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Recent Developments in International Taxation

Malta

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Pillar Two: Malta applies derogation in respect of the income inclusion rule and undertaxed profits rule, and transposes the remainder of the Pillar Two Directive

Among the announcements featured in Malta's 2024 Budget speech, the Maltese Minister of Finance (the 'Minister') announced that Malta shall be opting for the derogation granted in terms of the Pillar Two Directive (Council Directive (EU) 2022/2523). Article 50 of the Pillar Two Directive provides that by way of derogation to Articles 5–14, Member States in which no more than 12 ultimate parent entities of groups within the scope of the directive are located may elect not to apply the income inclusion rule and undertaxed profits rule for six consecutive fiscal years beginning 31 December 2023.

In light of this, the Minister furthermore confirmed the intention of the current legislature to retain Malta's existing full imputation system of taxation. Additionally, the Minister stated that the government shall be working to introduce measures and incentives in the forms of grants or qualified refundable tax credits (QRTCs) that are in conformity with European Union Regulations and Organisation for Economic Co-operation and Development (OECD) proposals.

Following the above, Malta has transposed the Pillar Two Directive by virtue of Legal Notice 32 of 2024, enacting the EU Global Minimum Level of Taxation for Multinational Enterprise Groups and Large-Scale Domestic Groups Regulations 2024. While the aforementioned derogation subsists, these regulations transpose the relevant provisions of the Pillar Two Directive that establish minimum measures (regardless of derogation) in order to ensure the functioning of Pillar Two across the EU.

Among the rules transposed are the imposition of filing obligations that are incumbent on constituent entities located in Malta that form part of a multinational enterprise (MNE) group. While these filing obligations apply to Maltese constituent entities, it is noted in the respective guidelines issued by the Malta Tax and Customs Administration (MTCA) that, due to the aforementioned derogation, the top-up tax information return cannot be filed in Malta. In order to ensure the proper functioning of the Pillar Two Directive, ultimate parent entities (UPEs) of in-scope MNE groups that are situated in Malta must therefore nominate a designated filing entity in another Member State or third country for the latter entity to be able to file this return. In this case, the constituent entities of an in-scope MNE group would still be required to process and transfer all information necessary to the designated filing entity of the group. Maltese constituent entities will, in all cases, still have the obligation to inform the MTCA of the identity of the filing entity, as well as any other pertinent information that may be required.

Grandfathering provisions introduced to Maltese transfer pricing rules

An update to Malta's transfer pricing rules, introduced by virtue of Legal Notice 9 of 2024, has introduced grandfathering provisions with regard to those arrangements entered into by in-scope entities prior to 1 January 2024. Initially, the rules were only applicable to arrangements entered into by in-scope entities after 1 January 2024. Arrangements entered into before that date would previously only fall within the remit of the rules to the extent that, on or after the 1 January 2024, such an arrangement was materially altered.

The newly introduced amendment now provides that, in relation to any arrangements entered into before 1 January 2024, and that were not materially altered on or after that date, the rules shall apply for basis years commencing on or after 1 January 2027. It is therefore important for in-scope entities to also review any arrangements entered into before 1 January 2024.

Deductions in respect of intellectual property and intellectual property rights

On 28 December 2023, the MTCA issued notification that, with effect from the period covered by the year of assessment 2024 (basis year 2023), any expenditure of a capital nature incurred on intellectual property or intellectual property rights may, at the option of the person that has incurred such expenditure, be deducted in full in terms of the provisions of Malta's Income Tax Act on the deduction of such expenditure, and in the year that said expenditure is incurred or in the year in which the intellectual property or intellectual property rights are first used or employed in producing the income.

With respect to expenditure of a capital nature on intellectual property and intellectual property rights that was incurred before the period covered by the year of assessment 2024, any deductions that were yet unclaimed as at the year of assessment 2023 may be claimed in full in the year of assessment 2024. Thus, if, for example, intellectual property was acquired in the year of assessment 2023 and only part of the expenditure was claimed in that year of assessment, the entire remaining deduction may be claimed during the following year (year of assessment 2024). It is important to note that the accelerated deductions described above may only be claimed against income produced through the use or employment of the intellectual property or intellectual property rights.

