

L.N. 344 of 2017

**INCOME TAX ACT
(CAP.123)**

**INCOME TAX MANAGEMENT ACT
(CAP. 372)**

**Cooperation with Other Jurisdictions on
Tax Matters (Amendment) Regulations, 2017**

IN EXERCISE of the powers conferred by articles 76 and 96 of the Income Tax Act and by article 10A of the Income Tax Management Act, the Minister for Finance has made the following regulations:-

1. The title of these regulations is the Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2017 and these regulations shall be read and construed as one with the Cooperation with Other Jurisdictions on Tax Matters Regulations, hereinafter referred to as "the principal regulations".

Citation.

S.L. 123.127.

2. Regulation 2 of the principal regulations shall be amended as follows:

Amends
regulation 2 of
the principal
regulations.

(a) immediately after the definition of "authorised representative" there shall be added the following definition:

" "beneficial owner" means any natural person(s) who ultimately owns or controls the customer and, or the natural person(s) on whose behalf a transaction or activity is being conducted and includes:

(a) in the case of an entity, any natural person(s) who ultimately owns or controls that body corporate or body of persons through direct or indirect ownership of twenty-five *per centum* (25%) plus one or more of the shares or ownership interests in that entity, or through control via other means, other than a company that is listed on a regulated market which is subject to disclosure requirements consistent with European Union law or equivalent international standards which ensure adequate transparency of ownership information:

Provided that a shareholding of twenty-five *per centum* (25%) plus one (1) share or more, or the holding of an ownership interest or voting rights of more than twenty-five *per centum* (25%) in the

customer shall be an indication of direct ownership when held directly by a natural person, and of indirect ownership when held either by a natural person through one or more entities or through a trust or a similar legal arrangement, or a combination thereof:

Provided further that if, after having exhausted all possible means and provided there are no grounds of suspicion, no beneficial owner in terms of this paragraph has been identified, the beneficial owner shall be the natural person(s) who hold the position of senior managing official(s);

(b) in the case of express trusts:

(i) the settlor;

(ii) the trustee(s);

(iii) the protector, if any;

(iv) the beneficiaries, or where the individuals benefiting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; and

(v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(c) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b);"; and

(b) the definition of "EU Administrative Cooperation Directive" shall be substituted by the following:

" "EU Administrative Cooperation Directive" means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC as amended by EU Council Directives 2014/107/EU, 2015/2376, 2016/881 and 2016/2258;".

Amends
regulation 4 of
the principal
regulations.

3. Regulation 4 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, the words "Entities shall keep updated information that identifies their owners and the level and type of their respective ownership stakes in such entities", shall be substituted by the words "Entities shall keep updated information that identifies their owners and the level and type of their respective ownership stakes in such entities, including information on legal and beneficial owners";

(b) paragraph (b) of sub-regulation (3) thereof shall be substituted by the following:

Cap. 386. "(b) a company that has issued share warrants in accordance with article 121 of the Companies Act shall inform the competent authority in Malta of such issue not later than one month from the date of publication of these regulations in the case of share warrants issued before the said date, or fourteen days after the date of any issue made after the said date. Such companies shall also keep a register with the information that identifies the owners of such share warrants. Notwithstanding any other provision in any Act, a person in possession of a share warrant shall not be entitled to any rights in relation to such share warrant unless the relevant company has been provided with the information that identifies such person. Furthermore, notwithstanding any other provision in any Act, a transfer of such share warrant shall not be valid at law if the relevant company has not been informed within fourteen days of the said transfer of the information that identifies the new owner:

Provided that the provisions of the preceding paragraph shall have effect up to 27 December 2017."; and

(c) paragraph (a) of sub-regulation (4) thereof shall be substituted by the following:

"(a) Trustees that are established under the laws of Malta or that are resident in Malta shall take all reasonable measures to ensure that updated information is kept that identifies the settlor, other trustees, the protector (if any)

and beneficiaries of express trusts (whether the proper law of such trusts is that of Malta or elsewhere).".

Amends
regulation 5 of
the principal
regulations.

4. Immediately after sub-regulation (6) of regulation 5 of the principal regulations, there shall be added the following new sub-regulation:

"(7) For the purpose of the implementation and enforcement of the laws giving effect to the EU Administrative Cooperation Directive and to ensure the functioning of the administrative cooperation it establishes, the Commissioner for Revenue shall have access to the mechanisms, procedures, documents and information referred to in:-

(a) Articles 13, 30, 31 and 40 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC; and

(b) any provisions of Maltese law transposing the said Articles 13, 30, 31 and 40 of Directive (EU) 2015/849.".

