

L.N. 230 of 1997

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

**Double Taxation Relief (Ships and Aircraft)
(United States of America) Order, 1997**

IN exercise of the powers conferred by section 76 of the Income Tax Act, the Minister of Finance and Commerce has made the following Order:-

1. This order may be cited as the Double Taxation Relief (Ships and Aircraft) (United States of America) Order, 1997. Citation.

2. It is hereby declared that -

Taxes covered
and
commencement.

(a) the Agreement specified in the Exchange of *Notes Verbals* reproduced in the Schedule to this order has been made with the United States of America with a view to affording relief from double taxation in relation to the taxation of income derived from the international operation of ships and aircraft; and

(b) the Agreement has entered into force on the 11th March, 1997 and is effective in respect of income derived on or after the 1st January, 1997.

SCHEDULE

(1065)

The Embassy of Malta presents its compliments to the Department of State of the United States of America and has the honour to propose that the two governments conclude an agreement to exempt from income tax, on a reciprocal basis, income derived by residents of the other country from the international operation of ships and aircraft. The following proposed terms of agreement have been drafted on the basis of similar agreements the United States has with other governments:

The Government of Malta agrees to exempt from tax gross income derived from the international operations of ships or aircraft by individuals who are residents of the United States (other than citizens of Malta) and corporations which are incorporated in the United States.

In case of a U.S. corporation, the exemption shall apply only if the corporation meets one of the following conditions:

(1) the corporation's stock is primarily and regularly traded on an established securities market in the U.S., another country which grants a reciprocal exemption to Maltese corporations or Malta, or

(2) more than fifty (50) percent of the value of the corporation's stock is owned directly or indirectly by individuals who are residents of the United States or of another foreign country which grants an equivalent exemption to Maltese corporations or by a corporation organized in a country which grants an equivalent exemption to Maltese corporations and whose stock is primarily and regularly traded on an established securities market in that country, another country which grants an equivalent exemption to Maltese corporations, or Malta.

The Government of the United States of America, in accordance with sections 872(b) and 883(A) of the Internal Revenue Code, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of Malta (other than United States citizens) and corporations which are incorporated in Malta.

In case of a Maltese corporation, the exemption shall apply only if the corporation meets one of the following conditions:

(1) the corporation's stock is primarily and regularly traded on an established securities market in Malta, another country which grants a reciprocal exemption to U.S. corporations or the United States, or

(2) more than fifty (50) percent of the value of the corporation's stock is owned directly or indirectly by individuals who are residents of Malta or of another foreign country which grants an equivalent exemption to U.S. corporations or by a corporation organized in a country which grants an equivalent exemption to U.S. corporations and whose stock is primarily and regularly traded on an established securities market in that country, another country which grants an equivalent exemption to U.S. corporations, or the United States.

For the purposes of exemption from the U.S. tax, the Government of Malta will be treated as an individual resident of Malta, and sub-paragraph (2) shall be considered to be satisfied if the corporation is a "controlled foreign corporation" under the Internal Revenue Code, so however, that U.S. shareholders of such corporations shall be treated as residents of Malta.

In this agreement:

(a) the terms "contracting state" and "other contracting state" mean Malta or the United States of America, the governments of which have concluded this agreement.

(b) gross income includes all income derived from the international operation of ships or aircraft, including:

(1) income from the rental on full (time or voyage) basis of ships or aircraft used in international transport;

(2) income from the rental on a bareboat basis of ships or aircraft used in international transport;

(3) income from the rental of containers and related equipment used in international transport that is incidental to income from the international operation of ships and aircraft; and

(4) gains from the sale or other alienation of ships or aircraft used in international transport derived by a person primarily engaged in the international operation of ships or aircraft.

In the application of this agreement by a contracting state, any term not defined in this agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that state relating to the taxes to which the agreement applies.

The Government of Malta proposes that, if the foregoing is acceptable to the Government of the United States, this note and the Department's note in reply shall constitute an agreement. The agreement shall enter into force on the date of the Department's note in reply and shall have effect in respect of income derived on or after 1st January, 1997.

This agreement shall continue in force until the Government of either contracting state gives written notice of termination of the agreement to the other contracting state through the diplomatic channel.

The Embassy of Malta takes this opportunity to renew to the Department of State of the United States of America the assurance of its highest consideration.

26 December, 1996

Embassy of Malta
Washington, D.C.

The Department of State refers the Embassy of Malta to the Embassy's note 1065 of December 26, 1996 regarding the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft.

The Department of State confirms that the proposals contained in the Embassy's note are acceptable to the Government of the United States of America. Therefore, this note and the Embassy's note of December 26, 1996, constitute an agreement which shall enter into force on the date of this note in reply and shall be effective in respect of income derived on or after January 1, 1997. This agreement shall continue in force until the Government of either contracting state gives written notice of termination of the agreement to the other contracting state through the diplomatic channel.

Department of State,
Washington,
March 11, 1997.