

ITPS PRODUCT PORTFOLIO

Malta: Tax Planning Opportunities

Malta - Products / structures

1. Holding structures
2. Financing -
3. Trading -
4. Licensing -
5. Investment funds -
6. Expatriates -

General - Features of Malta

- Political stability, acceptance, confidence and professional infrastructure
- Extensive and appropriate treaty network and access to EU Directives
- Effective tax burden may be reduced to 5% or even nil
- Participation exemption
- No withholding tax on dividends, interest and royalties to non-residents

General - Features of Malta

- No thin cap
- No CFC-rules
- No transfer pricing
- No capital tax
- No wealth tax
- Ruling practice
- Attractive expatriate taxation
- Treaty network with over 55 countries

Tax system - general

- Companies incorporated in Malta are considered domiciled and resident in Malta and are subject to income tax on worldwide income and chargeable capital gains
- Companies resident or domiciled but not ordinarily resident and domiciled are taxable on a source and remittance basis, i.e. on income and capital gains arising in Malta and on foreign income received in Malta (foreign capital gains not taxed)
- Companies neither incorporated nor resident in Malta are only chargeable to tax on Malta source income and capital gains

Tax system - general

- Rate of 35% income tax on chargeable income
- Participation exemption may apply in respect of income (dividends and capital gains) derived from a participating holding
- Where a foreign company does not qualify as a participating holding, tax on dividends and capital gains may be reduced with the application of double tax relief, i.e. treaty relief, unilateral relief and flat rate foreign tax credit
- Effective tax burden may be reduced to 5% or even nil because of full imputation system and tax refund

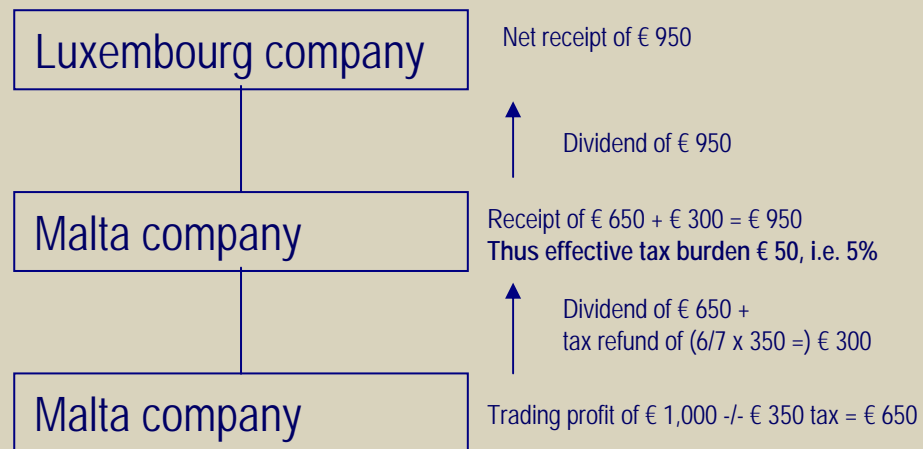
Tax system - general

- Full imputation system for resident and non-resident shareholders: dividends carry a tax credit equivalent to the tax paid on the profits out of which the dividend was paid
- Tax refund system: shareholder entitled to claim a refund equivalent to either 2/3, 5/7, 6/7 or 100% of the corporate tax paid upon distribution of a dividend

Tax refund – 6/7ths

- General rule: upon receipt of a dividend from a Malta company with trading income, shareholder entitled to a refund of 6/7ths of the total tax paid
- The total tax refund is limited to the Malta tax paid meaning that the total effective tax rate paid in Malta will be 5% (nil if foreign tax credit of 5% or more)
- Often two-tier structure to allow for dividend income (rather than other income) at the level of the foreign shareholder

Tax refund – 6/7ths - example



Tax refund – 5/7ths

- The tax refund is minimized to 5/7ths of the total tax paid by the company in the case of the dividends is distributed out of profits derived from passive interest or royalties, i.e. interest or royalty income which is not derived directly or indirectly from a trade or business and which has not suffered any foreign tax (directly or withholding) at a rate less than 5%
- Resulting in a net tax paid in Malta of 10%