Updated guidelines on notional interest deduction (NID) rules

The MTCA released its first update to its guidelines on Malta's NID rules, providing clarification on a number of matters. The first clarification refers to the requirement of obtaining shareholder approval for the NID; shareholders or partners in an undertaking as at the end of the year preceding the year of assessment are required to give their approval for the undertaking to claim NID by the earlier of the date on which the said undertaking files its income tax return for that particular year of assessment or the date on which any one of the said shareholders or partners ceases to be a shareholder or partner of the undertaking, as the case may be. The guidelines go on to clarify that approval must be given in respect of the year of assessment in which, and to the extent that, a claim for NID causes an actual reduction in total income.

Furthermore, when the Commissioner exercises his/her discretion in allocating the deemed interest income on a basis other than the nominal value of the risk capital held by the shareholder or partner, the criteria on which the Commissioner has based his/her decision in this respect is to be published as part of the guidelines. Importantly, any decision taken by the Commissioner in this regard shall, where applicable, constitute an exchangeable ruling in terms of the Cooperation with Other Jurisdictions on Tax Matters Regulations (Subsidiary Legislation 123.127) and the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters Order (SL 123.150).

Finally, the updated guidelines have introduced clarification on the claiming of NID against foreign-sourced income arising from immovable property. Where an undertaking derives foreign-sourced rental income that falls within the purview of the respective charging provisions of Malta's Income Tax Act, that undertaking is also eligible to claim a notional interest deduction in respect of risk capital employed in acquiring the said income when determining the amount chargeable to income tax in Malta in terms of the respective rules applicable to deductions of expenses in respect to immovable property. The NID allowable as a deduction must not be taken into consideration when determining the further deductions allowed under these rules.

Malta confirms agreement with DAC 8 and the Crypto-Asset Reporting Framework

Malta has agreed to the adoption of a directive amending EU rules on administrative cooperation in the area of taxation ('DAC 8'), and has furthermore confirmed Malta's agreement with the standard concerning the automatic exchange of information agreed to at the OECD. Further to this, Malta has joined in and published the Joint Statement on the Collective Engagement to Implement the Crypto-Asset Reporting Framework (CARF).

Introduction of income tax rules for nomad residence permit holders

Malta's Nomad Visa is aimed at individuals looking to reside in Malta while working remotely for a non-Maltese registered employer, partners or shareholders of non-Malta registered companies who perform activities for that company, or freelancers or consultants who provide services to clients established outside Malta. Successful applicants are granted a visa for up to one year, with the possibility of annual renewal, up to a maximum stay of four years. Rules have been issued governing the tax treatment of nomad residence permit holders.

Legal Notice 277 of 2023 introduces a ten per cent tax rate on the chargeable income of the main permit holder, if that chargeable income is derived from 'authorised work', and that may be subject to any relief of double taxation as may be provided. 'Authorised work' is defined as:

- services provided in accordance with a contract of employment with an employer who is not resident in Malta and who does not carry on business in Malta through a fixed place of business; and
- services performed by the permit holder in a self-employed capacity for clients who do not reside in Malta and who do not carry on business in Malta through a fixed place of business.

In both cases, services must be provided remotely by means of telecoms technology as may be approved by the respective residence agency in Malta. It is important to note, therefore, that nomad residence permit holders have the obligation to register in Malta for tax purposes and file tax returns accordingly.

Publication of Central Electronic System of Payment Information ('CESOP') Regulations

Malta has transposed the provisions of Article 1 of Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers. The transposition comes by way of Legal Notice 272 of 2023, with the purpose of requiring payment service providers to keep sufficiently detailed information of payees and payments in relation to the payment services they provide. Furthermore, payment service providers are to submit such information to the MTCA to enable the competent authorities of Member States to carry out controls of the supplies of goods and services that are deemed to take place in a Member State.

