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Obama signs Malta-US double taxation agreement

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The double taxation agreement between the United States and Malta was signed on Tuesday by President Barack Obama, American Ambassador Douglas Kmiec told The Times Business.

Secretary of State Hilary Clinton will now countersign the agreement, which is a required formality, and the agreement will take effect on January 1, 2011.

The agreement, which was ratified by the US Senate last July, is intended to eliminate barriers to cross border trade and investment while preventing offshore tax evasion. It is designed to ensure that US and Maltese citizens are taxed only once on their profits and income, and to limit withholding payments on dividends, royalties and other unearned income.

As a result of this agreement, the US and Maltese authorities have agreed not to tax business income derived from sources within their countries by residents of the other country unless business activities by the foreign person or business are substantial enough to constitute a permanent establishment.

Residents of one country providing services in the other also are not subject to tax in that country as long as their activities do not exceed specific minimums.

Under the agreement pensions and similar payments are taxable only by the country which pays them, even if the person is resident in the other country. Some payments, such as dividends and royalties, are taxable by either country, but there is a maximum withholding of 10 per cent. However, a tax credit must be allowed in the other country if, for example, the county which is the sources of a dividend assesses tax at the times it is paid.

The double taxation agreement cannot be applied in a way which will deny any taxpayer of either country any benefits he would have been entitled to under the domestic law of his country or under any other treaty between Malta and the US.

The agreement stipulates that countries cannot discriminate, i.e. they cannot tax a resident of the other country at a higher rate than they would have taxed their own citizens under the same circumstances.

It also contains strong provisions to prevent businesses or individuals from third countries from setting up a “shell” entity in either Malta or the US which is used to pass income through – thereby avoiding taxation – but does not have any other substantial business or activity in the country.

The double taxation agreement replaces an earlier agreement which was terminated in 1997 by the US. The US Embassy said the new agreement recognised the “significant” changes to Maltese domestic tax law which provides transparency and protection.

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