Tax refund – 2/3rds

- The 6/7ths and 5/7ths tax refund would not apply where dividend is paid out of profits allocated to the foreign income account and in respect of which the company has claimed relief from double taxation
- The shareholder of a Maltese company which derives any type of income, including passive interest or royalties, may claim a 2/3rds refund (even when the Maltese company has claimed relief from any one of the four forms of double taxation available under Maltese tax legislation), resulting in a maximum effective tax payable of 6.25% (may be further reduced further depending on the company's expenses)

Tax refund – 100%

- If profit distribution is from profits, i.e. dividends or gains, derived from a participating holding, refund is 100% if relevant conditions are satisfied, resulting in a net tax paid in Malta of nil

The refund system

- Tax refunds are applicable to resident and non-resident shareholders
- Residents will be taxed on dividends and tax refunds
- Tax on profits derived, directly or indirectly, from immovable property situated in Malta is excluded
- Applications for tax refunds within 4 years from the date of the distribution of profits
- Tax refund within 15 – 21 days after payment tax

Tax refund - example

Trading / non-FIA income	6/7ths (no DTR)	5/7ths (no DTR)	6/7ths (with DTR)	5/7ths (with DTR)
Taxable profits	1.000,00	1.000,00	1.000,00	1.000,00
Tax thereon at 35%	(350,00)	(350,00)	(350,00)	(350,00)
Distributable profits	650,00	650,00	650,00	650,00
Relief for double taxation			100,00	100,00
Distribution to Non-resident / Maltese shareholder:				
Tax refund	300,00	250,00	250,00	250,00
Malta tax suffered after tax refunds	50,00	100,00	nil	nil
Malta tax suffered as percentage of profit	5%	10%	0%	0%

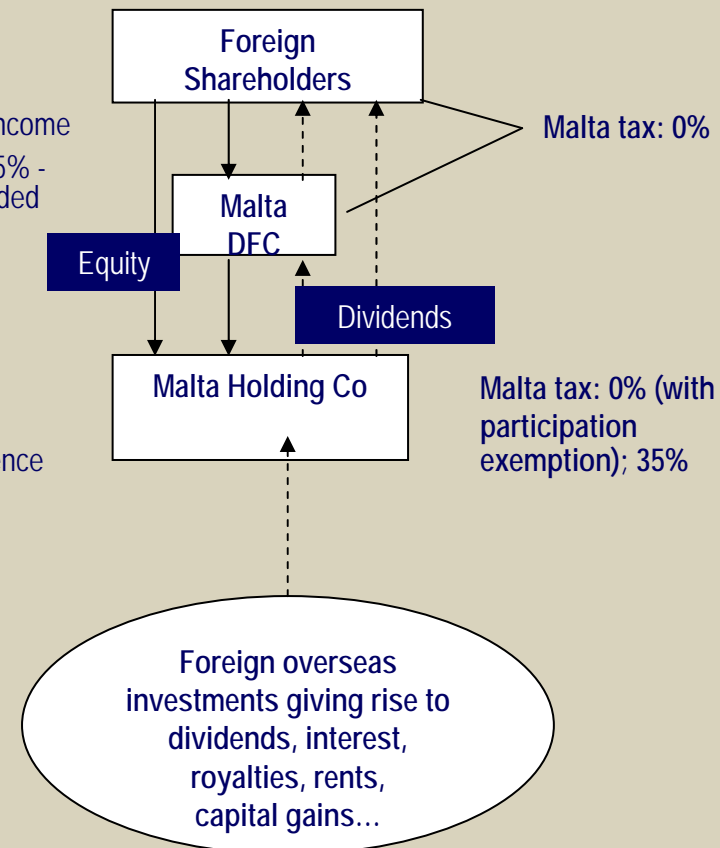
Holding company structure - example

Benefits:

- No or low taxation of passive income
- Maltese companies taxed at 35% - certain CFC rules may be avoided

Issues:

- CFC/ anti-avoidance rules
- Taxation of tax refunds in shareholder's country of residence



