



Alter Domus

MALTA NEWSLETTER

NOVEMBER 2020



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Alter Domus

MALTA NEWSLETTER

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Dear friends,

I hope you are keeping well in these unprecedented times.

In August, we mentioned that most of us were slowly but surely getting back to office. However, following the recent surge in the number of infections and new restriction measures, we are now back to 25% remote working. Having said that, we are continuously monitoring the situation to ensure that our working environment remains safe for everyone.

Coming back to the topics covered in this newsletter, we have various updates on the local financial services industry. We were also honoured to recently host a webinar that saw a panel of high-profile industry experts discuss how the aviation financing and leasing sector is beginning to look ahead. Further details can be found in this newsletter.

Finally, at Alter Domus, we continued our growth with improvement across all metrics. One also notes a leadership change at Alter Domus Mauritius and new fund services being offered from our Netherlands office.

I hope that you enjoy this newsletter and wish you a safe end of year.



Chris Casapinta
Country Executive, Malta

MALTA ECONOMY

ECONOMIC OVERVIEW AND BUDGET 2021

Economic Overview

Malta announces one of the strongest economic support and regeneration packages to restart its economy

The Maltese government has come in aid of businesses that have been hardest hit by the Covid-19 pandemic and has mandated Malta Enterprise to administer a total of around EUR 1.8bn in direct or indirect financial support, which amounts to almost 12% of Malta's GDP. The support package, which includes tax deferrals, national insurance on salaries and a wage supplement covering basic wages, is one of the strongest economic support measures provided by an individual nation in the wake of the pandemic.

The government has also announced a significant regeneration package of more than EUR 900m to lead the country's recovery and attract new niches of growth during the coming months.

Port Charges Refund Scheme

The Port Charges Refund Scheme is one of the measures taken by the Maltese government to ease the financial burdens created by the Covid-19 pandemic for the maritime industry. Administered by Transport Malta and aimed at ship operators, shipping agents, and importers and exporters, the scheme will benefit from a government funding of EUR 2.1m and will apply to import and export agents in operation between December 2019 and May 2020.

Budget 2021

On 19 October 2020, the Finance Minister Edward Scicluna presented the budget measures for 2021

As expected, this budget extended a number of Covid-19 measures and various other economic initiatives as well as announcing various new investments to sustain the economy and lay the foundations for recovery from this unprecedented time.

During his speech, the Minister highlighted that Malta is anticipating a 7.4% reduction in GDP for 2020 as a result of the pandemic. Despite this, the Government is expecting the Maltese economy to recover during 2021 and grow by 5% in real terms and by 6.4% in nominal terms.

Following are some of the key measures announced:

Incentives for property market

- The rate of duty on the acquisition of residential properties shall be reduced to 3.5% on the first EUR 200,000;

- The reduced income tax and duty rates on the inter vivos transfer of immovable property in Malta of 5% and 1.5% respectively for the first EUR 400,000 will continue on promises of sale agreements registered by 31 March 2021 provided that the contract is entered into by 31 December 2021;
- Extension of emphyteusis on commercial properties will be possible to the extent that there will be investment on the property.

Employment and Business measures

- Employers to be incentivised to introduce measures that improve work-life balance and gender equality;
- Wage supplement to be extended to March 2021;
- The reduced rate of duty of 1.5% on the transfer of family business to be extended by another year until end of 2021.

Infrastructure projects

- A number of infrastructure developments will be launched including maritime projects;
- A EUR 450,000,000 investment over seven years in industrial infrastructure and office space announced;
- Further investment in the infrastructure for the aviation maintenance sector to continue to support this sector.

Environmental measures

- The issue of "Green Bonds" by investors will be incentivised to finance renewable energy projects and projects aimed at decreasing air pollution;
- Current schemes contributing towards the acquisition of photovoltaic panels, heat pump water heaters, solar water heaters and batteries for storing renewable energy will be renewed;
- The exemption of electric and plug-in hybrid vehicles from registration tax will be extended as will the exemption from annual road license fees for the first five years;
- The special reduced night electricity rates granted for private residences owning electrical vehicles will be extended.



