



# AMENDING PROTOCOL TO THE DOUBLE TAXATION AGREEMENT BETWEEN MALTA AND SWITZERLAND

**On 11 November 2020, the Swiss Federal Council adopted the protocols of amendment to the double taxation agreement (DTAs) with Malta. This protocol implements the OECD recommendations in terms of the Base Erosion and Profit Shifting action plan. The protocols will enter into force once they have been ratified by the legislative bodies of both countries.**

Key amendments may be summarized as follows:

- Whilst the purpose of the original DTA was confined to avoiding double taxation, the protocol has widened its objective, which now includes the prevention of any DTA abuse, including through “treaty-shopping” arrangements, this resulting in double non-taxation or reduced taxation of income.
- Either country may make adjustments to the business profits that are attributable to a permanent establishment<sup>1</sup> of an enterprise of the other Country by not later than 5 years from the end of the taxable year in question.
- The allocation of profits and calculation of taxes of associated enterprises<sup>2</sup> requires that where a country (e.g. Switzerland) taxes the profits of an enterprise of that country and these profits have already been taxed by the other country (e.g. Malta) in relation to an associated enterprise, then the latter country must make an appropriate tax adjustment. The competent authorities of both countries must consult each other, if necessary.
- The “Mutual Agreement Procedure” for cross-border tax disputes will allow any tax payer that is taxed on the same income by both Contracting States to present his case to the competent authority of either country to figure out which State is in fact entitled to tax the income.

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<sup>1</sup> Permanent establishment is defined by the OECD as “ a fixed place of business through which the business of an enterprise is wholly or partly carried on”. This includes, by way of example, a branch, an office, a factory and a place of management.

<sup>2</sup> Associated Enterprises are defined by the OECD as enterprises “where the same persons participate directly or independently in the management, control or capital of both enterprises, i.e. both enterprises are under common control”.



Our group of companies operate both in Switzerland and in Malta, thus allowing us to offer practical and adequate cross-border corporate and tax solutions to our clients.

Please do not hesitate to contact the author if you have any questions or queries.



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