



Tax Alert – The Budget Measures Implementation Act, 2018

The Budget Measures Implementation Act, 2018 ('the Act'), contains a number of amendments of a fiscal nature; we herein highlight the salient features of the income tax and duty measures contained in the Act.

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Reduction in the 10% participating holding threshold to 5%

Malta's 100% participation exemption relieves income tax both on income derived from a participating holding and on gains derived from the transfer thereof. The Act reduces the minimum participating holding requirement of 10% of the equity shares of a company to 5%. In addition, the Act extends the scope of entities in which a participating holding can be held to include, in addition to companies and collective investment schemes, European Economic Interest Groupings (EEIG), partnerships *en nom collectif* and partnerships *en commandite*, irrespective of whether such entities elect to be treated as companies for tax purposes in Malta.

Group Loss Relief by Insurance Companies

Effective from financial year ending in 2018, companies carrying on the business of general and/or long term insurance can claim group loss relief or surrender losses to the group.

Rental Income subject to 15% final withholding tax

Taxpayers in receipt of ground rents from urban and rural tenements can now opt to be taxed in terms of the 15% final withholding tax system.

The deadline for the payment of the 15% tax on rental income, if opted for by any person (including corporate entities), will be moved forward by two months, from 30th June to 30th April following the end of a calendar year. The first payment deadline under this new rule will be 30th April 2019 for rents earned in 2018.

Deductions related to Intellectual Property

A new tax deduction was introduced to those exploiting intellectual property. The deduction is capped at a percentage amount of qualifying income derived from qualifying intellectual property by any person as the Minister may prescribe. Further details are expected on the application of this deduction.

In addition, the Act has aligned the wording of Article 14(m) of the Income Tax Act with the Guidance Note that had been published by the Inland Revenue on its website in connection with deductions on capital expenditure related to intellectual property. It has been clarified that such property must be 'used and employed' in the production of the relevant income and the expenditure must be spread equally over a number of consecutive years, not being less than three.

Computation of the Notional Interest Deduction

The Act provides a clarification on the computation of the notional interest deduction that was introduced in 2017. The Notional Interest Deduction Rules allow a tax deduction for the notional cost of risk capital, capped at 90% of the chargeable income that is allocable to the Maltese Taxed Account and Foreign Income Account. The Act clarifies that such 90% cap should be computed on the chargeable income ignoring any flat rate foreign tax credit.

Tax credits available in terms of the Business Promotion Act

With retrospective effect from year of assessment 2015 (i.e. basis year 2014), tax credits available to taxpayers in terms of the Business Promotion Act may be utilised without regard to any order of priority.

Additional reporting requirements for Payors of Investment Income

Upon the deduction of 15% final withholding tax on payments of interest and other investment income, banks and other payors of such income are now required to disclose the identity and other details of the recipients of such income to the Commissioner for Revenue. Such information must be submitted by payors by 31st January following the year in which the tax was withheld, with the first reporting date being 31st January 2019 in respect of payments effected during 2018. This reporting requirement ceases after the lapse of 9 years from the year that the said income becomes payable. The Commissioner for Revenue may impose a penalty capped at €23,000 if the information is not submitted on time, or not as required. The professional secrecy provisions of the Income Tax Management Act do not apply to such information.

Tax on part-time work

The payment deadline for individuals who opt for the 15% tax rate on income from part-time self-employment has been moved forward by two months, from 30th June to 30th April following the end of a calendar year. The first payment deadline under this new rule will be 30th April 2019 for income earned in 2018.

In addition, unless the 15% tax is paid by the due date, the income from part-time work will be subject to tax at the standard progressive rates of tax when a notice is issued by the Commissioner for Revenue to the effect that an enquiry will be conducted on that person's tax declarations and liabilities.

Remittance basis of taxation - Minimum Tax Charge introduced for ordinarily resident persons

The Act introduces a minimum tax of €5,000 (before taking into account any foreign tax relief) *per annum* chargeable to individuals who are 'ordinarily resident' but non-domiciled, as from basis year 2018. This tax charge will apply to individuals and married couples who:

- Derive income arising outside of Malta of at least €35,000 which is not remitted to Malta; and
- They are not taxable in terms of a special tax status such as Global Residence Programme, The Residence Programme, Malta Retirement Programme and the Residents Scheme Regulations.