Amends
regulation 13 of
the principal
regulations.

5. Sub-regulation (6) of regulation 13 of the principal regulations shall be substituted by the following:

"(6) For the purposes of regulation 13(4), a Maltese Constituent Entity shall annually report the country-by-country report as specified in Tables 1, 2 and 3 of Section III of Annex III in such manner as set out in Annex III and within twelve months of the last day of the fiscal year of the MNE group.".

Substitutes
regulation 43 of
the principal
regulations.

6. Regulation 43 of the principal regulations shall be substituted by the following:

"43. If a Reporting Malta Financial Institution or any other person enters into any transactions or schemes, the main purpose or one of the main purposes of which is to avoid any obligation under the EU Administrative Cooperation Directive, these regulations are to have effect as if such transactions or schemes had not been entered into.".

7. Paragraph (c) of regulation 44 of the principal regulations shall be substituted as follows:

Amends regulation 44 of the principal regulations.

"(c) where a Reporting Malta Financial Institution fails to apply the due diligence procedures specified in Section II through to Section VII of Annex I, including obtaining a self-certification for New Accounts, to a penalty of five thousand euro (€5,000);".

8. In regulation 45 of the principal regulations, the words "The provisions of regulation 13(2), (3)(b), (4) and (5)(b), and regulations 36 to 44 shall apply *mutatis mutandis* in relation to jurisdictions that are not EU Member States, hereinafter in these regulations referred to as "Non-EU Reportable Jurisdictions" ", shall be substituted by the words "The provisions of regulation 13(2), (7)(b), (8)(b) and (9)(b) and regulations 36 to 44 shall apply *mutatis mutandis* in relation to jurisdictions that are not EU Member States, hereinafter in these regulations referred to as "Non-EU Reportable Jurisdictions" ".

Amends regulation 45 of the principal regulations.

9. Immediately after regulation 48 of the principal regulations there shall be added the following regulation:

Adds new regulation 49 to the principal regulations.

"Extension of application to jurisdictions that are not EU Member States.

49. (1) The provisions of regulation 13(4), (5), (6), (7)(d), (8)(a) and (9)(d), and regulations 36 and 47 to 48 shall apply *mutatis mutandis* in relation to jurisdictions that are not EU Member States and:

(a) with which an arrangement is in place pursuant to which there is an obligation in place to provide the information specified in Section III of Annex III; and

(b) which are identified in the list published by the Commissioner on the website of the Inland Revenue Department under the provisions of article 96(2) of the Income Tax Act;

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(2) In applying this regulation, the 2015 final consolidated report, entitled "Transfer Pricing Documentation and Country-by-Country Reporting, on Action 13 of the OECD/G20 Action Plan on Base Erosion and Profit Shifting", as developed by the Organisation for Economic Cooperation and Development shall be used as a source of illustration or interpretation."

Amends Annex
I of the principal
regulations.

10. Section VIII of Annex I to the principal regulations shall be amended as follows:

(a) sub-paragraph C (9)(b) thereof shall be substituted by the following:

"(b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:

(i) the Account Holder also holds with the Reporting Malta Financial Institution (or with a Related Entity within the same Member State as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under sub-paragraph C(9)(a);

(ii) the Reporting Malta Financial Institution (and, as applicable, the Related Entity within the same Member State as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

(iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Malta Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in

sub-paragraph C(9)(a); and

(iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of the EU Administrative Cooperation Directive."; and

(b) sub-paragraph C(17)(a) thereof shall be substituted by the following:

"17. The term "Excluded Account" means any of the following accounts:

(a) a retirement or pension account that satisfies the following requirements:

(i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(ii) the account is tax-favoured (that is, contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(iii) information reporting is required to the tax authorities with respect to the account;

(iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

(v) either (i) annual contributions are limited to an amount denominated in Euro that corresponds to USD 50 000 or less; or (ii) there is a maximum lifetime contribution limit to the account of an amount denominated in Euro that corresponds to USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and

currency translation.

A Financial Account that otherwise satisfies the requirement of sub-paragraph C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of sub-paragraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of sub-paragraphs B(5) through (7);".
