



NEWSLETTER

July 2009

TREATY UPDATE

Malta and Italy

A protocol amending the double tax treaty between Malta and Italy was signed on the 13th March, 2009.

As a result, it is our understanding that Malta shall be struck off the Italian black list of haven jurisdictions – primarily insofar as the Protocol, *inter alia*, updates the provisions of Article 25 of the Treaty (Exchange of Information).

TREATY UPDATE

Malta and the United Arab Emirates

The double tax treaty (and protocol) between Malta and the United Arab Emirates, signed on the 13th March, 2006, entered into force on the 18th May, 2007. The treaty generally applies in respect of income accruing and/or gains derived in Year of Assessment 2009 and in subsequent Years of Assessment.

The treaty was largely negotiated on the basis of the OECD Model. Significantly, the treaty provides for a 0% withholding rate on dividends*, interest and royalties.

* The 0% rate in respect of dividends would not apply should a U.A.E. resident in receipt of a dividend claim a credit or refund of Malta tax paid by the distributing Malta resident company on the profits out of which the dividend was distributed.



PROFESSIONAL INVESTOR FUNDS (PIFs) IN MALTA

Malta is fast becoming an increasingly important jurisdiction for non retail Professional Investor Funds (PIFs) to establish themselves in. Many well known international funds have recently transferred some of their funds from other jurisdictions to Malta. The following are some of the factors that give Malta a competitive edge over other jurisdictions:

Low Set Up Costs - Malta, part of the European Union since May 2004 is a regulated jurisdiction which, although has set up costs that may exceed those of offshore jurisdictions, has lower set up costs for non-retail funds than most of its European counterparts.

Efficient Regulation - Malta is a well regulated jurisdiction. This regulation comes as an added benefit during a period in which ever increasing international pressure is being placed on funds to have a better quality regulation. Malta is ideally placed to provide such quality regulation. The regulation of these non retail Professional Investor Funds (PIFs) depends on the type of investors that are being targeted. Since PIFs are not generally intended for the general public, they are not subject to the same restrictions imposed on retail funds. There are three categories of Professional Investor Funds which are all subject to different levels of regulation depending on the sophistication and level of high net worth of an individual and the level of risk/ reward expected by the particular investors. The three categories of funds are :- i) the Experienced Investor Funds, ii) the Qualifying Investor Funds and iii) the Extraordinary Investor Funds.

The Experienced Investor Fund is the closest a fund can get to being a retail fund, with lower barriers to entry and is thus subject to higher levels of regulation, in terms of reporting requirements, investment restrictions and leverage and monitoring. This category of Investor Fund offers greater protection to the Investor without stifling the Investment Manager with too onerous requirements. On the other hand, the Qualifying and Extraordinary Investor Funds are those funds targeting the much higher net worth individuals and hence are subject to much less regulation, allowing for much greater flexibility in terms of the Investment Managers running of the fund, whilst still offering a certain level of protection to the investors nevertheless.



Beneficial Tax Treatment - Funds either established in Malta or re-domiciled to Malta are split into two categories: i) Prescribed Funds and ii) Non-Prescribed Funds. A Prescribed Fund is one which has more than 85% of the value of its assets situated in Malta, whilst all other funds are classified as Non-Prescribed. Non Prescribed funds benefit from a more fiscally advantageous treatment than the Prescribed Funds. Non-Prescribed funds benefit from an exemption that exempts from tax the income of the fund other than income from immovable property situated in Malta and certain investment income as described in the Malta Income Tax Act. Due to the fact that by definition Non-Prescribed funds are not principally consisting of these two forms of income then the fund would be mainly if not wholly exempt from taxes in Malta. Furthermore, no tax is payable by certain categories of investors when they dispose of their investment. There is also no stamp duty charged on share issues or transfers and no tax on the net asset value of the scheme.

Structuring Flexibility - It is important to note that one of the competitive edges that Malta has in respect of other jurisdictions is the flexibility of the structure that can be put in place in order to best suit the clients/Investment Managers/Promoter's needs. In the case of Qualifying or Extraordinary Investor Funds, custodians or prime brokers or administrators need not be appointed in the case where the MFSA have sufficient evidence that the Investment Manager has sufficient resources to perform such duties himself. Another benefit would be that none of the service providers need be located in Malta. The flexibility of the structure also allows the fund not to need the appointment of a third party Investment Manager effectively making it a Self Managed fund. One further factor making Malta such an attractive destination is the fact that Professional Investor Funds are not subject to an own funds requirement and meaning that funds can be set up with a share capital of EUR 2,000 unless it is Self Managed in which case the own funds requirement would be of EUR 125,000.



The above explanation is only a brief summary as to why Malta is an attractive jurisdiction for setting up of funds. In addition, it is due to these reasons, that Malta has seen a great deal of foreign investment from the major operators in the fund business in this area over the last few years. Should any further or more in depth information be required, please do not hesitate to contact us.