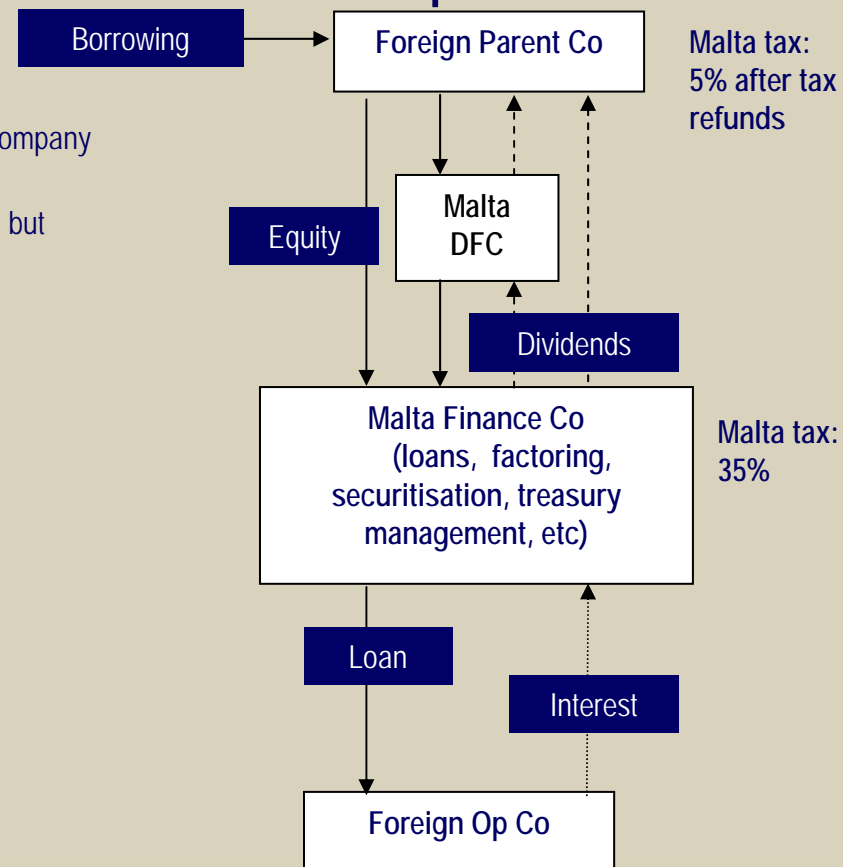
Financing structure - example

Benefits:

- Interest deduction at Parent company
- Interest deduction at Op co
- Very low effective tax in Malta but headline rate of 35% - may avoid CFC provisions

Issues:

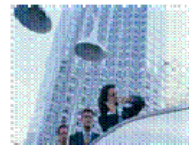
- CFC and foreign thin cap
- Taxation of tax refunds



Double tax relief provisions (DTR)

- Unilateral relief

- Ordinary Credit for foreign taxes suffered on foreign income – for resident companies and registered branches
- Credit for withholding and underlying tax (for dividends) of direct subsidiaries and 10% (participation in) sub-subsidiaries to all tiers (if foreign taxes is equal or higher than Malta 35% tax, the effective tax in Malta is nil)



Flat rate foreign tax credit (FRFTC)

- Foreign income deemed to have suffered foreign tax of 25% of foreign income received
- Reduces tax suffered to between 7.47% and 18.75%
- May be claimed on income allocable to the foreign income account (FIA income) if company empowered to receive FIA income
- FIA income: royalties and similar income arising outside Malta; income/gains derived from a participating holding, dividends, interest, rents, capital gains and other income derived from investments situated outside Malta;
- PE profits; profits from foreign assets/liabilities of Malta licensed banks and financial institutions; profits of Malta licensed insurance companies related to risks situated outside Malta.

FRFTC - example

	Without expenses	With expenses of 41%	With expenses exceeding 41%	
Income receivable (net of any foreign taxes)	1,000.00	1,000.00	1,000.00	
Deductible expenses	0.00	(409.65)	(900.00)	
Chargeable income	1,000.00	590.35	100.00	
FRFTC at 25 per cent	250.00	250.00	42.35	
Grossed-up chargeable income	1,250.00	840.35	142.35	
Taxation at 35 per cent	437.50	294.12	49.82	
FRFTC (limited to 85 per cent of tax charge)	-250.00	-250.00	-42.35	
Tax payable	187.50	44.12	7.47	(A)
Tax payable as percentage of chargeable income	18.75%	7.47%	7.47%	
Tax refund to recipient upon dividend distribution	125.00	29.41	4.98	(B)
Tax suffered in Malta	62.50	14.71	2.49	(A + B)
Tax suffered as percentage of income received	6.25%	2.49%	2.49%	

Participation exemption - content

Dividend income received from and capital gains realized on the sale of a participating holding are exempt from tax in Malta, or

