The Evolving Maltese and EU Tax Landscape

Tax Updates for Gambling Operators

27th June 2024

01

VAT Developments

VAT developments

Article 135(1)(i) of the EU VAT Directive exempts from VAT

Betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State

Two cases referred to the CJEU

- C-741/22 Casino de Spa and others
- C-73/23 Chaudfontaine Loisirs SA

Opinion of Advocate General Kokott in these two cases:

The principle of neutrality of VAT does not preclude a differentiation between gambling which is provided electronically and gambling which is not provided electronically. Instead there are objective reasons for this and for the differentiation between gambling which is provided electronically and lotteries which are organised electronically.

Of particular relevance to:

- Gambling operators based in Member States where certain gambling supplies are taxed (such as Malta)
- Gambling operators merely engaged in supplies taking place in Member States where certain gambling operations are taxed

VAT developments

With effect from 1st January 2025

The place of supply of services including entertainment or similar activities which are **streamed or otherwise made virtually available**, take place **where the non taxable person is established**, has his permanent address or usually resides.

To what extent could live casino offerings qualify as entertainment or similar activities?

02

Income Tax Developments

The Minimum Tax Directive in Malta

As an EU member state, Malta has transposed the **Minimum Tax Directive** into Maltese law.

Notwithstanding, Malta has not as yet introduced a Domestic Top Up Tax, an Income Inclusion Rule or an Undertaxed Payments Rule and therefore, for financial year 2024 and until such date that Malta introduces such rules, Maltese companies would be subject to income tax in Malta in terms of the general system of taxation, hence continuing to benefit in Malta from low ETRs thanks to the tax refund system or NID.

From a timing point of view, Malta has up to **6 years** to introduce the **Income Inclusion Rule** and the **Undertaxed Payments Rule**, with full discretion as to whether or not to introduce a **Domestic Top Up Tax**.

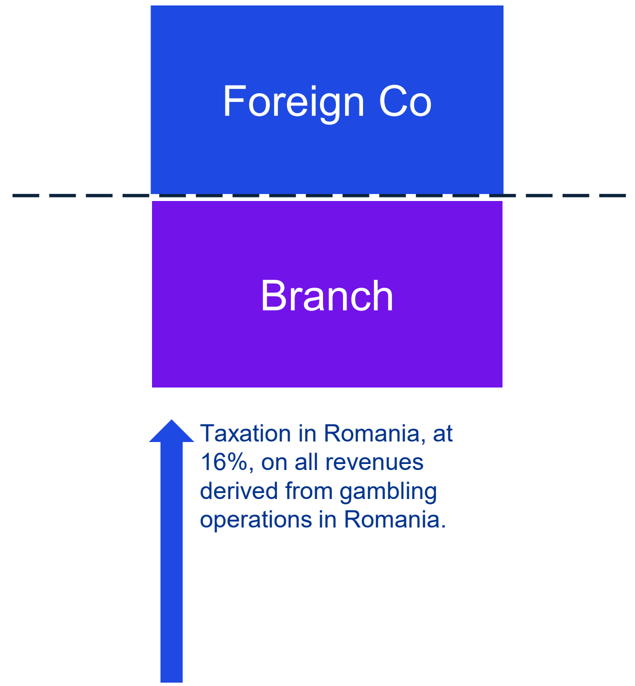
In the meantime, Malta is looking at introducing **Qualified Refundable Tax Credits** to aid companies operating from Malta, particularly those which will have payroll costs.

Romania's change in rules for online gambling operators

Foreign companies, including Maltese licensed companies, operating in Romania have faced an unprecedented challenge in Romania.