VAT updates

Introduction of a new reduced VAT rate

The legislator has, by virtue of Legal Notice 231 of 2023, introduced a new reduced VAT rate to certain services. The Legal Notice amends the provisions of the Value Added Tax Act (chapter 406 of the Laws of Malta) and provides that a reduced rate of 12 per cent shall be applicable to the following supplies:

- custody and management of securities;
- management of credit and credit guarantees by a person or body other than those who granted the credit;
- hiring of a pleasure boat to a person according to an agreement for any term or part of that term that, when added to the term of a previous hiring of the same goods or of other goods of the same kind to the said person during the previous 12 months ending on the date of the beginning of the existing hiring, does not exceed five weeks; and
- services consisting of care of the human body required to be delivered by a person in the exercise of any profession regulated by the Healthcare Professions Act (chapter 464 of the Laws of Malta), including services supplied in the course of a health studio business or similar business, but not including specified exempt supplies.

In relation to the hiring of pleasure boats, the MTCA has released further guidance in relation to the manner in which the reduced rate of 12 per cent is to be applied to hires for periods not exceeding five weeks, with the standard VAT rate of 18 per cent applying where, and for the period that, the five week limit is exceeded. Five weeks is first defined as being a period of 35 days. Therefore, where a pleasure boat is hired to a person according to an agreement for a term exceeding five weeks (35 days), the reduced rate of 12 per cent only applies to the first part of that term up to the five weeks, following which a rate of 18 per cent is to be applied to the remainder of the term exceeding five weeks.

The guidance also clarifies situations where a taxable person provides a package of supplies consisting of the provision of goods and services, all or some of which may be subject to differing VAT treatment. In these cases, such a package may constitute a composite supply,

and the applicable VAT rate would be the rate that is applicable to the principal component of that supply. Consequently, the 12 per cent rate would only apply to such composite supply if the hiring of the pleasure boat were the principal component.

Guidelines for VAT treatment of healthcare services

On 25 September 2023, the MTCA issued guidelines in order to provide guidance on the application of certain VAT exemptions applicable to the supply of medical care by a person in the exercise of any profession regulated by Malta's Healthcare Professions Act (chapter 364 of the Laws of Malta) or the Psychology Act (chapter 471 of the Laws of Malta).

The guidelines provide clarification on the terms 'medical care supplied by professionals' and 'care or medical or surgical treatment in hospitals/clinics'. It has also been clarified that the supply of 'medical care' may also include supply of an aesthetic or cosmetic nature. The guidelines further provide that, in order to substantiate the application of the respective VAT exemption on the supply of medical care, particularly for supply of an aesthetic or cosmetic nature, certain record keeping requirements are to be met.

Amendments to Maltese DAC 7 Guidelines

The MTCA has made amendments to its DAC 7 Guidelines. A number of changes were made to the first-year registration requirements for 2023, with the deadline for registering as a Reporting Malta Platform Operator set at 31 August 2023 (changed from 20 November 2023). The same change was also made to the deadline for the registration of Excluded Platform Operators.

Newly renamed Malta Commissioner for Tax and Customs launches a new strategic plan, and now accepts digitally signed documents

April 2023 was when the newly renamed Malta Commissioner for Tax and Customs (the 'Tax Commissioner') launched its new strategic plan for the period covering 2023–2025. The strategic plan is titled 'Delivering Transformation' and focuses heavily on international tax developments both at the EU level and within the wider OECD context. In acknowledging the need for the tax administration to become more efficient in order to increase annual tax revenue, the Tax Commissioner acknowledges the importance of promoting voluntary compliance by taxpayers in order to protect Malta's national tax base, rather than increasing the tax burden on individuals and companies.

As from 21 August 2023, the Tax Commissioner now accepts digitally signed documents in respect of tax submissions. Specifically, any documents that are required to be submitted to the Tax Commissioner in paper format and signed with a wet ink signature will now be accepted in soft copy format to the extent that they are signed with a qualified electronic signature.