

Recent Changes to The Malta-Poland Double Tax Treaty

The Malta – Poland Double Tax Treaty (DTT) has recently been revised with amendments being published as Legal Notice 64 of 2021

By **Jonathan Vassallo**, 14th July 2021

Background

The Malta – Poland Double Tax Treaty (DTT) has recently been revised with amendments being published as Legal Notice 64 of 2021. The changes are aimed to eliminate base erosion and profit shifting (BEPS), with the Treaty being based on the [OECD Model Tax Convention](#).

Modifications were made to Articles relating to the following: dividend definition, withholding tax on interest, royalty income, capital gains from the sale of shares, and director's fees, the method of elimination of double taxation, the mutual agreement procedure, the exchange of information to provide for tax arbitration, and prevention of treaty abuse.

These changes are outlined below:

- **The definition of 'dividend'** has been amended, and a new definition in Article 10 explicitly includes; income from distributions on certificates or participating units of an investment fund and their redemption, income from liquidation or partial liquidation of a company and income from the purchase or redemption of its own shares, by a company.
- **Withholding tax on interest payments, which is defined in Article 11, has been reduced.** The maximum withholding tax that a Contracting State can

levy, on outbound interest payments, when the beneficial owner is a resident of the Contracting State, is 4%. In the previous version it was 5%.

- Article 12 on **royalty payments** has been revised. New provisions include not only royalty payments but also **payments for technical services**. Such payments are now subject to the shared taxing right. The Resident State has the obligation to provide relief for the taxes suffered at the Source State. The Source State may tax payments for technical services at a maximum rate of 5%.
- **Income from an immovable property company**, regulated by Article 13, was amended. The updated version details, that gains derived by a resident of a Contracting State, such as interests in a partnership or trust, or certificates or the participating units of an investment fund, may be taxed in the other Contracting State if, during the 365 days preceding the sale or transfer of these shares or comparable interests, more than 50% of their value was derived directly or indirectly from immovable property situated in the other State.

The previous provision stipulated that if more than 50% of the value of shares directly or indirectly were derived from immovable property the capital gains from the sale of those shares could be taxed in the State where the property, owned by the company, was situated.

- Article 16 dealing with **director's fees** has been changed. The old rule stated that this type of income earned by a resident of a Contracting State could be taxed in the other Contracting State, where the company is resident. The new Article 16 provides that this type of income shall be taxed only by the Resident State. This change provides an exclusive taxing right in the State where the individual director is resident.

The new Article also expands on the definition of 'director', as a member of the board of directors and as a member of the supervisory board.

- New Article 23 amends **the method of elimination of double taxation**. It now provides that if a Polish resident's income is liable to tax in Malta, the amount paid will be subject to a tax deduction in Poland.

- **Article 25 – Mutual Agreement Procedure** has been changed. The amendment states that the competent authority will try to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the agreement. Any agreement reached shall be implemented notwithstanding obligations under the domestic law of the Contracting States.
- **Exchange of Information – Article 26**, authorises the use of such information, received by a Contracting State for other purposes, provided that the competent authority of the supplying State authorises such use.

A new Article 26A has also been inserted which provides for the **prevention of tax treaty abuse practices**.

Date of Implementation

The changes will come into the force the first day of January of the year following the date on which the Protocol comes into force.

This is therefore likely to be January 2022.

Additional Information

For further information about Malta-Poland Double Tax Treaty please contact Jonathan Vassallo, at the Dixcart office in Malta: advice.malta@dixcart.com. Alternatively, please speak to your usual Dixcart contact.