

NEWSLETTER

December 2009



NEWS

Double Taxation Treaties

New agreements for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to taxes on Income have been signed between Malta and Georgia, Isle of Man, Jordan, Montenegro, Qatar, Serbia and Switzerland. These have not yet come into effect.

On 15 January 2009 the agreement between Malta and Ireland for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to taxes on Income, came into effect.

Changes to the agreements between Malta and France, Italy, Lebanon, Libya and San Marino have also been announced.

Aviation in Malta

A draft Aircraft Registration Act has been issued by the Maltese Government. The Government is committed to establishing an aircraft registration system of international repute, committed to international safety and operational standards, and at the same time having the flexibility and efficiency required by the sector and marking an important milestone towards the success of an aviation service cluster in Malta.

The new law will regulate rules and financial incentives to attract more owners of private airplanes to register their airplanes with the Malta Aviation Registry.

Changes to the Professional Investor Fund (PIF) rules

The proposed changes to Experienced Investor PIFs are currently in the final part of the consultation stage. It is expected that the changes will become effective early January 2010.

The main scope of the proposed changes is to ensure that Experienced Investor PIFs are managed according to risk spreading principles. The Experienced Investor PIFs will need adhere to certain diversification requirements being introduced. The diversification requirements will have to be included in the Offering Memoranda of Experienced Investor PIFs established after the effective date of these new rules. The minimum investment level in the new Experienced Investor PIFs is being reduced from €15k to €10k.

Existing Experienced Investor PIFs may opt out of these new rules and continue to be regulated in accordance with the current rules. They however also have the right to adopt these rules if they so wish.

168 St Christopher Street, Valletta VLT 1467, Malta

T +356 21227553 | F +356 21227667

T +356 2569300 | F +356 21227731

info@qubeservices.com | www.qubeservices.com

info@dglawfirm.com.mt | www.dglawfirm.com.mt



QUBE SERVICES LIMITED



DAVID GRISCTI & ASSOCIATES

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Taxation of a Maltese Resident Trust

Income attributable to a Maltese Trust is normally not charged to tax in the hands of the Trustee if it is distributed to a Beneficiary. On distribution of income to a Beneficiary, tax (if any) is charged directly to the Beneficiary. However, if the Beneficiaries of a Trust are not resident in Malta and the income attributable to a Trust does not arise in Malta, there should be no tax due in Malta by the Trust or by the Beneficiary in Malta.

A Maltese Trust may also elect to have the income attributable to the Trust computed and charged to tax as if such income was derived by a company. The Trust would be subject to tax in Malta on a worldwide basis (ie not on a remittance basis).

An election by the trustee of a trust to have the income attributable to the trust computed and charged to tax as if such income was derived by a company is irrevocable and such election must be made on the date of the establishment of the trust (or on the date of appointment of a Maltese resident trustee if that is a later date).

The election must be done in writing by filing the relevant prescribed form by not later than 30 days after the establishment of the Trust (or on the date of appointment of a Maltese resident trustee if that is a later date).

Such election can only be made where the trust is established by a written instrument which specifically provides that the income attributable to the trust can only comprise of income in the form of royalties, dividends, capital gains, interest, rents or any other income from investments. For the purposes of Maltese taxation, such income will not constitute income from a trade, business, profession or vocation.

Any tax would be charged at the rate of 35% and payable in the same manner applicable to companies. The trust should be able to claim the participation exemption for income and gains derived from a participating holding, subject to the normal relevant rules. Distributable profits shall be allocated in the manner applicable to companies and distributions of such allocated profits to beneficiaries of such trust shall be treated as if they were dividends distributed to shareholders of such a company. No Maltese withholding tax would be charged on such distributions.

For more information regarding the above, or any other matter concerning Maltese financial services, please do not hesitate to contact Michael Ellul (michael.ellul@qubeservices.com), Thomas Jacobsen (thomas.jacobsen@qubeservices.com) on +356 21227553 or David Griscti (dgriscti@dglawfirm.com.mt) on +356 2569 3000.

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T +356 21227553 | F +356 21227667

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