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**Recent Developments in International Taxation**

**Malta**

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## **RECENT HIGHLIGHTS**

As for the most recent developments on the tax area regarding Malta, the highlights for the past year have been concerning the ratification of the Multilateral Instrument, the recommendations of The Organization for Economic Co-operation and Development (OECD) and along other matters such as the issue of guidelines in relation to transactions or arrangements involving Distributed Ledger Technology assets.

### **A. Tax Treaties**

In the last year five new double taxation agreements entered into force in Malta respectively with The Republic of Azerbaijan, The Socialist Republic of Viet Nam, The Principality of Andorra (both signed in 2016), The Republic of Botswana (signed in 2017) and with The Principality of Monaco (signed 2018). Agreements with The Federal Democratic Republic of Ethiopia, The Republic of Ghana and Republic of Kosovo were signed and published, based on the OECD model, but have not come in force yet. A number of existing double tax treaties were modified in terms of Multilateral Convention to Implement Tax Treaty Related Measure to Prevent Base Erosion and Profit Shifting (MLI).

In 2018 Malta entered into a Competent Authority Agreement with Ireland in terms of article 24 of Ireland and Malta double tax treaty. In terms of this Agreement the Competent Authorities of Malta and Ireland agreed that from the coming into force of the MLI where a company is considered to be resident only in one member state 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, the company would not be deemed to be resident only in one member state as by doing so it would be superfluous.

These treaties support Malta's international plans to encourage transparency and the exchange of tax information.

### **B. BEPS Measures**

1. In the midst of May of 2018, a Recommendation for the National Reform Programme regarding Maltese stability was published by the European Commission.

Some remarks regarding tax were made, but most notably on the matter of the Commission acknowledges Malta's commitment to fighting against tax payers' aggressive tax planning and will continue its constructive dialogue to fight it.

2. In December 2018, the European Union Anti-Tax Avoidance Directive (ATAD) was transposed to Maltese law, which affected the internal market. The ATAD created four changes to Maltese law:

- compulsory controlled foreign company (CFC) rules;
- exit taxations applicable from 2020;
- interest limitation rules;
- general anti-abuse rule (GAAR).

These changes will help Malta to stop profit shifting to a low or no tax country, prevent companies that are relocating with intent to avoid tax, to discourage artificial debt arrangements planned to minimize taxes and avoid aggressive tax planning.

### **C. OECD Multilateral Instrument**

The OECD published in July 2018 a report called Making Dispute Resolution More Effective – MAP Peer Review Report, Malta (Stage 1), with a few key points observed:

- Malta had 76 tax treaties, but only two of them did not contain the main idea of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015);
- The ratification of the Multilateral Instrument was of extreme importance, after the ratification the two treaties were modified automatically by the Multilateral Instrument (the Multilateral Instrument entered into force in 01/04/2019 in Malta);
- Malta could extend its bilateral Advance Pricing Agreement (APA) to earlier fiscal years;
- The ratification of the Multilateral Instrument would incorporate the corresponding of Article 25(1) (OECD, 2015), in treaties with no equivalent idea. Malta should as well, show its intention to change the other treaties that were not altered by the Multilateral Instrument and continue to search implement this disposition in every future treaty.

In December 2018, Malta ratified and transposed by L.N. 142 of 2018 Income Tax Act (CAP. 123) the Multilateral Instrument, following the recommendations made in July by OECD. It entered into force on 01 April 2019, providing for an effective tool for the application of agreed changes in a consistent and effective way across Malta's entire tax treaty network.

### **D. VAT Grouping**

On November 2018, the Commissioner for Revenue (CFR) created a parameter where two or more persons who are connected in financial, economic and organizational matters can apply for a single taxable person, a VAT group.

Some requirements are essential, such as both persons must be established in Malta, at least one need to be recognized under one of these acts: Banking Acts, Financial Institution Act, Gaming Act, Insurance Business Act, Insurance Distribution Act, Investment Services Act, Lotteries and Other Games Act, Retirement Pensions Act or Securitisation Act; and the applicants need to have a VAT identification number before the group application.

After that, when the VAT group is created, the individual's VAT numbers will be removed, and the new VAT number can be used only for the purposes of the group.

## **E. Distributed Ledger Technology (DLT) Guidelines**

In November 2018 the Commissioner for Revenue (CFR) published three guidelines in relation to tax treatment of transactions in relation to Distributed Ledger Technology (DLT) Assets. The guidelines covered Income Tax , Duty on Documents and Transfers and VAT .