REGULATORY DEVELOPMENTS

MFSA AND FIAU UPDATE

The Maltese regulatory and compliance framework is constantly developing due to the regulators' commitment to raising compliance and supervisory standards across the board. In this regard a number of updates have been published over the past months.

MFSA Updates

Circular regarding licence holders' obligations relating to record keeping

On 15 July, the MFSA issued a circular addressed to all licence holders regarding their obligations in relation to record keeping. Licensed entities are required to retain accurate documentation and records relating to their governance and oversight of their regulated activity and their interactions with customers. Their records should be readily available for inspection by the MFSA. Licensed entities are required to ensure that all correspondence relating to client contact/introduction, on boarding of clients, client acceptance and all ongoing exchanges throughout the relationship, are retained centrally.

All the information provided to the firms should be accessible to those who deal with clients in their day-to-day work or for monitoring purposes. Where licence holders are unable to comply promptly with the MFSA's information requirements, or pre-inspection or on-site requests, the inspection will not proceed, and the firm may be determined to have failed to cooperate with the Authority and further action may be considered.



Updates to the Investment Services Rules

A circular issued by the MFSA on 25 August on the updates made to the Investment Services Rules applicable to Collective Investment Schemes in relation to reporting of breaches in the Annual Report and Audited Financial Statements aims to ensure that PIFs, AIFs and UCITS ("Collective Investment Schemes") provide relevant information to investors and other stakeholders in relation to their level of compliance with licensing conditions. New rules have been introduced requiring Collective Investment Schemes to disclose breaches of the applicable Standard Licence Conditions, by including a statement in the Directors' Report or in any prominent section in the Annual Report and Audited Financial Statements regarding breaches which occurred during the relevant reporting period.

Guidance Note on the Submission of the Source of Wealth ("SOW") and Source of Funds ("SOF") Declarations

On 18 September, the MFSA issued a Guidance Note on the submission of the SOW and SOF declarations. When assessing the fitness and properness of an individual who is to take up a position of influence within an authorised entity, the due diligence process employed by the MFSA focuses on, inter alia, the assessment of the individual's reputation and in particular, on his/her integrity and solvency.

In this regard, AML/CFT considerations are an important aspect of this specific assessment, especially with respect to those persons holding significant or controlling interests with authorised persons, or who may be Politically Exposed Persons. Within this context, such individuals may be requested by the MFSA to submit a declaration with respect to their SOW/SOF. The aim of this Guidance Note is to assist individuals who are requested by the MFSA to disclose their SOW and SOF, with the intent of setting out the expectations of the MFSA with respect to the detail of such declarations, including documentary evidence.

REGULATORY DEVELOPMENTS

MFSA AND FIAU UPDATE

FIAU Guidance Document on Funding of Terrorism

On 17 July, the FIAU published a Guidance Document on Funding of Terrorism, which builds upon and incorporates the 2018 'Guidance Note on Funding of Terrorism - Red Flags and Suspicious Activities'. Key features of this Guidance Document include:

- Insights and key findings from the 2019 Terrorism Financing Risk Assessment carried out by the National Committee on Combating Money Laundering and Funding of Terrorism;
- Substantive information on the emerging FT trends and typology-specific case studies as well as red flags;
- Case studies based on real cases analysed by the FIAU's Intelligence Analysis Section.

Should a subject person know, suspect or have reasonable grounds to suspect that a transaction may be linked to funding of terrorism, they must submit a report to the FIAU.

Amendments to Regulation 15 of the Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR")

On 15 September, subject persons were informed that in order to address one of the issues highlighted in Malta's Mutual Evaluation Report relating to the timeframe for subject persons to submit STRs to the FIAU, amendments were carried out to Regulation 15(3) of the PMLFTR. The said regulation now requires that STRs be submitted to the FIAU promptly.

Amendments to Chapter 5 of the Implementing Procedures

Chapter 5 of the Implementing Procedures - Part I was also amended and now provides additional requirements and directions on internal and external reporting procedures that subject persons should have in place so as to ensure that any suspected or known instance of money laundering or funding of terrorism is reported to the FIAU within the timeframes set out in the PMLFTR.

Internal reports are to be filed with the MLRO no later than the next working day from when a subject person's employee becomes aware of any information or matter that is considered by the said employee to give rise to knowledge or suspicion of ML/FT.

