

INCOME TAX TREATY BETWEEN SPAIN AND MALTA ENTERS INTO FORCE

Malta excluded from Spanish tax havens list

Last September 12, 2006 an Agreement between Spain and the Republic of Malta for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income took effect. This agreement, which will generally apply for the fiscal years starting on January 2007, is of special importance for different reasons.

First, the Republic of Malta was up to that moment included in the list of jurisdictions considered as a tax haven by the Spanish Authorities, thus meant the enforcement of a series of legal measures that blocked and made it remarkably more expensive for Spanish companies to operate and establish economic relationships with such country. The enforcement of those restrictive laws to the relations with Malta after its accession to the EU was already considered by several experts as contrary to the freedoms which form part of the treaties and substantive law of the EU. The entering into force of the agreement results in Malta's automatic exclusion for all purposes from the Spanish tax haven's "black list".

Over and above that we must underline the benefits that generally a tax treaty grants, specially the provision of certainty to taxpayers regarding the threshold question with respect to international taxation, and the right to equal treatment and non-discrimination of cross-border investors compared to national investors in the same circumstances. Finally, we must pay special attention to the reduction of tax burden granted by the Treaty by reducing withholding taxes that are imposed at source.

The combination of the Treaty provisions and those in the EU Directives on direct taxation, plus the benefits in the Maltese internal taxation, creates a very favourable tax frame and offers interesting opportunities of tax planning for foreign investors.