Alter Domus

MALTA NEWSLETTER

JULY 2019

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MALTA NEWSLETTER

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Dear Friends,

With great pleasure we are presenting the third newsletter for 2019. This edition includes various updates on the local financial services industry. One also notes the reorganization of the Malta Financial Services Authority. The thorough reorganization is expected to bring in more efficiency and quicker turnaround times without compromising on the quality and robustness of the regulatory oversight.

At Alter Domus, we continued to expand and amongst several individuals who were recently appointed, one notes two global senior appointments with more details further in the newsletter.

Being summer, we had the opportunity to meet clients, partners and colleagues in a reception held towards the end of June at our offices. It was a good opportunity to spend some time together in an informal environment, as you will read further on in the newsletter.

I wish you all a fantastic summer and hopefully enjoyable holidays.

Chris Casapinta
Country Executive, Malta

MALTA UPDATE

ANTI-TAX AVOIDANCE DIRECTIVE

The implementation of Legal Notice 411 (2018) published by the Ministry of Finance in Malta on the 11th of December 2018, following the EU Anti-Tax Avoidance Directive (ATAD EU 2016/1164 – July 2016), is applicable to resident and non-resident companies and any other trust or similar entity subject to Maltese tax and that have a permanent establishment in Malta.

The legal notice introduces new anti-avoidance measures, including:

Interest Limitation Rule

This measure aims at limiting the deductibility of interest payments. Namely, such costs shall be deductible in the tax period in which they are incurred only and are chargeable up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation [EBITDA], with a maximum of a EUR 3,000,000 threshold which can be deducted.

Other exclusions, per the De Minimis tax rule, include a standalone entity exemption and part of a consolidated group for financial accounting purposes and has no associated enterprise or permanent establishment.

It also includes the grandfathering of loans concluded before the 17th of June 2016, excluding them from the scope of funding long-term public infrastructure products.

A further exclusion is that of financial undertaking; and full deductibility of exceeding borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal or higher than the equivalent ratio of the group.

There is also a possibility to carry forward the excess, without any time limitation, possibly even carrying forward unused interest capacity for a maximum period of five years.

General Anti-Abuse Rule (GAAR)

The GAAR measure states that Member States shall not grant the benefits of the EU Parent-Subsidy Directive to "an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances".

The tax liability would need to be calculated in accordance to provisions of the Income Tax Act ("ITA") should the transaction be considered as non-genuine to the extent that they are not implemented within a valid commercial reason thereby reflecting economic reality.

Controlled Foreign Company (CFC) Rule

For the application of the CFC rules to come into play, the following two criteria must be met:

- An entity whereby the Maltese resident taxpayer by itself, or together with its 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 capital or is entitled to receive more than 50% of the profits of that entity; and

- The actual corporate tax paid by the entity is less than 50% of the tax that would have been charged on the entity under the terms of the ITA and the actual foreign corporate tax paid.

Where an entity or permanent establishment is considered to be a CFC, the Regulations require the non-distributed income arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage to be included in the tax base of the Maltese resident entity.

The CFC rule applies only if:

- The accounting profits exceed €750,000 and non-trading income exceeds €75,000, or

- The accounting profits amount to more than 10% of its operating costs.

Exit Taxation (with effect from 1st January 2020)

The final measure put into place by the ATAD relates to the introduction of exit taxation whereby a state is able to tax the capital gains arising from the movement of an asset in the territory of that state and is moved by the taxpayer to another state, or when the taxpayer changes tax residency. The exit charge shall be implemented in the following circumstances:

- A transfer of assets from the Malta head office to a permanent establishment in another EU Member State or third country in so far as Malta no longer has the right to tax capital gains from the transfer of such assets;

- A transfer of assets by the taxpayer from its permanent establishment in Malta to its head office or another permanent establishment in another EU Member State or in a third country in so far as Malta no longer has the right to tax capital gains from the transfer of such assets due to the transfer;

- A taxpayer transfers tax residence from Malta to another EU Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in Malta;

- The business carried on by its permanent establishment from Malta is transferred by the taxpayer to another EU Member State or to a third country in so far as Malta no longer has the right to tax capital gains from the transfer of such assets due to the transfer.

