



Malta Tax Alert

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Regulations for tax exemption on royalties introduced

The Maltese government published regulations on 14 September 2010 for the application of the income tax exemption on royalties derived from patents on inventions. The exemption was introduced into Maltese tax law in April 2010.

Under the exemption, royalties and similar income (including any amounts paid for the grant of a licence to exercise rights) derived from registered patents, in respect of qualifying inventions, whether registered in Malta or elsewhere, are exempt from tax in Malta as from 1 January 2010. The exemption applies regardless of where the underlying R&D was carried out.

Royalties and income derived from other (i.e. non-patented) intangibles continue to be taxed in Malta at the statutorily guaranteed maximum overall effective rate of 5%. This rate falls to 0% where the Malta resident entity is not incorporated under the laws of Malta and the income is not physically received in Malta.

The royalty exemption for income derived from patents is complemented by certain other aspects of Malta's tax system, allowing for the tax efficient structuring of intellectual property holding and licensing activities via Malta, namely:

- No withholding taxes on outbound dividends, interest or royalties paid from Malta;
- Possible mitigation of source country withholding taxes on royalties paid to Malta under the EC Interest and Royalties Directive or one of Malta's 60 tax treaties;
- An optional step-up in the base cost of assets from historic cost to fair market value for persons transferring their residence to Malta, as well as for companies formed by way of an EU cross-border merger;
- A possible exemption from capital gains derived from a disposal of intellectual property in one of the following situations:

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- An intragroup transfer (with no clawback on subsequent disposals by the related party transferee where the transferee is a non-Malta-resident);
- Upon a disposal of the intellectual property where the Malta resident entity is not incorporated under the laws of Malta; and
- Migration out of Malta of the Maltese intellectual property company.

Malta's profile as an intellectual property holding jurisdiction has been significantly enhanced by the introduction of a full exemption for income derived from patents. Malta now provides the unique possibility for taxpayers to secure a tax neutral position in the EU on qualifying royalties and the ability to effect outbound payments free of withholding taxes regardless of the recipient's country of residence.

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