L.N. 213 of 2021

INCOME TAX ACT
(CAP. 123)

Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2021

IN EXERCISE of the powers conferred by articles 76 and 96 of the Income Tax Act, the Minister for Finance and Employment has made the following order:-

Citation.

1. The title of these regulations is the Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2021 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".

S.L. 123. 127.

Amends regulation 2 of the principal regulations.

2. In regulation 2 of the principal regulations, the definition "beneficial owner" shall be substituted by the following:

" "beneficial owner" means any natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction or activity is being conducted and, or:

(a) in the case of an entity, the beneficial owner shall consist of any natural person or persons who ultimately own or control that entity through direct or indirect ownership of twenty-five *per centum* (25%) plus one (1) or more of the shares or more than twenty-five *per centum* (25%) of the voting rights or an ownership interest of more than twenty-five *per centum* (25%) in that, including through bearer share holdings, 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 by one

or more body corporates or body of persons 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 or persons who hold the position of senior managing official or officials, and record of the actions taken and any difficulties encountered to determine who the beneficial owner is in terms of this paragraph shall be kept.

(b) in the case of express trusts the beneficial owner shall consist of:

(i) the settlor or settlors;

(ii) the trustee or trustees;

(iii) the protector or protectors, where applicable;

(iv) the beneficiaries, or the class of beneficiaries as may be applicable; 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 beneficial owner shall consist of the natural person or persons holding equivalent or similar positions to those referred to in paragraph (b);".

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:

(i) in paragraph (a) the words "the legal owners; and" shall be substituted by the words "the legal owners and the beneficial owners; and";

(ii) in paragraph (b) the words "the foundation." shall be substituted by the words "the foundation;" and immediately thereafter there shall be added the following:

"(c) for the purposes of paragraph (a) and (b) above, the term 'beneficiaries' shall mean both beneficiaries as identified in terms of article 2(1) of the Trusts and Trustees Act and beneficial owners as defined in regulation 2.";

Cap. 331.

(b) in sub-regulation (11), the words "For the purposes of these regulations, "banking information" includes all records pertaining to the accounts as well as to related financial and transactional information." shall be substituted by the words "For the purposes of these regulations, "banking information" includes:

(a) information that identifies the legal owners of the accounts;

(b) information that identifies the beneficial owners of the accounts; and

(c|) all records pertaining to the accounts and to related financial transactional information.".

4. Immediately after regulation 4 of the principal regulations there shall be added the following regulation:

Adds new regulation to the principal regulations.

"Compliance monitoring.

4A. The Commissioner may give notice in writing to any person to furnish him, within a reasonable time stated in such notice, not being less than twenty days, such information as may be necessary in order to verify that such person is complying with the obligations set out in these regulations. Such requests shall be sent to that person either by electronic means to a verified email address of that person or sent by post to the person's registered address. Where any of the information requested is not submitted to the Commissioner within the time limit specified in the notice, the person shall be liable to a penalty of not less than five hundred euro (€500) and not exceeding nineteen thousand, two hundred and fifty euro (€19,250):

Provided that where the Commissioner is satisfied that the default in respect of which the penalties have been imposed were justifiable, the Commissioner may remit such penalties in whole or in part as he may think fit. In every case the Commissioner shall inform the said person in writing.".

Amends regulation 6 of the principal regulations.

5. Sub-regulation (2) of regulation 6 of the principal regulations shall be substituted by the following:

"(2) Where the person fails to show that the information was kept or was properly updated, as required under these regulations, the person who had the duty to keep or update such information shall be liable to a penalty of nineteen thousand, two hundred and fifty euro (€19,250).".

Amends regulation 35 of the principal regulations.

6. Regulation 35 of the principal regulations shall be substituted by the following:

"35. (1) Where a person comes within the scope of the penalties as set out in these regulations, the Commissioner shall advise such person by means of a notice in writing which penalty the Commissioner intends to impose, the reason for its imposition and the time within which such penalty is to be paid:

Provided that in such cases, reference to the specific legal provision would constitute sufficient notice.

(2) The notice referred to in sub-regulation (1) may be served on the relevant person either personally or by being sent by registered post to the last known business or private address:

Provided that where such notice is not made because the taxpayer could not be found or for other reasons attributable to him and the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that a notice has been made and inviting the taxpayer to call for it at the Department, then such notice shall also be deemed to have been duly notified.

(3) Where the penalty is not paid within the time specified in the notice referred to in sub-regulation (1), the Commissioner shall inform the person referred to in sub-regulation (1) and serve him with a demand notice advising that person that, unless the latter notice is contested in a court of law within thirty days from its date of service, it shall constitute an executive title in terms of article 40(1)(d) of the Income Tax Management Act. For this purpose only, the relevant penalty shall be considered to be a tax which should have been paid.

Cap. 372.

(4) Where the Commissioner is satisfied that the default in respect of which the penalties have been imposed under sub-regulation (1) was not due to any fault or neglect on the part of the relevant person, he shall remit the whole of the said penalties

and, in any other case, may remit such part or all of the said penalties as he may think fit. In every case the Commissioner shall inform the said person accordingly.

(5) The payment by any person of any penalties imposed under these regulations shall in no way exonerate that person from its obligations under these regulations.

(6) Where such penalty remains unpaid within the time specified in the notice referred to in sub-regulation (1), the provisions of article 47 of the Income Tax Management Act relating to the collection and recovery of tax shall apply to the collection and recovery of such penalty.". Cap. 372.

7. Immediately after sub-regulation (3) of regulation 48 of the principal regulations there shall be added the following sub-regulations: Amends regulation 48 of the principal regulations.

"(4) Where a Maltese Constituent Entity that is neither the Ultimate Parent Entity nor the Surrogate Parent Entity nor the Constituent Entity referred to in point 1 of Section II of Annex III, fails to notify the Commissioner of the identity and tax residence of the Reporting Entity obliged to file a country-by-country report with respect to a Reporting Fiscal year by not later than the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year, it shall be liable to a penalty of:

(a) two hundred euro (€200); and

(b) fifty euro (€50) for every day during which the default existed:

Provided that this penalty shall not exceed in total five thousand euro (€5,000).

(5) Where a Constituent Entity of a MNE Group that is resident for tax purposes in Malta, fails to notify the Commissioner of whether it is the Ultimate Parent Entity or the Surrogate Parent Entity or the Constituent entity referred to in point 1 of Section II of Annex III, by not later than the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year, the Constituent Entity shall be liable to a penalty of:

(a) two hundred euro (€200); and

(b) fifty euro (€50) for every day during which the

default existed: provided that this penalty shall not exceed in total five thousand euro (€5,000).".

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