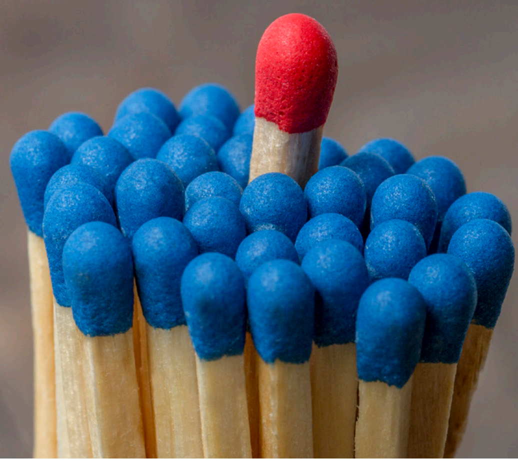
Tax Consolidation in Malta



Following the issue of the Consolidated Group (Income Tax) Rules (LN 110 of 2019 on 31st May 2019) Malta introduced fiscal unity rules enabling, for the first time, the formation of a tax group for Maltese income tax purposes.

Formation

Members of the fiscal unit may be either Maltese companies or foreign entities that fall within the definition of "company" for the purposes of the Income Tax Act, provided that the parent company (the principal taxpayer) holds at least 95% of two of the following rights; voting rights, profits available for distribution, or assets available for distribution upon winding up, in its subsidiaries (the transparent subsidiaries). Such election is possible provided that the accounting periods of all the members are the same and subject to the consent of minority shareholders, if any.

While the election is at the option of the principal taxpayer, once made any underlying qualifying subsidiaries will join the fiscal unit automatically. On the other hand, the fiscal group may be unwound by the principal taxpayer, and any subsidiary may leave the group.

The Effects of the Election

Unlike the group relief provisions, tax consolidation provides for a full integration of the tax position of its members. As a result, intragroup transactions (excluding transfers related to immovable property situated in Malta) are disregarded for tax purposes.

The main benefit of the fiscal unity arises from the cash flow advantage when compared to the current operation of the partial shareholder tax refunds. Through the fiscal unit the group may achieve an identical effective tax rate without the time lapse between the payment of the standard corporate income tax rate of 35% and the receipt of the shareholder refund at the level of the shareholder as the new rules will immediately reduce the tax due by the principal taxpayer to the lower effective tax rate.

From a practical perspective, tax shall be payable by the principal taxpayer on behalf of all members of the group and only one tax return will be filed. Principal taxpayers are also responsible for the preparation of a consolidated balance sheet and consolidated profit and loss account covering all the companies in the fiscal unit.

Key takeaway

While it is clear that there may be some further compliance obligations, we expect a number of large groups to take advantage of the consolidation rules in order to eliminate the cash flow disadvantage they may face with the refund system. The introduction of these rules is a welcome move to bring Maltese tax rules at a par with those of larger jurisdictions.

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