STRs are to be submitted to the FIAU on the same day on which the MLRO determines that the information or matter set out in the internal report actually gives rise to knowledge or suspicion of ML/FT. Renewed emphasis was put on the need for MLROs to be provided with the necessary resources to carry out their work in an effective manner.



REGULATORY DEVELOPMENTS

REGULATORY UPDATE

The 4th and 5th AML Directives do not require any further introduction. As time goes by, the number of Anti-Money Laundering Directives ('AMLD') continue to be transposed to combat the use of the financial system for the purposes of money laundering or financing of terrorism.

4th AML Directive

The implementation of the 4th AML Directive has led to the following outcomes:

- Obligation for Corporate Services Providers ('CSP') to hold and maintain a Beneficial Owner Register on any individual holding more than 25% in an entity;
- During the course of 2018 and 2019, and upon the submission of either a new company or the Annual Return of an entity with the Malta Business Registry, CSPs were requested to report and disclose the beneficial owner ('BO') of each structure set up in Malta;
- Obligation for the trustee/administrators to hold and maintain a BO Register with all the parties mentioned in the Trust Instrument or Deed of Foundation;
- When a trust generates tax consequences in Malta, the trustee is obliged to report the beneficial owners via the TUBOR portal; and
- Disclosure of any BOs mentioned in the Deed of Foundation would need to be reported with the Legal Persons Office.

5th AML Directive

To avoid loopholes such as in instances when one cannot identify any beneficial owner who directly or indirectly holds more than 25% shareholding interest in an entity, the Directive placed responsibility on the CSPs to identify the name/s of person/s who holds the position of Senior Managing Official/s ('SMOs') of the relevant entity and these must be recorded and reported as the beneficial owner/s of that entity.

- If after having exhausted all possible means to identify the beneficial owner/s, no natural person has been identified, then one would need to report the SMOs;
- Other criteria of direct or indirect ownership of voting rights or ownership interest can be assessed through the use of usufructuaries, pledgees or guarantee as they will often determine how the voting rights are exercised;
- All trustees are now required to report all the trusts under their administration on the TUBOR portal;

In addition to the above, a few weeks ago the Malta Business Registry introduced the following set of new added measures in relation to the beneficial ownership:

- Revision of Form BO1, Form BO2 and Form BO3;
- Introduction of Form BO, Annual Confirmation (declaration on BOs in terms of Regulation 6A, confirming that all the information reported to MBR is up-to-date and correct. This form needs to be submitted annually with each Annual Return);
- Introduction of Form BO, change in SMO (declaration on BOs in terms of Regulation 6A(3);
- Introduction of Form BO, change in Details of BO/SMO (declaration on BOs in terms of Regulation 6A(4);
- Requirement to submit a certified true copy of the identification document for every BO or SMO for screening purposes;
- Revision of administrative penalties in connection with late filings of the BO reporting.

If an officer, shareholder or beneficial owner of a company knowingly or recklessly makes a statement, declaration or otherwise provides the Registrar with information on the beneficial ownership of a company that is misleading, false or deceptive, he or she shall be guilty of an offence. On conviction, he or she shall additionally be liable to a fine of up to EUR 5,000 and/or imprisonment.

REGULATORY DEVELOPMENTS

TAX UPDATE

Income Tax Group Consolidation Rules – September 2020

The Commissioner for Revenue issued an initial set of guidelines in relation to the Consolidated Group (Income Tax) Rules S.L. 123.189 on 3 June 2020. These were subsequently updated on 28 September to clarify certain technical matters.

As from Year of Assessment 2020, companies forming part of a group may elect to be treated as one single taxpayer. This would be achieved by allowing a parent company to elect that its subsidiary/ies and itself will form a fiscal unit, resulting in the subsidiary/ies being treated as transparent entities.

With the successful registration as a fiscal unit, the parent company would be considered as the principal taxpayer and the chargeable income of the members of the fiscal unit would be taxable solely in the hands of the parent company.

In case of transactions with a foreign company within the fiscal unit, the attribution of profits to the foreign subsidiary (as a permanent establishment of the principal taxpayer) would need to be assessed on an arm's length basis, and only such profits may be subject to certain exemptions.

