



Entry into force of China – Malta new Double Taxation Treaty

The new treaty between Malta and the People's Republic of China for the avoidance of double taxation has entered into force and is effective as from 25 August 2011. The Treaty applies with respect to income derived during taxable years starting on or after 1 January 2012. This new Treaty replaces the double taxation agreement which was signed in 1993.

This Newsalert sets out some brief notes on the salient features of the new treaty.

Taxation of dividends, interest and royalties

Dividends - The new Treaty introduces a maximum withholding tax of 5% on dividends distributed by a company resident in one Contracting State (e.g. China) to a company resident in the other Contracting State (e.g. Malta), where the latter company holds at least 25% of the share capital of the company effecting the distribution. This rate compares well with rates contained in various other treaties concluded by China.

In all other circumstances, the maximum withholding tax is fixed at 10%.

Interest - When interest is paid by a company which is a resident of one Contracting State (e.g. China) to a resident of the other Contracting State (e.g. Malta) being the beneficial owner thereof, the withholding tax so charged shall not exceed 10% of the gross amount of the interest.

Royalties - The new Treaty also allows for a lower rate of withholding tax of 7% in respect of royalties derived from the use of (or the right to use) industrial, commercial or scientific equipment compared to the current rate of 10%. This rate compares well with that contained in many other treaties concluded with China.

Contracting States are entitled to charge a maximum withholding tax of 10% on other royalties.

Other Treaty Considerations

The new Treaty introduces some changes to timeframes in which the presence of an enterprise of one State in another Contracting State is considered to give rise to a permanent establishment in particular circumstances.

The timeframe within which a building site, assembly or installation project is deemed to constitute a permanent establishment will increase from the current eight months to twelve months.

However, the furnishing of services will now constitute a permanent establishment if activities are performed in a Contracting State for more than 183 days in any twelve months – this represents a reduction in the permissible timeframe under the old treaty.

The Treaty also provides for further enhanced cooperation between the Maltese and Chinese Revenue authorities particularly in the context of exchange of information and assistance in the collection of taxes.

Maltese domestic law considerations

By virtue of Maltese domestic tax legislation, no withholding tax is imposed on dividends distributed by Maltese resident companies to non-residents.

In addition, no Maltese withholding tax is imposed on interest and royalties derived by non-residents as long as the statutory conditions are complied with, particularly that the relevant income is not effectively connected with a permanent establishment through which the non-resident carried on business in Malta.

Furthermore, royalties and similar income derived from qualifying patents in respect of inventions may, at the taxpayer's option, be exempt from income tax in Malta, subject to satisfying certain conditions.

Maltese companies may also benefit from the participation exemption in respect of any income or gains received from a participating holding (a participating holding includes a holding of at least 10% in the equity capital of the company resident outside Malta) subject to satisfying certain conditions.

Malta's tax system coupled with the new double tax treaty between Malta and China should, *inter alia*, enhance Malta's attractiveness for the purposes of channelling investments in or from China.

The notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners and/or Senior Consultants of the firm. For further details please do not hesitate to contact:

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