Alternatively, may be taxed at 35% income tax and the shareholder may, upon a subsequent distribution of these profits, claim a full refund of the Malta tax paid by the company



Participation exemption - conditions

However, dividends received from a participating holding acquired after 1 January 2007 are exempt from tax if:

- Foreign company is resident in the EU country; or
- Is subject to a foreign tax of at least 15%; or
- More than 50% of its income is not derived from passive interest or royalties

If none of these conditions is satisfied two extra conditions must be satisfied:

- The holding must not be a portfolio investment; and
- The foreign company or its passive interest or royalties must have been subject to tax at a rate of at least 5%

Participating holding

The holding of equity shares by a resident company in a non-resident entity where the said holding satisfies any one of the following :

- The holding is of at least 10% of the equity shares of the non-resident company or rights to vote or assets available for distribution on a winding up; or
- The holding confers entitlement to purchase the balance of the equity shares of the non-resident company, or has the right of first refusal to purchase such shares, or is entitled to appoint a director on the Board of that company; or

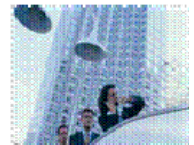
Participating holding

- The amount invested in the holding is a minimum of €1.2 million (or the equivalent sum in another currency) and such investment is held for an uninterrupted period of not less than 183 days; or
- The holding is made for the furtherance of the resident company's own business and the holding is not held as trading stock for the purpose of a trade

Participating holding

Equity shares are shares which entitle the holder to a right to any two of the following being votes, to profits available for distribution to shareholders or to assets available for distribution on a winding up

The non-resident entity can be a company or a limited partnership – a partnership *en commandite* the capital of which is not divided into shares



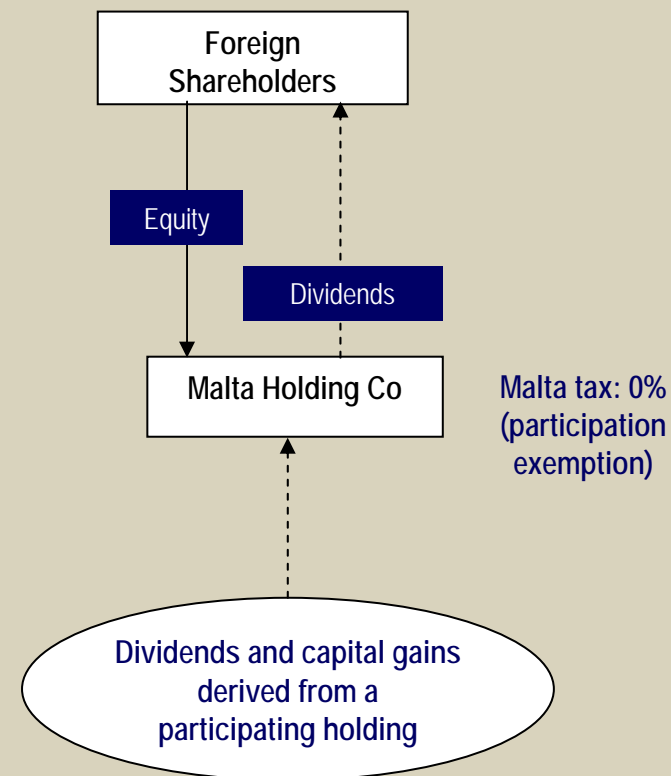
Participating exemption - example

Benefits:

No taxation of dividends
and capital gains

Issues:

CFC/ anti-avoidance rules



Branches

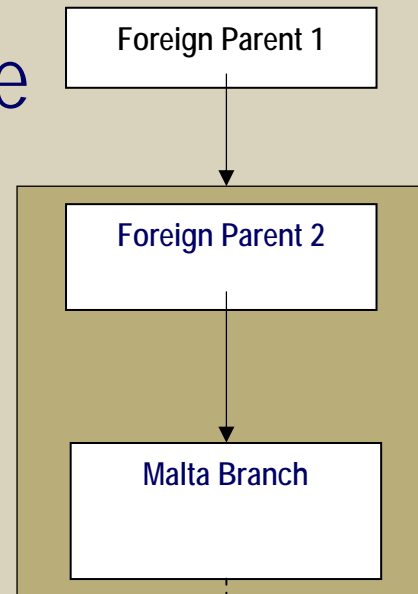
Non-resident companies with Malta branches :

