

## Overview of Malta's Main 2011 Tax Developments

### Keeping you updated



#### Corporate Income Tax

##### Clarification of the Tax Treatment of Hybrid Loans

Following the Economic and Financial Affairs Council's approval of recommendations adopted by the EU Code of Conduct Group on profit participating loans (PPLs), Malta's Inland Revenue Department on April 27, 2011, issued guidance, with immediate effect, that confirmed Malta's tax treatment of income from hybrid loans as interest, and not as income from share capital or from an equity holding. The guidance also confirmed that amounts payable on a PPL are deductible as interest if they otherwise satisfy the tests for the deductibility of interest.

##### Introduction of Tax Regulations for Securitization Vehicles

On August 12, 2011, Malta introduced special tax rules (effective from that date) expanding the deductions available to securitization vehicles, effectively eliminating taxable income in Malta at the level of those vehicles. While a comprehensive and flexible legal system for securitization vehicles and transactions already existed in Malta, the new tax rules make it advantageous from a fiscal perspective to form securitizations through Malta.

##### Changes to the Tax Accounts Rules

Malta operates a full imputation system for the relief of double taxation on the distribution of taxed profits by companies registered in Malta. Shareholders in receipt of a dividend distributed by a company registered in Malta are entitled to claim a refund of a part of the tax paid by the company on the profits out of which the dividend is distributed. The amount of the refund available varies on the basis of a number of factors.

To track profits and their subsequent distribution to shareholders, Malta's tax rules impose that profits are allocated to one of five alternative tax accounts in accordance with a very rigid allocation methodology. One of the said tax accounts is the *Immovable Property Account* (IPA) to which must be allocated all distributable profits derived, directly or indirectly, from immovable property situated in Malta. This latter tax account is particularly relevant as while a refund may be claimed by any shareholder with regard to virtually all categories of income derived by a company registered in Malta an exception is contemplated in the relevant rules which denies the possibility for shareholders to claim a refund of any part of the tax paid in Malta which is derived from income, directly or indirectly, from immovable property situated in Malta.

An amendment targeting abusive practices regarding tax account allocations updated the tax accounting rules to include additional situations that require an IPA allocation (generally effective from January 1, 2012).

### **Changes to Capital Gains Taxation**

Capital gains taxation in Malta is limited to gains derived from specified chargeable assets. The list of chargeable assets, which already includes shares that participate in any way in the profit of the company and whose return is not limited to a fixed rate of return, was extended to include any interest in a partnership (generally effective from January 1, 2011).

### **Personal Income Tax**

A beneficial flat tax rate of 15 percent (as opposed to the standard progressive rates of up to 35 percent) was introduced (and deemed to have come into force January 1, 2010) in relation to employment income derived by qualifying expatriates working in the financial services or the Internet gaming (I-gaming) industry.

The 15 percent flat rate also applies (effective January 1, 2011) to foreign-source income derived by high-net-worth individuals (HNWIs) in Malta. HNWIs who wish to apply for the scheme are required to acquire or rent property of a minimum value in Malta and cannot spend more than 183 days per year in any other jurisdiction.

Both schemes are subject to a minimum annual tax obligation.

### **Treaties**

To date, Malta's tax treaty network consists of 57 active tax treaties. An additional eight treaties are pending.

Tax treaties with the Isle of Man, Jersey, Jordan, Serbia, and the U.S., as well as a revised treaty with Libya, became generally applicable as of January 1, 2011. During 2011, new tax treaties were initialed, signed, or ratified with Azerbaijan, Bahrain, Hong Kong, Israel, Mexico, Switzerland, Turkey, and Uruguay.

Protocols to existing treaties with Germany (applicable as of May 19, 2011) and Poland (applicable as of January 1, 2012) were ratified, as was a revised treaty with China (applicable as of January 1, 2012). A revised treaty with India was initialed.

Malta also signed a tax information exchange agreement with Bermuda. The agreement still needs to be ratified before it can enter into force.

### **2012 Outlook**

The 2012 budget proposes incentives to boost existing industries (such as the pharmaceutical and life sciences industries) and attract highly skilled human resources to the country. Such proposals include:

- Extension of Royalty Exemption

In 2010 Malta introduced a "patent box" regime, providing a tax exemption for royalties and similar income

derived from qualifying patents, whether registered in Malta or elsewhere and irrespective of the place where the underlying research and development is performed. The current proposal would extend the patent box regime to include works protected by copyright, including books, film scripts, music, and art.

- Highly Qualified Expatriates

The beneficial flat tax rate of 15 percent for highly qualifying expatriates, discussed above, would be extended to qualifying individuals working in the manufacturing industry.

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