This minimum tax will be net of withholding tax and any other tax already paid in Malta, with the exception of tax paid on capital gains from a transfer of immovable property. Moreover, if the non-domiciled person proves to the Commissioner for Revenue that the tax payable on foreign income and capital gains would have been less than the minimum tax above had he/she been taxed on a worldwide basis, that person's tax liability will be capped at such lower amount.

In addition, the Act provides clarification for what was previously a grey area, that individuals who acquire either of the following statuses in Malta, will not be eligible to claim the remittance basis of taxation:

- Permanent residents of Malta in terms of the Free Movement of European Nationals and their Family Members Order; and
- Long Term residents of Malta in terms of the Status of Long-Term Residents (Third Country Nationals) Regulations.

Eligibility for the 'Married Tax Bands'

Certain conditions for the application of the married tax bands by Maltese residents who are unmarried, widows/widowers, separated or divorced have been changed. Such individuals must, amongst others, have *whole maintenance* of a child under his/her *sole* custody and must be designated as the *sole* beneficiaries of children's allowance where applicable. The age bracket of the child has increased from 16 to 18 years, and to 23 years if still receiving full-time education or serving an apprenticeship. The child must not receive more than €3,400 (previously €3,200) income during the year. The latter increase of €200 to the income cap of a child is similarly reflected in the provisions governing the use of the parent tax bands.

Income Tax on Property Transfers and Donations

Several changes were made to Article 5A of the Income Tax Act, the article which regulates the final withholding tax system on the transfer of immovable property situated in Malta.

- The definition of a 'project' for the purposes of applying the final tax on the transfer of immovable property has been amended to exclude land acquired by the owner and divided for transfer into more than one transferable portion, where the land is transferred in the same state as when acquired and without planning permits for the development of more than one transferable unit. This may, among other things, affect the tax rate applicable on a property transfer.
- Certain anti-avoidance provisions were introduced in relation to the transfer of immovable property which was acquired by donation or acquired in the course of winding-up in order to deem the date of acquisition as being the date when the said property was acquired by the donor who made the original donation or by the company that had been wound up. As a result, such changes could also potentially affect the tax rate applicable upon a property transfer.
- The exemption available in respect of the transfer of own residence has been limited to exclude immovable property forming part of a project.
- A company transferring immovable property that is of a trading nature (i.e. not a capital asset) will now qualify for the intra-group exemption as long as the transfer is part of a restructuring which involves the transfer of the whole or part of a company's business. As such, the application of the intra-group exemption on transfers of such immovable property is no longer dependent on a 12-year holding period.
- Upon a partition of immovable property which was acquired exempt of tax in terms of the own residence exemption, the Act imposes taxation at the point of partition. Each partitioner is taxed in relation to a deemed transfer of a portion of that property, equivalent to his undivided share in that property, at its market value.
- Article 5A now also clarifies that a balancing statement should in general be prepared by the transferor of the immovable property if such taxpayer had at any time claimed capital allowances in respect of the said immovable property.

Duty on transfer of own residence between spouses

The imposition of duty on documents and transfers is being waived on the transfer *inter vivos* between persons who are married to each other, of the ordinary residence or part thereof, of any or both of the spouses.

Other selected fiscal changes

Other fiscal measures enacted by the Act include:

- An extension of the tax exemption on receipts for child maintenance to that provided by a parent to another in terms of a public deed, irrespective of whether the assistance is authorised or ordered by a Court.
- Clarifications to the conditions applicable for sports players, athletes and licensed coaches to avail themselves of the 7.5% reduced income tax rate.

Changes related to the administration of income tax and its collection

Changes related to the administration of income tax and its collection include the following:

- The service of notices to taxpayers may now be carried out by electronic means to a taxpayer's verified email address. Previously, notices could only be served in person or by post.
- When tax is required to be withheld at source is not duly withheld, or if withheld is not paid, the Commissioner may charge interest in addition to additional tax. In the event that the Commissioner issues a demand notice for such tax at source, such demand notice will also constitute a privileged claim over the assets of a principal officer in the case of a body of persons.
- Enforcement of demand notes issued by the Commissioner for Revenue is strengthened with the introduction of a right to register in the public or land registry a note of privilege for the amount demanded in the judicial act made as intimation for payment of any tax due.



If you would like to know more about any of the measures enacted or on any other matter, please feel free to get in touch with us.

Contacts



André Zarb

Partner,
Head of Tax
E: andrezarb@kpmg.com.mt
T: +356 2563 1000

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