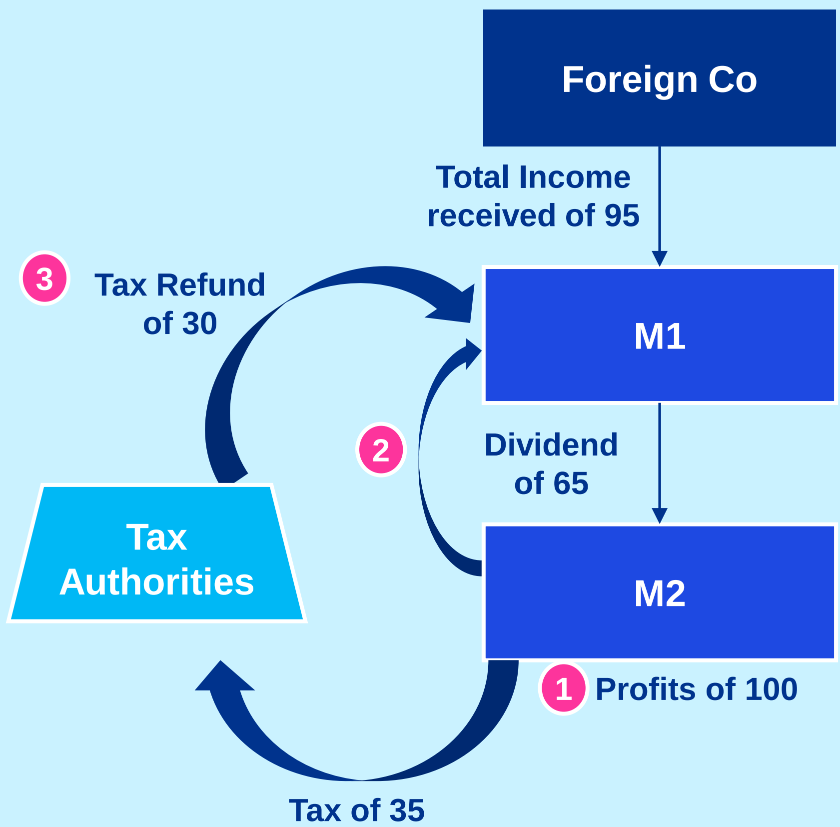
Scenario:

- ForeignCo is a Maltese online gambling operator operating in Romania.
- Foreign Co does not have any employees, place of business or presence in Romania.
- In terms of Emergency Ordinance no. 82/2023, online gambling operators are now required to operate in Romania either through:
    - A company incorporated in Romania; or
    - A permanent establishment (not as per OECD definition) registered in Romania through which all revenues derived from gambling operations in Romania must be recognised.



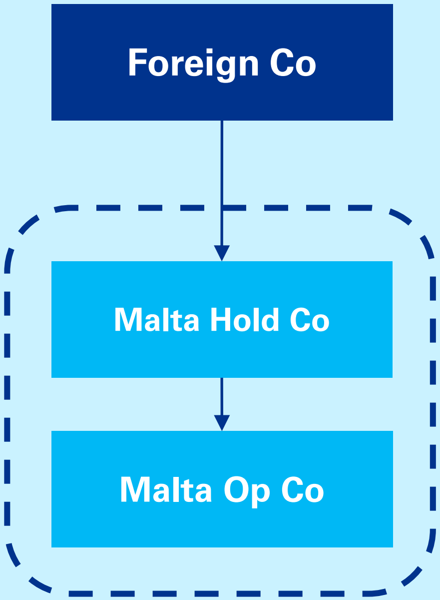
- ✓ Treaty Override, unless having a place of business and meeting the definition of Permanent Establishment in terms of the applicable Double Tax Treaty.
- ✓ Availability of relief of double taxation at the level of the HO?
- ✓ Breach of fundamental freedom of establishment?

General Overview – Tax Refund System



1. M2 is taxed at 35%
2. M2 distributes dividend
3. M1 claims and receives tax refund. Effective tax rate in Malta: 0% 6.25% (commonly 5%)

Fiscal Unity



Profits of 100

1. Malta Cos opt to form part of a fiscal unity
2. Malta Hold Co (principal taxpayer) taxed at 5%
3. Transactions between Malta Cos are ignored

$$\text{Rate} \quad \frac{35\% \ \text{tax refunds claimable by members of the fiscal unit}}{\text{chargeable income of the fiscal unit}}$$

Malta's Notional Interest Deduction

The availability of a deduction on equity funding, reducing the debt vs equity bias.

- NID is available in computing the taxable income of Maltese resident companies, branches and partnerships in respect of:
  - the share or partnership capital of the undertaking,
  - any share premium,
  - positive retained earnings,
  - loans or other debt borrowed by the undertaking that do not bear interest.
- NID is effectively a deduction, computed at the NID rate multiplied by the abovementioned items, capped at 90% of taxable income.
- The effective tax rate, excluding foreign tax relief, can be decreased to 3.5%.

NID Rate – 5% + yield to maturity on Malta government stock
Effective Tax Rate - approximately 3.5%

Other Considerations and Opportunities

- ✓ Does the group have the required substance, in terms of management and control, and staff, availability of premises and level of activities in the jurisdiction of residence?
- ✓ Does the group have employees working abroad whether in their home office or in other places of business?
- ✓ Are the group members remunerating any activities, such as intra-group services, at arm’s length?
- ✓ Has the group looked at opportunities surrounding IP amortization?
- ✓ Is the group monitoring EU developments in the direct tax sphere?

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