Conditions for successful registration include:

- The parent company holding at least 95% shareholding in the subsidiary¹;
- The accounting period of the members of the fiscal unit starts and ends on the same date.

Balances carried forward

Upon joining a fiscal unit, the balances of any (a) item allowed to be carried forward under the Income Tax Act and (b) profits allocated to the tax accounts (excluding the untaxed account) are treated as a balance of the principal taxpayer.

One may opt out of such treatment, in which case the said balances would be held in abeyance in the transparent subsidiary until such subsidiary leaves the fiscal unit.

The guidelines clarify that in such case either all balances are transferred to the principal taxpayer, or all balances are kept in abeyance and that a different decision may be adopted for different transparent subsidiaries.

Any unabsorbed notional interest deduction balance of the transparent subsidiary should be kept in abeyance upon joining or commencing to form part of the fiscal unit.



¹ (Any 2 of (i) voting rights; (ii) profits; (iii) assets on winding up).

REGULATORY DEVELOPMENTS

TAX UPDATE

Tax Account balances

All balances of profits allocated to the tax accounts (excluding the untaxed account) of all transparent subsidiaries, as at preceding basis year end, shall be added to the tax account balances of the principal taxpayer.

However, the guidelines clarify that any dividend distributed from pre-tax consolidated profits shall be deemed to be made from the basis year preceding the election to join the fiscal unit.

The guidelines also clarify that any dividend distributed by a transparent subsidiary from profits derived when part of the fiscal unit, shall be made from its Untaxed Account, subject to withholding tax where applicable.

Deductibility of expenses

Upon election of a fiscal unit, the parent company would be considered as the principal taxpayer and the chargeable income of the members of the fiscal unit would be taxable solely in the hands of the parent company.

The guidelines clarify that the assessment of whether an expense is deductible or otherwise shall be made in the same manner.

Income attributable to a foreign subsidiary

Income or gains derived by a foreign subsidiary is deemed to be attributable to a permanent establishment of the principal taxpayer situated outside Malta. Such profits or gains are to be calculated as if the permanent establishment is an independent enterprise at arm's length. Such profits may be subject to an exemption.

For sake of completion no standalone data is required for any non-resident entity forming part of the fiscal unit, unless such entity derives any income which is liable to tax in Malta.



REGULATORY DEVELOPMENTS

NEW DEVELOPMENTS IN SHIPPING

Malta maritime registry among top 20 on the Paris MoU white list

The Maltese maritime registry has qualified in the top 20 on the white list of the Paris Memorandum of Understanding on Port State Control (the "Paris MoU") for the first time in history.

During a press briefing in July, the Minister for Transport, Infrastructure and Capital Projects Ian Borg announced that, while the Maltese registry has retained its first place in Europe and sixth in the world, it has been now classified in 17th place on the Paris MoU white list. This result is proof of Malta's commitment towards safeguarding international maritime conventions and of the high technical performance of the Maltese fleet.

In his announcement, Minister Ian Borg said, "For the first time, the Maltese flag has registered a detention rate lower than 2%. We have a registry that in the last 7 years nearly doubled its registered tonnage, from little more than 42 million tons at end 2012 to nearly 83 million tons at the end of last year. Despite difficult times for the industry, in 2019 we witnessed a growth of over 7% and saw the same growth percentage in superyacht registrations. In the first 6 months of this year we have had more than 30 new registrations in this niche, a very encouraging number. These results don't only come with honours but have also resulted in an increase of over 13% in income in foreign currency, as the authority made more than €22 million in foreign currency in one year."

Besides being the largest flag in Europe, the Maltese fleet also performed well on the Tokyo MoU list and in America.

How the shipping industry is responding to IMO's 0.5% sulphur cap

Earlier this year, the International Maritime Organization's (IMO) mandate of introducing a new global limit for sulphur emissions in shipping came into force.

The imposed 0.5% cap on permissible sulphur content in marine fuels generated much debate around the availability of compliant fuels at the time of switchover and whether ports around the world would have timely access to the required quantities.

