



MALTA INSTITUTE OF TAXATION

EURO-TAX SEMINAR 16th October 2002

The Malta Institute of Taxation held another in its series of Euro-Tax Seminars on the 16th October. As usual, the Seminar was open to the public and was very well attended, mostly by accountants and lawyers.

The Seminar was opened by the M.I.T President, Mr. Edwin A. Vella, who explained that the advised presence of the Hon. Minister of Finance could not materialize as the Minister had to go abroad on state business. Mr. Vella then proceeded to illustrate how professional life in Malta would be affected through membership of the European Union. The examples given included the consequences in Europe of the Enron debacle in the United States, which had affected the accountancy profession so deeply. The "Verkooijen" judgement concerning discrimination in the treatment offered to foreign, as against domestic dividends was also mentioned. Mr. Vella queried whether our system of corporate taxation would be in line with this judgement. Amongst other matters, Mr. Vella reminded the audience that professionals in Member States could put questions direct to the E.U. Commission, on the lines of Parliamentary Questions. The speaker was not at all convinced of the utility of this device.

Dr. Ant. Fiott and Mr. James Farrugia then jointly delivered two VAT related lectures. These concerned the Abolition of Fiscal Frontiers and The Single Market, linked issues between which it is difficult to draw a dividing line.

The speakers explained how the levying of VAT is being transformed from the Destination Principle to the Origin Principle in so far as international transactions were concerned. Essentially, the current Destination Principle states that in export of goods and services, these are zero-rated in the country of origin but are taxed in the importing state as a separate taxable event. The Origin Principle required that supplies are to be taxed in the state where the supplier is established. This will be done at the rate applicable in that state, tax will be accounted for in that state, and credits and refunds are likewise to be claimed in the state where the supplier is established.

The Single Market refers to the movement of goods within the Community without suffering border taxes. The concept of "importation" will no longer be applicable in this matter. Goods entering one Member State from another Member State will not be subject to VAT on imports. This clearly links up with the introduction of the Origin Principle for intra-Community supplies. The proposal for the introduction of the Origin Principle will only affect supplies





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within the Community. These would be treated as made within the same fiscal area and like domestic "internal supplies" will be accounted for by the suppliers. Suppliers outside the Community and the export of goods outside the Community would still be zero rated under the Destination Principle.

The speakers reviewed the problems which the new proposals will be meeting. These concerned the different rates of tax in the various E.U. member states, different exemptions and disadvantages for importing states. A proposal for a clearance house mechanism, apart from its obvious practical problems, does not appear to solve all difficulties. A transitional period is therefore being proposed, so that the new regime would only be adopted when a greater degree of harmonization had been achieved. The proposed transitional period in effect has become open-ended with no definitive target date for full implementation. In the meantime, however, certain changes had started to be made. These were explained by the speakers.

Dr. Stephen Attard, in his lecture, made a comprehensive review of the Taxation of Financial Instruments. The legislation involved comprises the Investment Services Act, the Malta Stock Exchange Act, the Income Tax Act and the Duty on Documents and Transfers Act. Financial Instruments in question range from shares in limited liability companies to debentures, bonds, notes, certificates of deposit, units in a collective investment scheme, warrants and options, certificates giving property rights over instruments, futures, rights under contracts for differences (e.g. swaps) and limited long term contracts of insurance.

Dr. Attard made a detailed review of what constitutes Investment Services, and set out the licensing required thereunder, as well as the exemptions from licensing given under the Regulations. He also explained that over the years changes had been effected to the tax system in order to provide incentives for investment into financial instruments. Tax incentives has been used as a tool to encourage Maltese investors to move away from other forms of investment (e.g. real estate), and also to repatriate foreign investment.

A substantial part of Dr. Attard's lecture was devoted to the taxation of shares in Malta (i.e. the system of corporate taxation) as well as the fiscal consequences of transfers. A clear distinction was drawn between listed and unlisted shares. Dr. Attard also spoke on foreign shares, and explained how foreign source dividends received by Maltese companies were effectively relieved from tax under the arrangements for the grant of a flat-rate foreign tax credit. It was emphasized that this credit was only due to companies resident in Malta, but not to individuals.





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The speaker also reviewed of the taxation of Collective Investment Schemes, and drew a distinction between "Prescribed" and "Non Prescribed" Funds: both of which must however be licensed by the Malta Financial Services Authority.