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Recent Developments In International Taxation

Malta

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Recent highlights

Throughout the past year, there have been some significant changes on the Maltese tax scene, most of which were driven by European Union or international tax developments. Such can be seen through the introduction of the new VAT e-commerce rules and the reverse hybrid mismatch rules.

During this period, Malta has also successfully strengthened its double tax treaty network, solidifying cooperation, transparency and the exchange of information with more than 76 countries.

In 2021 and 2022, we witnessed several endeavours by the Maltese tax authorities and legislators to combat financial crime and tax evasion. By virtue of Legal Notice 312 of 2021, Malta transposed EU Directive 2019/1153, which lays down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of serious criminal offences, including tax evasion.

Additionally, the persistent effort by the Maltese authorities to prevent offences such as tax evasion and money laundering is evidenced through Malta’s official removal from the Financial Action Task Force (FATF) ‘grey list’ on 17 June 2022.

EU Directives and international tax

Malta has transposed a series of EU Directives to its domestic laws over the past years, including the first and second Anti-Tax Avoidance Directives (ATAD I and ATAD II), amendments to the VAT Directive and introduction of reporting obligations through DAC 6.

New VAT e-commerce rules

As of July 2021, the VAT E-commerce package entered into force and officially introduced the national One-Stop Shop (OSS) and import One-Stop Shop (IOSS). In essence, the new e-commerce rules affect all those natural and legal persons involved in the e-commerce supply chain. The OSS contains two separate schemes, known as the Union Scheme and the Non-Union Scheme.

The Union OSS scheme is an extension to the current EU mini One-Stop Shop (MOSS) scheme. This new scheme covers supplies of distance sales of goods and business to customer (B2C) supplies of services by taxable persons established in the EU, as well as deemed supplies made by electronic interfaces facilitating in supplies of distance sales of goods made within the EU and certain domestic supplies of goods.

The Non-Union OSS scheme is an extension to the current non-EU MOSS scheme. The new scheme covers supplies of services by persons not established in the EU, who make B2C supplies of services in the EU.

Moreover, taxable persons who facilitate distance sales using an electronic interface (EI, such as a marketplace, platform or portal) may in certain cases be involved in the collection of VAT on those sales. In this respect, a new legal provision, preliminarily added to the VAT Directive, provides that these taxable persons are deemed in certain circumstances to make the supplies themselves and will be liable to account for VAT on these sales.
This legal provision has been transposed into Maltese law by virtue of Item 12A of the Second Schedule of the VAT Act. The Act stipulates that a taxable person shall be deemed to have received and supplied goods when using an EI if said taxable person facilitates distance sales of goods imported from third territories or third countries in consignments valued at around €150.

A taxable person will moreover be deemed to have received or supplied a good where, using an electronic interface, said person facilitates the supply of goods within the European Community by a person not established within the Community to a non-taxable person.

**Reverse hybrid mismatches**

The reverse hybrid mismatch rules, as per Regulation 10 of the ATAD II Implementation Regulations, applicable for financial periods commencing on 1 January 2022. A reverse hybrid is an entity or arrangement that is treated as fiscally transparent under the legislation of the jurisdiction of its establishment, but treated as a fiscally non-transparent entity under the legislation of the investor jurisdiction.

If one or more associated non-resident entities, holding in aggregate a direct or indirect interest in 50 per cent or more of the voting rights, capital interests, or rights to a share of profit in a hybrid entity that is incorporated or established in Malta, are in a jurisdiction or jurisdictions that regard the hybrid entity as a taxable person, this hybrid entity shall be regarded as a resident of Malta. The hybrid entity will thus be taxed on its income, to the extent that the income is not otherwise taxed under the Income Tax Act or any other jurisdiction outside of Malta. Therefore, this corrective mechanism operates to transform the reverse hybrid entity’s classification, wholly or partly, for Malta income tax purposes.

The general principle stated above does not apply to collective investment vehicles.

**Double tax treaties**

Malta has more than 70 double tax treaties; in the last year, one new double tax agreement entered into force with Armenia, effective as of 28 November 2021. Moreover, a number of existing double tax treaties have been modified. Several amendments were made to the Convention between the Government of Malta and the Government of the Republic of Poland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes and capital (the Malta–Poland Treaty), which came into force on 11 March 2022. Most pertinently, the rate at which Poland may tax interest arising in Poland and paid to a resident of Malta (being the beneficial owner thereof) has been reduced to a maximum of four per cent of the gross amount of the interest.

The Protocol between Malta and Switzerland, signed in July 2020 and incorporating the minimum standards for double taxation agreements of the BEPS project, has been effectively implemented by virtue of Legal Notice 198 of 2021.

The amendments to the treaties support Malta’s international plans to encourage cooperation, transparency, and the exchange of tax information.
Domestic legislation

Transfer pricing rules consultation

The office of the Commissioner for Revenue issued a draft of the new transfer pricing rules, with the consultation period ending February 2022. The aim of such rules is to ensure Maltese legislation reflects current global standards related to the arm’s length principle. It is envisaged that such rules will take effect for the financial years commencing on or after January 2024. The rules will impact ‘associated enterprises’ entering into cross-border arrangements; as things currently stand, micro, small or medium-sized enterprises will fall outside the scope of the rules.

Nomad residence programme

On 2 June 2021, the Residency Malta Agency and Identity Malta launched the Nomad Residence Permit (NRP) for third-country nationals. The NRP enables holders to legally reside in Malta while retaining their employment with an employer based in another country, provided they can work remotely by using telecommunications technologies independently of their location and location of their employer.

A third-country national may apply for a NRP if they are able to prove that their work is carried out remotely and independently of any location. The applicant needs to qualify under one of the following classes:

- the applicant has a valid employment contract with an employer that is registered in a foreign country;
- the applicant conducts business activity for a company that is registered in a foreign country and of which the applicant is a partner or shareholder; or
- the applicant offers freelance or consulting services mostly to clients whose permanent establishments are in a foreign country, and with whom the applicant has contracts in place.

The applicant may also add family members to the NRP application. For the applicant to apply for the NRP, they need:

- a certain monthly gross income;
- a valid travel document;
- health insurance covering risks in Malta; and
- a valid rental or purchase agreement for an immovable property in Malta.

Other changes

Finance Minister Clyde Caruana has announced that Malta will have a new corporate tax regime by 2025, indicating that there is a plan to move away from the imputation system and towards a classical taxation system. There has not yet been any publication of the draft legislation; however, the Minister has commented that the aim, with regards to tax rates, is not ‘to rake in more money but [rather] to maintain current levels.’1