Competent Authority Agreement

1. Introduction

The Competent Authorities of Ireland and Malta enter into the following agreement ("Agreement") under the *Convention Between Ireland and Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* signed in Rome on the 14 November 2008. The agreement concerns certain companies incorporated in Ireland that are managed and controlled in Malta. The Agreement is entered into under Article 24 (Mutual Agreement Procedure) of the Treaty.

Where tax-deductible payments are made by a company that is resident for tax purposes in Ireland to a company that has been incorporated in Ireland but which is managed and controlled in Malta, there could be double non-taxation where the payments concerned are not received in Malta.

2. Background

Section 23A of Ireland's Taxes Consolidation Act 1997 (TCA) provides that companies which are incorporated in Ireland will be treated as resident in Ireland for tax purposes. However, where such Irish-incorporated companies are regarded *for the purposes of a Double Taxation Convention* to be resident in a country other than Ireland and not resident in Ireland, they will also be treated as not resident in Ireland for any other tax purposes (in addition to the purposes of the Double Taxation Convention concerned).

Where a company is managed and controlled in Malta, it will be treated as resident in Malta for Maltese tax purposes, irrespective of whether it is incorporated (or domiciled) in Malta. Maltese tax law also provides that where a company, which is resident in Malta but not incorporated – and therefore not domiciled – in Malta, is in receipt of income that is not received in Malta, such income will not be subject to tax in Malta.

In summary, where payments are made by an Irish-resident company to an Irish-incorporated company which is managed and controlled in Malta, and such payments are not received in Malta, double non-taxation could arise: The payments will be tax-deductible in Ireland but will not be subject to tax in Malta as they are not received in Malta.

3. Agreement

The purpose of the Ireland-Malta Double Taxation Convention (Ireland-Malta DTC) is the avoidance of double taxation and the prevention of fiscal evasion. Ireland and Malta are both signatories to the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI). On its coming into effect as respects the Ireland-Malta DTC, the MLI will further clarify the purpose of the DTC as being to eliminate double taxation with respect to the taxes covered by the DTC without creating opportunities for non-taxation or reduced taxation through tax avoidance.

The Competent Authorities are giving notice that they have agreed as follows:

From the coming into effect of the MLI as respects the DTC between Ireland and Malta (the "Contracting States" in relation to that DTC), where–

- for the purpose of avoiding double taxation, under paragraph 3 of Article 4 of the Ireland-Malta DTC a company would be deemed to be only resident in one of the Contracting States, but
- in the circumstances concerned–
  - there is no double taxation to be avoided, and
  - it is reasonable to conclude that an opportunity for double non-taxation would otherwise arise,

then any such deeming of the company to be resident only in one of the Contracting States shall not be *for the purposes of the Ireland-Malta DTC*– as it would serve no such purposes. It would be superfluous to, and redundant for, those purposes.

The Competent Authorities shall notify each other in a timely manner where they become aware of circumstances to which this Competent Authority Agreement refers.

Aldo Farrugia

Maltese Competent Authority

Date: 22·11·2018

Eamonn O'Dea

Irish Competent Authority

Date: 16·11·2018