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Recent Developments in International Taxation July 2020

Malta

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Recent highlights

During 2019–2020, we have seen some important changes in the Maltese tax scene. Most of the tax changes were European Union or international tax driven, such as the full implementation of the Anti-Tax Avoidance Directives (ATAD) 1 and 2, the recommendations from the Organisation for Economic Co-operation and Development (OECD) regarding Covid-19, the implementation of amendments to the VAT Directive and the introduction to reporting obligations under Directive 2018/822 ('DAC 6').

During this period, Malta has also strengthened its double tax treaty network by signing at least three new double tax treaties, and entered discussions with other countries for future treaties that are in the pipeline. Malta's double tax treaty network consists of 76 plus treaties worldwide.

Malta has also adopted new domestic tax rules, such as the new Patent Box regime deductions and the implementation of the Consolidated Group (Income Tax) Rules; the scope of these new domestic rules is to provide incentives to international business in Malta.

EU directives and international tax

Exit Tax

Exit taxes were introduced for the first time in Maltese legislation through the implementation of ATAD 1 on 1 January 2020. Exit taxes are triggered by unrealised capital gains at the time a Maltese taxpayer relocates its residence, business or assets from Malta to another Member State or to a third country.

Exit tax is at the rate of 35 per cent. A deferral of tax may be made over a period of five years if the transfer is made to another EU Member State, subject to claw back provisions. A transfer of assets and or residence may be exempt from exit tax on certain conditions being satisfied.

Dispute resolution

Malta has implemented the EU Tax Dispute Resolution Mechanisms Directive Implementation Regulations 2019, which came into force on 1 July 2019.

These regulations establish mechanisms to resolve disputes between Malta and other Member States arising from the interpretation and application of agreements and conventions for the elimination of double taxation of income and capital.

Hybrid mismatch rules

The European Anti-Tax Avoidance Directives Implementation (Amendment) Regulations 2019 came into force on 1 January 2020 in Malta and are legislated on hybrid mismatches between EU and third countries. The amendments aim to combat aggressive tax planning used by associated enterprises to avoid tax liabilities.

Hybrid mismatch rules are addressed to avoid double deduction and deduction without inclusion between associated enterprises, applying to all companies, other entities, trusts and similar arrangements that are subject to tax in Malta.

Cross-border arrangements (DAC 6)

In 2019, Malta transposed DAC 6, which contains Cooperation with Other Jurisdictions on Tax Matters Regulations, to its domestic law regarding the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements by intermediaries, when they meet certain criteria (hallmarks) that are an indication of potential tax avoidance schemes. Malta is currently waiting for implementing guidelines, which are expected to be published by the Inland Revenue Department in the coming weeks. The implementing regulations are expected to shed more light on the hallmarks and clarify other matters, such as the exception in relation to professional secrecy.

VAT 'quick fixes'

The EU announced four 'quick fixes' through Council Directive EU 2018/1910, which changed the taxation of trade between Member States. The changes amended the principal VAT Directive 2006/112/EC and entered in force on 1 January 2020.

In October 2019, Malta transposed the 'quick fixes', which covered: (1) call-off stock arrangements; (2) chain transactions; (3) proof of intra-EU supply; and (4) the VAT identification number of the customer.

Double tax treaties

Malta has 76 double tax treaties, and in the last year, one new double tax agreement entered into force with The Republic of Kosovo (signed in March 2019). Agreements with the Republic of Ghana and the Republic of Armenia were signed and published, based on the OECD model, but have not yet come in force.

A number of existing double tax treaties were modified in terms of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('MLI'). Accordingly, Malta has published a series of Synthesized Texts of Tax Treaties impacted by the MLI, such as treaties with the Republic of Austria, Ireland, Isle of Man, Lithuania, the Republic of Serbia, the Slovak Republic, the United Kingdom, the Republic of Finland, Guernsey, Australia, India and the Republic of Slovenia.

The Synthesized Texts have been based on the reservations and notifications made by Malta when it deposited its instrument of ratification for the Multilateral Base Erosion and Profit Shifting Convention.

In 2019, the protocol between Malta and Belgium was signed and will enter into force on 1 January 2021, amending Article 26 of the Malta and Belgium Double Tax Treaty.

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

Malta's position concerning the OECD's analysis of tax treaties and the impact of the Covid-19 crisis

The OECD provided guidance to individuals and companies in view of the Covid-19 context. Guidance was issued in April 2020 covering the most important questions raised by the exceptional situation caused by the virus, such as the creation of a permanent establishment of companies in other jurisdictions, the change of the place of effective management and questions regarding cross-border workers. Malta welcomed this guidance and adopted it for double tax treaty interpretation purposes.

Domestic legislation

Patent Box regime deductions

Malta introduced a Patent Box regime, allowing a deduction on qualifying intellectual property (IP). These new rules were published in August 2019 and apply to qualifying income derived from qualifying IP, on or after 1 January 2019.

The new regime refers to qualifying IP, such as patents, assets in which protection rights are granted (eg, assets relating to plants and genetic material), utility models and software protected by copyright.

The total income that is derived from the use, enjoyment and employment of the qualifying IP, and also the total IP expenditure (expenditure directly incurred in the acquisition, creation, development, improvement or protection of the qualifying IP), will be used in order to calculate the amount that can be deducted.

Where a beneficiary incurs a loss in respect of the qualifying IP that it is entitled to set off against its income or gains, and such a beneficiary claims the benefit of such a loss, the beneficiary shall be entitled to elect to benefit from any one of the following: (1) a deduction corresponding to five per cent of the loss; or (2) a deduction corresponding to the full amount of the loss that would be available for deduction.

Consolidated Group (Income Tax) Rules

In 2019, Malta saw the introduction of the Consolidated Group (Income Tax) Rules, and in 2020, the implementing guidelines and applications for year of assessment 2020 were published. Through the Consolidated Group (Income Tax) Rules, a group of companies may opt to be treated as one 'fiscal unit' for income tax reporting purposes.

One of the highlights of the Consolidated Group (Income Tax) Rules is the possibility to consider that any income, outgoings and expenses derived by the transparent companies will be considered as incurred by only one company (the principal taxpayer). Additionally, any transactions that take place between the principal taxpayer and its subsidiaries will be disregarded for income tax purposes.

Companies that opt for the Consolidated Group Rules will benefit from a more efficient compliance model by filling one tax return per group. This may also result in the effective tax at the group level to be paid by the principal taxpayer straight away rather than requesting tax refunds from the tax authorities. As per recent guidelines, companies that are located outside Malta may also form part of the Consolidated Group (Income Tax) Rules on certain conditions being satisfied.

Other changes

In 2019 and 2020, several other changes were made, including the publication of unified guidelines in terms of the Foreign Account Tax Compliance Act (FACTA) and Common Reporting Standard (CRS), amendment and extension of stamp duty exemptions, postponement of the payment of certain taxes in response to the Covid-19 crisis, and revised tax rates on the acquisition and sale of property.