

Malta Introduces Consolidated New Group Rules – Offering Cash Flow Advantages

By Jonathan Vassallo, 6th September 2019

Malta – Full Imputation Tax Regime

Malta's competitive tax regime is based on a full imputation system. Tax on the profit paid by the company distributing dividends, is made available to the shareholder as a tax credit, to avoid double taxation on the same income (for the company and subsequently for the shareholder).

A shareholder receiving profit dividends can request a tax refund on those profits paid by the company in Malta. The amount of the refund depends on the nature of the distributed profit and if these have benefited, or not, from double taxation relief.

Cash Flow Benefits of New Consolidated Group Rules

Malta published new 'Consolidated Group Rules' on 31 May 2019. These will come into effect for year of assessment 2020, relating to 'fiscal units' with accounting periods commencing in calendar year 2019.

- One of the advantages of the consolidation regime is the cash flow benefits that can be enjoyed, by eliminating the time lapse for the receipt of applicable tax refunds, once relevant tax returns have been filed.

The new 'Consolidated Group Rules' will make income tax calculations, reporting of group companies and other group matters, easier, as detailed in the next section. This is because all income, outgoings and expenses derived by 'transparent companies' will be considered as if incurred by the principal taxpayer. The same applies to transactions between the principal taxpayer and 'transparent subsidiaries'.

What is a 'Fiscal Unit' and How is it Established?

The parent company, and any relevant subsidiaries, can make an election to form a 'fiscal unit', provided that each subsidiary has the same accounting period as the parent company and as long as two of the following conditions are met:

- The parent company holds at least 95% of the voting rights in the subsidiary company;
- The parent company is beneficially entitled to at least 95% of the profit available for distribution to the ordinary shareholders of the subsidiary company;
- The parent company would be beneficially entitled to at least 95% of the assets of the subsidiary company available for distribution to its ordinary shareholders, in the event of a winding up.

Where such an election has been successfully made, each '95% subsidiary' will form part of the 'fiscal unit' of the parent company, with such subsidiaries being referred to as 'transparent subsidiaries.' Where a 'transparent subsidiary' is itself a parent company, its '95% subsidiaries' will also join the fiscal unit.

Companies which are not resident in Malta can form part of a 'fiscal unit', however the principal taxpayer must at all times be a company registered in Malta, and with a permanent establishment in Malta.

The 'Fiscal Unit Regime' is optional.

Chargeable Income

Members of a fiscal unit, other than the principal taxpayer, will be considered transparent entities for Maltese income tax purposes. As a result, income and gains earned by these transparent subsidiaries will be attributed to the principal taxpayer. Similarly, expenditure and capital allowances incurred by transparent subsidiaries will be attributed to the principal taxpayer.

Transactions between members of the fiscal unit will not be taken into account, with the exception of transfers of immovable property situated in Malta, and transfers of

property companies.

Income or gains allocated to the principal taxpayer will retain their nature and source. The 'rules', however, incorporate a number of 'deemed source rules'.

One such rule is that income or gains, earned by a non-Malta tax resident transparent subsidiary, will be attributed to the permanent establishment of the principal taxpayer situated outside of Malta, as long as the transparent subsidiary maintains sufficient substance in that particular jurisdiction.

Compliance Obligations

The principal taxpayer will be required to prepare a consolidated balance sheet and consolidated profit and loss account covering all companies within the fiscal unit.

The principal taxpayer will also be responsible for filing the tax return of the fiscal unit. The other 'members' of the fiscal unit are exempt from filing their respective tax returns, however, all members 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.