Although at the time of the actual implementation of the new rules, the bunkering supply was generally very well maintained and the IMO 2020 transition went pretty smoothly, some of the smaller ports around the globe registered supply outages. This implies that going forward the shipping industry will need to think of a pragmatic approach towards creating a global supply infrastructure of future marine fuels.

The shipping industry has been facing pressure to decarbonise its operations for some time now and the IMO 2020 regulation is a step towards reaching that objective. However, it's worth noting here that when it comes to decarbonising initiatives land-based infrastructure is lagging behind the development of zero-carbon ships. While some vessels might be technically ready to be in the water by 2024, the question is whether the supply of their land-based supply of energy sources would be able to keep up. At this point, there are many promising contenders for the production and supply of green fuels, but as of today there aren't a number of solid proposals for a worldwide distribution channel.

As the maritime industry continues to navigate uncharted waters brought about by the Covid-19 pandemic, what will be key in shaping the future of the fuels landscape and reaching the target set by IMO will be government incentives, innovation and collaborations between industries.



MALTA AFTER HOURS

WEBINAR : AIRCRAFT LEASING IN A NEW WORLD

On 23 September, Alter Domus organised an exclusive webinar on how the Covid-19 pandemic has affected the aviation industry. A panel of experts from Castlelake, Vedder Price, Aero Capital Solutions, Watson Farley & Williams joined Andrea Debattista, Senior Manager at Alter Domus Malta to discuss the impact of the pandemic, solutions and the shape of recovery.

Titled “Aircraft leasing in a new world”, the webinar highlighted how, six months into the pandemic, the aviation financing and leasing sector is finally beginning to look ahead and beyond the hurdles of closed borders and cancelled flights.

Key takeaway: What will the future of aircraft leasing really look like? It all comes down to perspective. Deferral requests by lessees—often accompanied by lease extensions—are strengthening partnerships across the board. Private equity is beginning to fill funding gaps on both the equity and debt side left by fleeing banks. And older aircraft are being retired, helping to reduce the industry’s carbon footprint as a whole. While the future remains to be seen, the aircraft leasing industry has shown real resilience and a true recovery is only a matter of time.



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Shareholder at Vedder Price



Rose Neale
Managing Counsel at Castlelake



Pete O'Hare
Partner at Watson Farley & Williams



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Chief Financial Officer at Aero
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Andrea Debattista
Senior Manager at Alter Domus

ALTER DOMUS UPDATE

NEW COUNTRY EXECUTIVE MAURITIUS, UPDATED CORPORATE FIGURES, AND NEW SERVICES IN THE NETHERLANDS

Alter Domus Mauritius - New Country Executive and Leadership

Sum Tze Sheng will be taking over the role of Country Executive for the Mauritius office in addition to his current role as Country Executive for Singapore. Sum's experience and knowledge of South East Asia and especially of the Indian market will help to foster the synergy between Mauritius-Singapore and India.

He will be stepping in following the announced departure of Shamima Mallam-Hassam at the end of October. Shamima spent about three and half years as the Country Executive of Alter Domus Mauritius and contributed significantly towards the development of the Mauritius office. Under her tenure as Country Executive, the team grew from 6 to 22 members.

In his new role, Sum will be supported by Albert Sugianto, Head of Sales and Relationship Management for Singapore. Sum has held various roles in the banking and financial services industry throughout his career, which spans over a decade.



Sum Tze Sheng
Executive, Singapore and Mauritius

Alter Domus Netherlands now offering fund services

Alter Domus Netherlands (ADNL) has recently begun providing fund services to its clients. The Amsterdam office has grown significantly over the last few years and has built a solid track record in servicing real estate and private equity structures. To build on this success and meet a maximum number of its clients' needs, ADNL launched its fund services offering, led by Majid El Kahtaoui, with the ambition to diversify its service portfolio.

Corporate Figures

In July 2020, Alter Domus released its latest corporate figures which included improvements across all metrics.

Alter Domus currently serves:



15 of the 20
Largest Private Debt
managers in the world



14 of the 20
Largest Private Equity
houses in the world



18 of the 20
Largest Real Estate
forms in the world



2,500
Employees
worldwide



44
Offices & desks
worldwide



10,900
Structures under
administration



840 bn
USD Assets under
administration

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