

Key Measures Relating to EU ATAD Now Implemented in Malta

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By **Jonathan Vassallo**, 26th February 2019

As a member of the EU, Malta has implemented the EU Anti-Tax Avoidance Directive (ATAD) and has incorporated it into domestic legislation.

Malta incorporated the ATAD measures into its domestic legislation at the beginning of December 2018 through implementation of Legal Notice 411, which includes the following:

- an interest limitation rule;
- general anti-abuse rules (GAAR);
- controlled foreign company rules (CFC);
- an exit tax.

These measures came into force as from 1st of January 2019, with the exception of the exit tax, which will be introduced as from 1st of January 2020.

Interest Limitation Rule

This regulation limits the deductibility of borrowing costs for a taxpayer. If borrowing costs exceed interest receivable, the maximum allowable tax deduction from the excess costs (referred to as “exceeding borrowing costs”), during a specific tax year, will be 30% of EBIDTA (the taxpayer’s earnings before interest, depreciation, tax and

amortisation).

The unutilised exceeding borrowing costs can be carried forward, subject to further limitations and criteria. In addition, no capping applies for borrowing costs less than €3 million.

The “interest capacity” that a taxpayer has in a tax year can also be carried forward for up to 5 years.

These rules do not apply to financial institutions such as banks, funds, insurance companies, etc. and also to companies which do not form part of a group or have no permanent establishments or associated companies.

There is also an exception to the general rule, whereby it is possible to enjoy full deductibility of the exceeding borrowing costs. This is subject to the taxpayer proving that the ratio of equity over total assets is equal to, or higher than, the equivalent ratio of the group.

GAAR

General anti-abuse rules have been included, for a considerable length of time, in the Malta Income Tax Act and the EU directive re-iterates the importance of these rules.

CFC Rules

An entity or permanent establishment, whose profits are not subject to tax or are exempt from tax, will be treated as a controlled foreign company in the following circumstances:

- an entity (the ‘taxpayer’ and/or associated enterprises), holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of the capital, or is entitled to receive more than 50% of the profit of that entity; **and**
- the corporate tax paid by the entity or permanent establishment is lower than the difference between the tax that would have been liable under the Malta Income Tax Act plus any foreign corporate tax paid.

The CFC rule does not apply to an entity or permanent establishment:

- with accounting profits not exceeding €750,000 and non-trading income of not more than €75,000; **or**
- where the accounting profit is less than 10% of operating costs in the relevant tax year.

Exit Tax

A taxpayer will be subject to tax on unrealised capital gains where assets owned by the taxpayer are moved or transferred outside of Malta.

The capital gain is calculated as the market value of the transferred assets, at the time of exit, less their value for tax purposes, and is applicable in any one of the following circumstances:

- a taxpayer transfers assets from its head office in Malta to its permanent establishment in another EU Member State or other country;
- a taxpayer transfers assets from its permanent establishment in Malta to its head office or another permanent establishment in another EU Member State or other country;
- a taxpayer transfers tax residence from Malta to another EU Member State or other country (excluding assets which remain effectively connected with a permanent establishment in Malta);
- a taxpayer transfers the business conducted by its permanent establishment in Malta to another EU Member State or other country.

Additional Information

The Dixcart office in Malta has extensive experience in establishing and managing tax-efficient companies in Malta, can assist with all relevant compliance matters, and related corporate and residence issues. For further assistance please contact us on advice.malta@dixcart.com or speak to your usual Dixcart contact.