any year of assessment beginning on or after the 1st day of January 1993.

Article VIII

This Supplementary Agreement, which shall form an integral part of the Agreement and the Protocol, shall remain in force as long as the Agreement and the Protocol remain in force.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Supplementary Agreement.

DONE at Brussels, this twenty third day of June 1993, in duplicate in the English language.

FOR THE GOVERNMENT OF THE STATE OF MALTA :	FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM :
Guido de MARCO Minister of Foreign Affairs	Willy CLAES Minister of Foreign Affairs

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