MALTA UPDATE
MFSA ORGANISATIONAL RESTRUCTURING

In line with its "Vision 2021" which was discussed in the previous edition of our Malta Newsletter, the Malta Financial Services Authority ('MFSA') has embarked on a restructuring exercise with the aim of becoming a more robust and forward-looking financial supervisor.

MFSA Chief Executive Officer Joseph Cuschieri explained, "The MFSA's Vision 2021 is the start of a transformative journey supported by an ambitious change programme focused on innovation, investment in FinTech and RegTech, the modernisation of supervision, and technological development," he said. "Our reform agenda includes an overhaul in our organisational and governance structures to enable the Authority to meet its future challenges more effectively."

"The Authority's technology plan envisages an investment of approximately €12 million over the coming three to four years", he said, "which will place the MFSA as a role model in respect of the application of cutting-edge technology in financial services supervision."

The main changes announced in March include the establishment of:

1. Executive Committee ('Ex Co')
1. Enforcement Decisions Committee and an Enforcement Directorate
2. Specialised unit focused on Financial Crime Compliance
3. Prevention of Money Laundering and Financing of Terrorism Committee
4. Risk Committee
5. Regulatory Committee
6. Financial Services Stakeholder Panel

Cuschieri explained that these initiatives will work to strengthen the Authority's focus on financial crime compliance, raise supervisory standards, risk management, and innovation, and increase the efficiency of decision making processes, thus paving the way for a refreshed leadership framework focused on clarity of responsibilities and accountability.

MALTA PRODUCTS
TRUSTS VS FOUNDATIONS

In the private wealth management sphere, the main concerns for high net worth individuals arguably include:

1. Preserving the family wealth in perpetuity;
2. Maintaining control of the family wealth within the family; and
3. Continuous growth of the family wealth.

Two structures available for the financial planner to achieve the above are foundations and trusts. Trusts are particular to common law systems and are not generally found in civil law countries. Malta is one of the few jurisdictions that caters for both.

The aim of both structures is to preserve the assets in the structure, whilst allowing for succession planning and preservation during the lifetime of the individual or entity setting up the structure. Beyond this commonality however, each type of entity presents its' own features which, depending on the specific needs of the individual, may provide different advantages or disadvantages.

The following are the main differences between the two structures in Malta:

Legal personality and registration

The trust has no separate legal personality. The rights and obligations here vest in the trustee. A Malta Foundation, on the other hand, does have a separate legal personality and is subject to being registered with the Registrar for Legal Persons.

Alternatively, a Malta Trust is not required to be registered as is the case with many other trust jurisdictions. This means that there are no initial registration fees. A Malta Foundation, on the other hand, can be set up either by means of a public deed or else through a last will published in Malta and therefore registered in the records of a Malta notary public.

Initial assets

A Malta Trust is funded through the initial and subsequent settlements by the settlor(s) and accepted by the trustee. A trust cannot exist without the trust assets. A Malta Foundation, on the other hand, is "endowed" with assets by its founder. The initial endowment for a Malta Foundation needs to be of at least € 1,200.

Powers of the founder and settlor

A settlor can retain settlor reserved powers under a Malta Trust, however if this is taken too far then there is the risk of the trust being deemed a "sham trust". Therefore once the settlor settles the property on the trust, he no longer has control over the trust property. A founder can also retain powers under a Malta Foundation and in fact, when compared to the settlor, has more control. Maltese law allows a greater degree of control to the founder over the assets of the foundation.

Lifetime of the structure

A Malta Trust can be set up for a maximum of 125 years. Foundations generally do not have a time limit for existence unless the law provides otherwise, which is exactly the case for the Malta Foundation where under Maltese law, there is a limit of up to 100 years for a private foundation. On the other hand, purpose foundations, foundations used for collective investment vehicles and foundations used for securitisation transactions may be established for an unlimited term.

