L.N. 329 of 2010

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income) (Republic of France) (Amendment) Order, 2010

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

Citation.

1. This title of this order is the Double Taxation Relief (Taxes on Income) (Republic of France) (Amendment) Order, 2010 and it shall be read and construed as one with the Double Taxation Relief (Taxes on Income) (Republic of France) Order, hereinafter referred to as "the principal order".

S.L. 123.14

Amendments to have effect.

2. It is hereby declared:-

(a) that the amendments to the principal order, as 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 and preventing fiscal evasion 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;

(iv) the tax on salaries (*"la taxe sur les salaires"*);

(v) widespread social security contributions (*contributions sociales généralisées*) and contributions for the reimbursement of the social debt (*contributions pour le remboursement de la dette sociale*);

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

(c) that the Protocol specified in the Schedule to this order has entered into force on the 1st June, 2010.

VERŻJONI ELETTRONIKA

SCHEDULE

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT 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 AND ON CAPITAL SIGNED IN VALLETTA ON 25TH JULY 1977 AND AMENDED BY THE PROTOCOL

SIGNED IN VALLETTA ON 8TH JULY 1994 AND EXCHANGE OF LETTERS OF 8TH JULY 1994

The Government of Malta
and
The Government of the French Republic,

desiring to amend 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 and on Capital, signed on 25th July 1977 and amended on 8th July 1994 (hereinafter referred to as "the Agreement"),

have agreed as follows:

Article 1

Article 2 of the Agreement is amended as follows:

1. A subparagraph 3 a) iv) worded "the tax on salaries ("la taxe sur les salaires");" is added.

2. A subparagraph 3 a) v) worded as follows is added:

"(v) widespread social security contributions (contributions sociales généralisées) and contributions for the reimbursement of the social debt (contributions pour le remboursement de la dette sociale) ;".

3. In subparagraph 3 b), the words “and surtax including prepayments of tax whether made by deduction at source or otherwise” are deleted.

Article 2

Article 10 of the Agreement is amended as follows:

1. The subparagraph 2 a) is deleted and replaced by the following subparagraph:

"2.a) Where the dividends are paid by a company resident of France to a resident of Malta who is the beneficial owner thereof, the French tax so charged shall not exceed 15 per cent of the gross amount of the dividends. However, dividends paid by a company which is a resident of France and beneficially owned by a company which is a resident of Malta which holds directly at least 10 per cent of the capital of the company paying the dividends shall be taxable only in Malta.".

2. In paragraph 3, the words "income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident" are deleted and replaced by the following words "income treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident".

3. In subparagraph 5 a), the words "sub-paragraph (a)(ii)" shall be replaced by the words "sub-paragraph (a)".

4. A new paragraph worded as follows is added:

"8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or the assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.".

Article 3

Article 11 of the Agreement is amended as follows:

1. In paragraph 2, "10 per cent" is replaced by "5 per cent".

2. A new paragraph worded as follows is added:

"8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or the assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.".

VERŻJONI ELETTRONIKA

Article 4

In Article 12 of the Agreement, a new paragraph worded as follows is added:

"8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or the assignment of the rights in respect of which the royalty is paid to take advantage of this Article by means of that creation or assignment.".

Article 5

Article 22 of the Agreement is amended as follows:

1. Paragraph 1 is deleted and replaced by the following paragraph:

"1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State if such resident is subject to tax in respect of those items of income in that State. If that requirement is not met, those items of income shall remain taxable in the other Contracting State and according to the laws of that other State.".

2. A new paragraph worded as follows is added:

"3. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or the assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.".

Article 6

In subparagraph 1 d) ii) bb) of Article 24 of the Agreement, "10%" is replaced by "5%".

Article 7

The provisions of Article 27 of the Agreement are deleted and replaced by the following provisions:

"1. The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or territorial authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to**,** the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use information only for such purposes. They may disclose the information in public court proceeding or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.".

Article 8

The Protocol of the Agreement is amended as follows:

1. Paragraph V is deleted and paragraphs VI and VII shall be renumbered as paragraphs V and VI respectively.

2. A new paragraph worded as follows is added:

"VII. Where, under any provision of the Agreement, income or gains is or are wholly or partly relieved from tax in a State and, under the laws in force in the

other State, an individual, in respect of the said income or gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other State, and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income or gains as is remitted to or received in that other State.".

Article 9

1. Each of the Contracting States shall notify to the other the completion of the procedures required as far as it is concerned for the bringing into force of this Protocol. This Protocol shall enter into force on the first day of the second month following the day when 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 29th day of August, 2008, in duplicate, in the English and French languages, both texts being equally authentic.

Tonio Fenech
For the Government of
Malta

Eric Woerth
For the Government of French
Republic

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