### **1. *Income Tax Guidelines***

The Income Tax Acts are responsible to regulate each transaction linked between DLT assets and income tax, according with the principles and jurisprudence. It means that the transactions must be analyzed as other transactions, according to the market value which will be determined by the Maltese authority, the quoted price on reputable exchanges or another way to satisfy the CFR.

According to these guidelines, DLT assets for Income Tax purposes may be classified into coins and tokens (financial tokens and utility tokens). The first category are used as medium of payment, exchange and also as a store of value. The second category is divided into financial tokens and utility tokens. Financial tokens are similar to equities, debentures and units in collective investment schemes, which can grant rights to dividends, bonds or collective investment schemes and on the other hand reward based on performance or voting rights. At last, the utility tokens can only be used to the acquisition of goods or services. The guidelines also specify the tax treatment on Initial Coin Offerings and in the case of utility tokens the tax may be deferred until profits are realized.

Existing a transaction based in cryptocurrency, a payment or receiving, it needs to be measured in the same currency of the taxpayer's financial statements, being the value of the DLT asset determined according to the market value, where a record of each transaction shall be maintained. The responsibilities and sanctions in the Income Tax Acts will be applied in these transactions relating the DLT assets.

### **2. *Duty on Documents and Transfers***

The tax provisions, principles, and jurisprudence must be observed in the duty treatment in every transaction where a DLT is observed. As said before, it must be analyzed as other transactions, according with the market value who will be determined by the Maltese authority the quoted price on reputable exchanges or another way to satisfy the CFR as well, with the same responsibilities and sanctions in Duty on Documents and Transfers Act (DDTA).

### **3. *VAT***

A transaction involving DLT will be treat with the same criteria in the points 1 and 2, but where the supply of the good or service occurred need to be observed before the application of any tax, it means that if Malta is not competent to apply this rules another jurisdiction will be applied.

Some examples can be given in transactions involving coins, such as digital wallets involving the payment of fees for permitting coin users, mining of coins when miners have payment for other activities and exchange platforms which services can be classified as supply of services if a fee is charged for every transaction.

The last category, where there are situations involving financial tokens, there is no VAT implications when they are issued just to raise capital, because it is not considered a supply of goods or services, but otherwise whether these services are provided by exchange platforms, a VAT implication shall be considered as described above. Concerning the utility tokens, if a token is issued to be recognized as consideration for a supply of goods or services, this token would have similarities of a voucher and could be treated in terms of Part Nine of the 14th Schedule to the VAT Act.

## **F. Consolidated Group (Income Tax) Rules**

The Consolidated Group (Income Tax) Rules, 2019 were published recently and came into effect for companies who have its financial period starting on or after 1 January 2019. This is an optional regime and the group of companies that are willing to apply will be constituted by the “principal taxpayer” and the “transparent subsidiaries”, considered a “fiscal unit” for income tax purpose.

Some requirements are essentials, such as all companies must have the same accounting year. Also, the principal taxpayer needs to be a company registered in Malta and hold at least 95% and any two of these three rights: 1) voting rights; 2) any profits available for distribution; and 3) any assets of the subsidiary company available for distribution; of the transparent subsidiary.

After that, the principal taxpayer will assume the responsibilities, rights and obligations according to the ITA of its transparent subsidiaries and the later will have its responsibilities, rights and obligations suspended. For instance, when there is the responsibility to pay tax or to submit the income tax return, the principal taxpayer will be accountable for this.

These changes will support the income tax calculations, reporting of group companies and other group matters easier, once all income, outgoings and expenses derived by transparent companies shall be considered incurred by the principal taxpayer. The same will happen with the transactions occurred between principal taxpayer and transparent subsidiaries, which are not going to be considered.

When any income or gains is derived by a transparent subsidiary who is not resident in Malta, this income will be attributable to a permanent establishment of the principal taxpayer situated outside Malta; and where any income or gains derived by a transparent subsidiary not resident in Malta arising in Malta, the principal taxpayer will be considered responsible.

The range of the income tax grouping rule is not restricted to any specific sector or industry and as said before, will help the fiscal unit in its organization and reports.

## **G. Other changes**

In 2018, several changes have been made to the Income Tax Acts. The important changes contain the reduction shareholding ratio from 10% to 5% as a requirement of participating holding; the remittance basis of taxation and minimum tax paid; obligation to draw up a Balancing Statement and Tax amortization of intellectual property.