

**L.N. 238 of 2013**

**INCOME TAX ACT  
(CAP. 123)**

**Double Taxation Relief (Taxes on Income)  
(Grand Duchy of Luxembourg) (Amendment) Order, 2013**

IN exercise of the powers conferred by article 76 of the Income Tax Act, the Minister of Finance, the Economy and Investment has made the following order:-

1. The title of this Order is the Double Taxation Relief (Taxes on Income) (Grand Duchy of Luxembourg) (Amendment) Order, 2013 and this Order shall be read and construed as one with the Double Taxation Relief (Taxes on Income) (Grand Duchy of Luxembourg) Order, hereinafter referred to as "the principal order".

Citation.

S.L. 123.37

2. It is hereby declared:

Amendments to  
have effect.

(a) that the amendments to the principal order, as specified in the Protocol set out in the Schedule to this Order (hereinafter referred to as "the Protocol"), have been made with the Government of the Grand Duchy of Luxembourg;

(b) that it is expedient that those amendments should have effect following the entry into force of the Protocol and in accordance with the relevant provisions of the Protocol;

(c) that the Protocol shall enter into force on such date as may be announced by notice in the Gazette.

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SCHEDULE

Article 2

PROTOCOL  
TO AMEND THE CONVENTION BETWEEN  
MALTA  
AND  
THE GRAND DUCHY OF LUXEMBOURG  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND  
THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON INCOME AND ON CAPITAL,  
SIGNED AT LUXEMBOURG ON 29 APRIL 1994

The Government of the Grand Duchy of Luxembourg and the Government of Malta

Desiring to conclude a Protocol to amend the Convention between the Grand Duchy of Luxembourg and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed at Luxembourg on 29 April 1994, (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Article 26 (EXCHANGE OF INFORMATION) of the Convention shall be deleted and replaced by the following:

"Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such

purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information upon request solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

## ARTICLE 2

1. This Protocol shall be subjected to ratification in accordance with the applicable procedures in Luxembourg and in Malta. The Contracting States shall notify each other in writing, through diplomatic channels, when their respective applicable procedures have been satisfied.

2. The Protocol shall enter into force on the date of the latter of the notifications referred to in paragraph 1. The provisions of this Protocol shall have effect with regard to tax years beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

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DONE in duplicate at Brussels on 30 November 2011, in the French and English languages, both texts being equally authentic.

Tonio Fenech  
For the Government of  
Malta

Luc Frieden  
For the Government of  
Grand Duchy of Luxembourg

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Brussels, the 30th November 2011

His Excellency  
Mr Tonio Fenech  
Minister of Finance of Malta

Excellency,

I have the honour to refer to the Convention between the Grand Duchy of Luxembourg and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed at Luxembourg on 29 April 1994, (hereinafter referred to as "the Convention") and to propose on behalf of the Government of the Grand Duchy of Luxembourg the following understandings:

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in Article 26.

2. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

If the foregoing understandings meet with the approval of the Government of Malta, I have the further honour to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall

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become an integral part of the Convention on the date of entry into force of the Protocol.

Accept, Your Excellency, the expression of my highest consideration.

Luc Frieden

Brussels, 30 November, 2011

His Excellency  
Mr. Luc Frieden  
Minister of Finance of  
the Grand Duchy of Luxembourg

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

"I have the honour to refer to the Convention between the Grand Duchy of Luxembourg and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed at Luxembourg on 29 April 1994, (hereinafter referred to as "the Convention") and to propose on behalf of the Government of the Grand Duchy of Luxembourg the following understandings:

1. It is understood that the competent authority of the requested State shall provide upon request by the competent authority of the requesting State information for the purposes referred to in Article 26.

2. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

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If the foregoing understandings meet with the approval of the Government of Malta, I have the further honour to propose that this Note and your affirmative Note in reply shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol."

I have further the honour to accept the understandings contained in Your Excellency's Note, on behalf of the Government of Malta. Therefore Your Excellency's Note and this Note shall constitute an agreement between our Governments which shall become an integral part of the Convention on the date of entry into force of the Protocol.

Accept, Your Excellency, the expression of my highest consideration.

Tonio Fenech  
Minister of Finance,  
the Economy and Investment

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