- Taxed at 35% as per normal rules on Malta sourced income
- No further tax when profits are remitted to head office
- Non-resident company should register with tax authority
- Double tax relief provisions are also applicable to branch
- Tax refunds also applicable when non-resident company distributes Malta branch profits to its shareholders

Branch - example

Benefits:
See next page

Issues:
See next page



6/7^{ths} refund of the 35% Malta tax

Normally: Taxed at applicable rate less double tax relief for Malta tax at 35%; Nil tax if tax rate does not exceed 35%

Malta tax: 35%

Branch's activities may be varied and may also include licensable activities in financial services if Foreign Parent is EU based

Branches

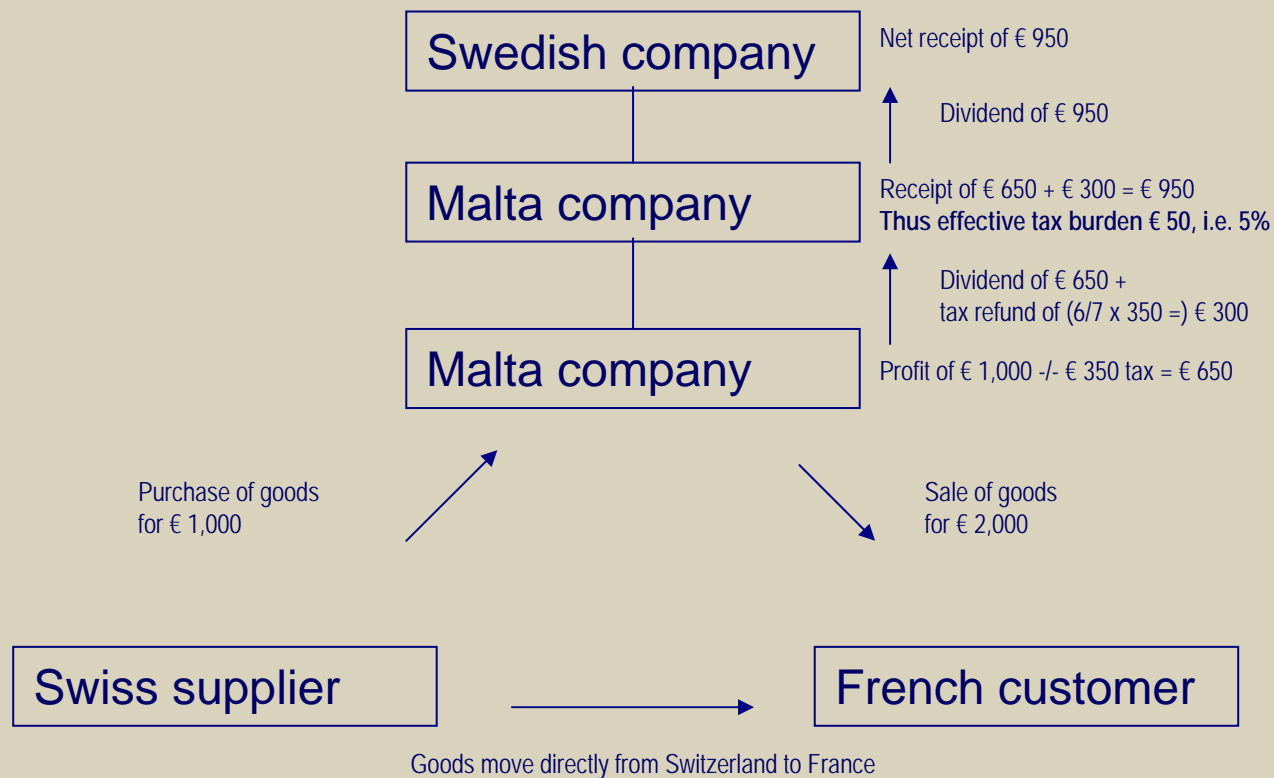
Benefits:

- Possibly no tax liability on Malta branch profits for Foreign Parent 2 (Head Office) in view of credit for Malta tax
- 6/7ths of Malta tax refunded to Foreign Parent 1 upon distribution of branch profits by Foreign Parent 2
- 6/7ths tax refund received from Maltese tax authorities may not be taxed in certain jurisdictions – considered as exempt dividends or not to be income
- CFC provisions avoided in a number of jurisdictions

