

Advantages of Malta's Consolidated Group Rules and the Concept of Fiscal Units

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The Concept of 'Fiscal Units' and Why They are of Interest

Through its Income Tax Act, Malta had introduced the concept of 'Fiscal Units' which can be formed by a group of companies. This means that it is now possible for such companies to directly pay 5% tax (*trading income*) or 10% (*passive income*), rather than the standard 35% for a trading company, with non-resident shareholders then claiming a 30% refund (*trading income*) or 25% (*passive income*).

As from 2020 it is possible to register a group of companies as a fiscal unit, which can elect to be treated as a single taxpayer.

Malta published Consolidated Group Rules which come into force with effect from the year of assessment 2020, relating to fiscal units with accounting periods commencing in 2019 and subsequent years thereafter.

- One of the advantages of applying the consolidation regime is a cash flow benefit. Filing one tax return will eliminate the time lapse for receipt of the tax refund in the usual circumstances, where a tax return is filled for each company separately. For a group of companies only one tax return would be filed.
- Consolidated Group Rules will make income tax calculations and reporting for group companies and other group matters easier, as all income, outgoings and expenses derived by the companies will be considered incurred by the principal taxpayer. The same will rule will be applied in relation to transactions occurring between the principal taxpayer and its subsidiaries.

Formation of a Fiscal Unit

A parent company and relevant subsidiary or subsidiaries may make an election to form a fiscal unit. The parent company must own at least 95% of the subsidiary, and the subsidiary must have the same accounting period as its parent company.

Subsidiaries, as detailed above, are referred to as 'transparent subsidiaries'. Where the transparent subsidiary is a parent company, if it has any '95% subsidiaries', they are also able to join the fiscal unit. The principal taxpayer of a fiscal unit, is a parent company of one or more transparent subsidiaries, within the fiscal unit.

Companies which are not resident in Malta may form part of a fiscal unit, however the principal taxpayer must at all times qualify as a company registered in Malta, and must maintain a permanent establishment in Malta.

Chargeable Income

Members of the fiscal unit, other than the principal taxpayer, are regarded as transparent entities for Malta income tax purposes. As a result, any income and gains derived by these transparent subsidiaries will be directly allocated to the principal taxpayer. Similarly, expenditure and capital allowances incurred by transparent subsidiaries will also be directly allocated to the principal taxpayer.

Transactions between members of the fiscal unit shall be disregarded, with the exception of transfers of immovable property situated in Malta, and the transfer of property companies.

Income or gains allocated to the principal taxpayer will retain their character and source. A number of deemed source rules, are however included. For example, income or gains derived by a non-Malta tax resident transparent subsidiary, are deemed to be attributable to a permanent establishment of the principal taxpayer situated outside Malta, as long as the transparent subsidiary maintains sufficient substance in that jurisdiction.

Compliance Obligations

Use of the Malta Fiscal Unit Regime is by choice.

The principal taxpayer will be required to prepare a consolidated balance sheet and consolidated profit and loss account, covering all of the companies within the fiscal unit. The principal taxpayer is also responsible for filing the tax return of the fiscal unit, with the other members of the fiscal unit being exempt from filing their respective tax returns. The members of the fiscal unit are jointly and severally liable for the payment of

tax.

Additional Information

If you would like any further information on this subject, please contact the Dixcart office in Malta: advice.malta@dixcart.com or your usual Dixcart contact.