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Article

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Malta: A Safe European Option For International Business

Overview

The fiscal implications of any transaction are typically at the forefront of the decision-making process when determining whether a particular jurisdiction offers an attractive proposition. In this regard, over the past two decades, one of Malta's key strengths as a financial services centre has been its rigorous yet flexible and constantly updated fiscal regime which is fully compliant with EU Directives and Regulations.

Briefing

The main connecting factors adopted by Malta to exert its jurisdiction to tax

Under Maltese law, persons who are ordinarily resident but not domiciled in Malta (or vice-versa) are only taxable on income arising in Malta and on any foreign income (excluding capital gains) remitted to Malta. On the other hand, persons who are neither ordinarily resident nor domiciled in Malta are only taxable on any income arising in Malta.
In this regard, although companies incorporated in Malta are considered to be both resident and domiciled in Malta, any foreign incorporated companies that are managed and controlled in Malta are considered to be resident but not domiciled in Malta and hence only taxable on foreign income (excluding capital gains) if such income is remitted to Malta.

The full-imputation system – a key element of Malta's fiscal legislation

Malta adopts the full-imputation system for dividend distributions. This mechanism is highly beneficial to shareholders receiving dividend income as it provides a credit of the tax paid by the company which is set-off against the tax to be paid by the shareholders in receipt of the dividend income. This credit, effectively capped to the tax paid by the Maltese company ensures that no economic double taxation is suffered by the shareholder receiving the dividend income.solid.

Other fiscal benefits associated with dividend payments

- No withholding tax and the underlying tax credit: Besides the full-imputation system, Malta's tax laws provide other benefits relating to dividend payments. For instance, no withholding tax is charged on any dividend payments whilst credit is also available to a shareholder for tax suffered by a company at underlying levels (prior to the actual distribution to the shareholder).

- Participation exemption: Any dividend income derived by a Maltese company from a participating holding which satisfies certain basic conditions (the "Participating Holding") may qualify under the Participation Exemption and hence will be exempt from tax. The Participation Exemption may also be claimed in respect of capital gains income derived from the transfer of the Participating Holding. Alternatively, the company may elect to be taxable on such income and apply for a 100% refund of the tax paid.

- Refunds to shareholders: Under the Maltese tax system, distributable profits are allocated to separate tax accounts in accordance with the nature of the business activity giving rise to such income. Refunds of tax paid on dividends distributed out of certain tax accounts are available to shareholders who are registered with the Revenue for such purposes. The account to which such profits were allocated and other factors (including whether double taxation relief was claimed or not) determine whether any refunds may be claimed by the shareholder. Subject to certain conditions, the refunds that may be claimed by shareholders vary between 2/3, 5/7 and 6/7 of the corporate tax paid by Maltese companies on such profits being distributed. As a result of such refunds being claimed, the shareholder can benefit from a significantly reduced tax leakage in Malta, which is as low as between 5% and 10%.

Malta and international taxation:

- Double taxation relief: Although Malta's fiscal legislation is generally viewed as attractive for investment purposes, the legislation should not be viewed in isolation, particularly in terms of foreign investment. Arguably, when assessing a country's investment attractiveness from a fiscal perspective, the domestic legislation must be assessed together with the double tax relief system available in that particular jurisdiction, and not analyzed on its own merits. In this respect, Malta offers a flexible and wide-ranging system for relief from double taxation. In fact, Malta boasts a wide treaty network of more than 60 treaties (generally based on the OECD Model Tax Convention on Income and on Capital) signed with different jurisdictions.

In addition, unilateral relief can also be claimed in the event that that treaty relief is not available. Treaty relief and unilateral relief utilise the same computational rules, where the source-by-source method is applied to provide relief by using the credit method. The amount of this credit is capped to the amount of tax payable on the income which was taxed twice, i.e. it cannot exceed the Malta tax payable on such income.

The Flat-Rate Foreign Tax Rate Credit, ("FRFTC") is another option available for relief from double taxation. FRFTC operates by virtue of a notional credit which is provided at the flat-rate of 25% (subject to certain conditions) and is deducted from the tax payable in Malta on the foreign sourced income.

- Tax on interest and royalties: Subject to the satisfaction of certain anti-abuse conditions, no tax is charged on interest and royalties accruing to or derived by a person not resident in Malta.

Furthermore, certain sectors, such as the aviation sector offer interesting benefits from a fiscal perspective. For instance, any income which is derived or which otherwise arises from the ownership, operation or leasing of an aircraft or aircraft engine which is used for the international transport of goods and passengers, is deemed to arise outside of Malta, irrespective of the aircraft's and, or engine's country of registration or of whether the aircraft calls at or operates from a Maltese airport. Fiscal incentives are also available to entities operating in the maritime sector, where no income tax is charged on income derived from shipping activities, with a tonnage tax system being in place.

With regards to investment opportunities, the fiscal treatment of a Collective Investment Scheme ("CIS") is also beneficial, with the income of any CIS being generally exempt, subject to certain exceptions. Investment income derived by certain CISs is subject to a withholding tax at the flat rate of 10% or 15%, subject to certain conditions.

Malta's fiscal regime also offers a general degree of flexibility for companies seeking to redomicile in or out of Malta, with no exit charges being levied.