Issues:

- Possible anti-avoidance provisions; therefore, substance needed in Malta branch

Trading structure



Licensing activities – patent box

All royalties received by a Maltese Company which is derived through the licence or a sub-licence of a patent are exempt from tax in Malta



Investment funds

- Essentially, not taxed
- No tax on net asset value of fund
- Funds may be retail UCITS (“Undertaking for Collective Investment in Transferable Securities”) and non-UCITS Funds and Professional Investor Funds (PIFs)
- For PIFs, including hedge funds, regulation is based on EU norms but is mindful and responsive to clients’ needs; regulation and licensing is very fast and focused
- PIFs may be self-managed funds; foreign administrators are allowed; investment restrictions are minimal

Taxation of Expatriates

- Worldwide unlimited taxation only applies to resident and domiciled individuals
- Foreigners living and working in Malta therefore may suffer very low effective taxation
- Domicile is generally the place of birth of an individual's parents; it can be changed by choice if one moves permanently and a domicile of choice is acquired; otherwise the domicile of origin remains
- Expatriates are therefore normally resident but not domiciled and are therefore technically taxable on income arising in Malta (remuneration for services performed in Malta, whereas salary for time spent working outside of Malta is not taxed) and foreign income received in Malta (none of which is usually so received and hence is not taxed)

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The ITPS Group

INTERNATIONAL TAX PLANNING AND STRUCTURE SERVICES

The ITPS Group

Needs of clients

As business is becoming more international, organizations are seeking ways to minimize the incidence of taxation linked to it. On the other hand, organizations as well as individuals are seeking international ways to optimize their profits and to protect their assets. The increasing complexity of (tax) laws necessitates careful planning and consideration of the structure to be established and maintained. Customers require highly specialized professional services.

Mission

The purpose of ITPS is: doing the best the things that the customer values most. The focus is long term customer satisfaction. The mission of the ITPS Group is to create value for its customers through the provision of professional services in the field of international tax planning and structure, designed to optimize the customer's after tax profits.

Services

The objective of ITPS is to meet customer needs for international tax planning and structure by rendering "total offering" services with the highest standards of professional and personal service combined with complete confidentiality.

This comprehensive offering comprises not only the advice for international tax planning (i.e. for legal and tax questions), but also implementation to establish and maintain structures.

These services include, but are not limited to: International tax planning; Company formation, registered office facility, management, accounting and tax compliance; Trust and foundation formation and administration; Licensing and sub-licensing of intellectual property rights.

The services ITPS does not provide, but which we are rendered by correspondents, include auditing, legal opinions, litigation and portfolio investment.

Why you should use The ITPS Group

The ITPS Group holds an unique position in each of these jurisdictions for the following reasons:

1. Market oriented (and not product oriented):

ITPS focuses on meeting the needs of the clients;

2. Rendering international tax planning and structure (trust) services:

Tax planning and structure services are complementary. Planning is of no use if you do not structure it. Moreover you can not efficiently structure if you do not take the first step: plan the structure. Therefore, the services of ITPS are not restricted to trust services. Since ITPS has the combined skill and experience for more than ten years, high quality is ensured;

3. All included fixed fees for structure (trust) services:

In each jurisdiction, tax structure services are charged at annual fixed fees, generally payable in quarterly installments in advance. Tax planning services are charged at an hourly rate;

4. One contact person is possible for several jurisdictions;

5. Independent:

There is no conflict of interest. ITPS works with all other skilled professionals and (financial) institutions as the client deems appropriate;

6. Personal contact and continuity:

ITPS focuses on long-term customer satisfaction, providing proactive, personal, attentive and competent services;

7. Regular meetings:

Customers and correspondents are visited on a regular basis (three to four times a year) to touch base and to discuss opportunities and problems that may have arisen, without a fee being charged;

8. Tax sparring and education:

ITPS strives to built up a (tax) sparring relationship with customers and correspondents in order to keep each other abreast in a fast changing environment. A quarterly newsletter on international tax planning, the International Tax Planning Newsletter, is sent to inform customers and correspondents on the changes in legislation;

9. An excellent network:

Since ITPS is not part of an international network, it has built up a network of highly skilled professionals to work with.

www.itps-group.com
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