

EXIT TAXATION

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EXIT TAXES IN MALTA

Companies, which are planning a migration to Malta, or a transfer of assets outside of Malta, should consider the tax implications, which may arise from the transposition of the exit tax rules into Maltese law emanating from the Anti-Tax Avoidance Directive - ATAD, introduced in the Maltese legislation through Legal Notice 411 of 2018. The exit tax rules are anti-abuse rules and are applicable with effect from 1 January 2020.

The exit tax rules introduce a tax on capital gains arising at the time of exit of the assets or transfer of business and tax residency, out of Malta. The deemed capital gain is to be determined by deducting the cost of acquisition of the transferred asset for tax purposes from the market value of the transferred asset, at the time of exit of the asset. One of the most common transactions which give rise to exit tax is that where the taxpayer transfers his business carried on from Malta to another country – generally referred to as “redomiciliation” of the company/business.

However, where Malta still retains the right to tax any future capital gains from the transfer of the assets, the exit tax will not be triggered.

The exit tax shall be paid by not later than the company’s tax return date, in such a manner as may be determined by the Commissioner for Revenue. However, in certain circumstances, the taxpayer may defer the payment of the exit tax (subject to interest in line with the provisions of the Income Tax Management Act (ITMA)) by paying it in instalments over five years.

The exit tax rules also provided for a step up in asset value upon entry into Malta. In fact, where assets or the business carried on by the company is transferred to Malta from another EU member state, the starting value of the relevant assets for tax purposes in Malta shall be that established by that other EU member state. However, the Commissioner for Revenue is empowered to determine through an enquiry and assessment that such value reflects the market value (based on an evaluation of an independent person that is an expert in the field). For the purpose of the exit tax rules, ‘market value’ means the amount for which an asset can be exchanged, or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

The recently issued guidelines by the Commission for Revenue about exit taxation contain a new interpretation by the Maltese tax authorities which provides that where Malta has the right to tax in terms of international tax principles but chooses not to tax, then it is considered that there is no effective loss of right to tax for Malta by the exit of these assets/business outside Malta. This means that, as explained above, exit tax is not triggered. The guidelines provide an example of such an instance, when a taxpayer which is not taxed on foreign capital gains (for example because the taxpayer is subject to tax in Malta on a remittance basis) changes its place of effective management away from Malta, it will not be subject to exit tax on foreign unrealised capital gains, since such gain would in any case have been exempt.