Administration of trusts and foundations

A Malta Trust is run by the trustees whilst a Malta Foundation is run by its administrators. The trustees have a fiduciary responsibility to the beneficiaries of the trust.

In both structures, the administration of the assets is delegated to third parties such as the trustees or the board of administrators. Therefore, there is no need for the settlor or the founder to be physically present in Malta to execute any decisions or documentation.

MALTA PRODUCTS
SECURITISATION IN MALTA

Securitisation in a nutshell

Securitisation is essentially the process by which an Issuer brings together financial assets to form a single financial instrument. The Issuer can then market different tiers of this instrument to investors. Any type of financial asset can be packaged into this instrument, and its intention is to promote liquidity in the marketplace. All types of assets and receivables can be securitised, be they existing or future, movable or immovable, tangible or intangible.

The holder of the asset, known as the Originator, transfers their asset(s) to a securitisation Special Purpose Vehicle (SPV). This SPV can then make securities available for investment backed by the assets contained within the instrument. Such securities can be described as bonds, pass-through securities or Collateralised Debt Obligations (CDOs). The investors' returns stem from the principal and interest that is collected from the underlying debt. This is then distributed through the new financing capital structure.

Clear, transparent regulation

The advantages of securitisation are increased liquidity in the marketplace coupled with credit risk mitigation that arises from having a pool of securitised assets; unlike corporate debt, for example. It is a flexible, efficient, low-cost means of raising capital, and can be an effective method of transferring risk away from one entity to another. Investors are attracted to the potential for higher rates of return, to investing in specific pools of assets, and to achieving diversification in their portfolios.

In 2014, the Maltese Government passed the Securitisation Cell Companies Regulation, which in conjunction with the Securitisation Act of 2006 created a pioneering framework in Malta for securitisation transactions. The result is a cell structure for securitisation vehicles whereby assets and liabilities can be set aside under one legal structure. This has created a clear framework for both Originators and Investors alike, and made Malta into a prime location for securitisation activities.

The level of protection the regulations afford to investors, whereby they have a legal right to any assets attributed to a segregated cell, further bolsters the attractiveness of the Island's financial framework. Should an Issuer become insolvent, for example, then each cell is protected from the others, so the Investor's investment is better protected. While the benefits of the Maltese securitisation framework apply to any asset class, Malta is particularly well placed as a jurisdiction for the securitisation of transport-related assets, given the additional benefits of Malta's maritime and aviation legislation that can be applied to such transactions.

Securitisation vehicles established in Malta under the Securitisation Act can be in the form of a company, partnership, trust or any other legal structure that the MFSA may expressly permit. Securitisation vehicles are typically established as limited liability companies.

The Securitisation Tax Rules enable securitisation vehicles established in Malta to eliminate tax leakage and achieve tax neutrality in Malta, in respect of the securitisations for which they are established. No Maltese tax is withheld/payable on payments of interest, nor on the transfer of securities issued by a securitisation vehicle to a holder of the vehicle's securities, provided that the investor is not resident in Malta, does not have a permanent establishment in Malta, and is not owned and controlled (directly or indirectly) by, or acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.

A securitisation vehicle established as a Maltese company qualifies for a stamp duty exemption where more than 90% of its business interests are situated outside Malta. The exemption is obtained following an application on a statutory form to the tax authorities, and applies to any transfer of securities issued by the Maltese company.

The interest and/or dividends the SPV outflows are not subject to Withholding Tax, and as it is resident in Malta, it can benefit from tax treaties with a large number of major jurisdictions. The EU Parent Subsidiary Directive and VAT exemptions on management services are also strong points in favour of investing in Maltese SPVs.

Last but not least, SPVs do not require a license from the Malta Financial Services Authority (MFSA), so there are no licensing costs to be incurred. A lower rate of initial capital is also possible as there are no minimum requirements in this area.

