The Bill for the Budget Measures Implementation Act for Financial Year 2021

26 October 2020

Following last week's budget speech by the Minister of Finance, on 20 October 2020, Bill No. 173 was published, which Bill includes provisions to implement some Budget Measures for the Financial Year 2021 and other administrative measures. We highlight herein the salient income tax and duty measures proposed in such Bill. The Bill, as is or with amendments, would be expected to be enacted in the first quarter of 2021.

A] Amendments to the Income Tax Act and Income Tax Management Act

Amendments to the Participation Exemption

Currently, Malta's Participation Exemption exempts dividends and capital gains derived from a participating holding, as defined, or from the transfer thereof, subject to the satisfaction of a number of conditions.

The Bill proposes to disapply the exemption on dividends where the body of persons is resident in a jurisdiction which is included in the EU list of non-cooperative jurisdictions for a period of 3 months during the preceding year of assessment.

Non-deductible payments

For the purpose of ascertaining the chargeable income of a taxpayer, the Bill proposes to disallow deduction of payments, the making of which constitutes a criminal offence or, in the case of a payment made outside Malta, would constitute a criminal offence if made in Malta.

Reduced Rate of tax on royalties derived from literary works

As announced by the Minister of Finance in his speech for Budget 2021, the Bill proposes that as from 1 January 2021 authors who receive royalties from qualifying literary works may opt to tax the full amount of such royalties at the rate of 15%. The tax is final and is payable by 30 April of the year following the relevant basis year. The literary publication must be eligible for copyright in terms of the Copyright Act.

Adjustment Forms pursuant to a Mutual Agreement Procedure

The Bill proposes to remove the 5 year prescription period for the filing of tax adjustment forms where the adjustment results in a reduction in the tax payable by or an increase in the tax refundable to the taxpayer in the cases where such forms are filed for the purposes of implementing an agreement reached pursuant to a Mutual Agreement Procedure ('MAP').

The MAP is a procedure which may be resorted to with the aim of resolving an international tax dispute, pursuant to specific provisions in a relevant double taxation treaty between Malta and another State and the EU Arbitration Convention (90/463/EEC of 23 July 1990) on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. Access to and operation of the MAP has been improved since Malta ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing in 2018.

B] Amendments to the Duty on Documents and Transfers Act

Changes to the definition of 'documents' in respect of which duty is chargeable

Maltese law imposes duty on transfers of certain assets or value in such assets and on documents executed or used in Malta. The Bill proposes to add to the list of dutiable documents a judgment, decree or order of any court or other lawful authority whereby any immovable or any real right over an immovable is transferred.

Extension of certain duty exemptions / reductions to cohabitants upon a declaration *causa mortis*

Certain exemptions / reductions from duty, currently granted to the surviving spouse upon a transmission *causa mortis* of property, have been extended to cohabitants. These include the exclusion from the dutiable amount of the value of the usufruct of any property bequeathed in favour of the cohabitant and the exemption from duty on the ordinary residence of the deceased where the beneficiary of such residence is the cohabitant.

Transmission of ordinary residence to descendants

The Duty on Documents and Transfers Act provides for an exemption from duty applicable on the transfer *causa mortis* of a dwelling house, comprising of the ordinary residence of the deceased, to descendants in the direct line. The Bill retains such exemption with a proposal to remove the conditions that such residence must have been the ordinary residence of the deceased at the time of transfer and for a minimum of 3 years prior to the date of transfer. In other words, the transmission is still exempt from duty even if the deceased was not using such ordinary residence for the whole of the 3 years before decease (for example he/she was hospitalised or in a home for the elderly).

Clarification on the Commissioner's powers to determine and assess duty

The Bill proposes an amendment to the provision which grants the Commissioner powers to determine and assess under-declared duty, such that it would also cover under-declarations on transfers of real rights over immovable property.

Contact Us:

Anthony Pace
Partner
Head of Tax Services
anthonypace@kpmg.com.mt
+356 2563 1137

Doreen Fenech
Partner
Tax Services
doreenfenech@kpmg.com.mt
+356 2563 1017

Juanita Brockdorff
Partner
Tax Services
juanitabrockdorff@kpmg.com.mt
+356 2563 1029

John Ellul Sullivan
Partner
Tax Services
johnellulsullivan@kpmg.com.mt
+356 2563 1154

Simon Xuereb
Partner
Tax Services
simonxuereb@kpmg.com.mt
+356 2563 1147

www.kpmg.com.mt

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