Everything close at hand

Malta itself has a proven track record when it comes to investments of this nature. The market boasts strong, experienced players, whose track record in brokering securitisation deals is broad and successful. The local tax authorities take an economic approach to financial investment on the island, and their proximity and accessibility make them a valuable partner. This combined with strict, transparent rules to protect Investors, Originators and other securitisation creditors ensure that Malta is a leading location within the European Union for securitisation SPVs.

MALTA AFTER HOURS

SUMMER CLIENT EVENT, GLOBAL ABS & FINANCE MALTA CONFERENCE

On June 27th, Alter Domus Malta hosted their annual summer reception. More than 100 clients, business partners and colleagues from the local financial services industry where invited to celebrate their ongoing partnership with after work drinks and canapés on the rooftop terrace of the Alter Domus Malta office whilst networking and enjoying live music and a fireworks display.

Chris Casapinta commented “It is always a pleasure to welcome so many familiar faces to our office for a networking event. I would like to thank all those who attended and I hope that they have enjoyed the evening with us”.

From June 11th to 13th, Chris Casapinta, Country Executive Malta, attended the 23rd Annual Global ABS Conference in Barcelona. There, he met with other delegates to discuss the Asset-Backed Security (ABS) industry, structured products, emerging regulations and markets, and much more.

Chris was joined by Managing Directors Juliana Ritchie and Lora Peloquin, as well as Tim Houghton, Head of Debt and Capital Markets.

On June 5th and 6th, Alter Domus sponsored FinanceMalta’s 12th Annual Conference. Our very own Przemyslaw Koger, Domenic Azzopardi, Steve Cuschieri and Paul Rostkowski all attended the insightful two-day event along with over 400 delegates from Malta and abroad.

Titled “Malta: A Platform for Innovation”, the conference highlighted the factors that are driving Malta’s financial sector forward. FinanceMalta’s Chairman Kenneth Farrugia welcomed the delegates by saying: “While Malta’s small size may be considered a disadvantage by some, in actual fact it provides the perfect platform for innovation as it allows new structures to be developed and introduced to the market.”

ALTER DOMUS UPDATE

CORPORATE FIGURES, DIRECTORS' MEETING & NEW APPOINTMENTS

Corporate Figures

In May 2019, Alter Domus released its latest corporate figures which included improvements across all metrics. Alter Domus now has:

- 642bn USD in assets under administration
- 8,700 structures under administration
- 96bn USD in assets under depositary
- 2,200 employees worldwide

Alter Domus solidified its stance as a leading partner of choice by revealing that we now serve:

- 17 of the 20 largest private equity houses
- 19 of the 20 largest real estate houses
- 16 of the 20 largest debt houses

Directors' Meeting in Chicago

In mid-May, all 130 of Alter Domus' Directors and functional leaders from across the world met in Chicago for their annual Directors' Meeting. Led by Chief Executive Officer, Aidan Connolly, the meeting aimed to unify all Directors globally in order to effectively consider, plan and project how the company will grow and meet the evolving needs of clients in the coming years.

New Appointments

Bruno Bagnouls
Group Head of
Products & Innovation

In May, Bruno Bagnouls joined Alter Domus to oversee the management and growth of the Group's product and service offering, as well as the development and implementation of new products and innovation to our offering.

Previously, Bruno was Global Head of Private Equity and Real Estate and Capital Markets at TMF Group and Country Leader at TMF Luxembourg. Prior to this, Bruno worked at Alter Domus for 15 years, his last position being Group Head of Corporate Services.

Andy Wilson
Head of Property
Management & BOS

Andy joined Alter Domus in May 2019, and oversees all of Alter Domus' property activities globally, including the negotiation of all leases and property fit-outs, and the facilities support contracts that go with them. He is also responsible for Business Office Services (BOS) under the supervision of Bruno.

Previously Andy worked at Wilko in the UK for 24 years. In his time there, he held various senior management positions, including Head of Property, Head of Central Retail Operations, Head of Retail for the North of England and Head of Space Planning, Development and Fixtures.

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- Nordic
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