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Implications of Maltese presidency for EU tax reforms

Is Malta a Tax Haven?

Having joined the European Union (EU) in 2004, Malta is about to assume the rotating Presidency for the first time between January and June 2017. Expectations from European citizens to deliver in the fight against tax evasion and avoidance, as well as money laundering, are high, given the OffshoreLeaks, LuxLeaks, SwissLeaks and Panama Papers recent scandals. **This leaves the upcoming Maltese Presidency with an important tax agenda to implement and move forward. The question is: is Malta best placed to achieve this?**

- **Report "Is Malta a tax haven?"**

The Greens publish today a new report on Malta's tax system, which offers a number of advantages for foreign multinationals and wealthy individuals. On paper, a company is subject to income tax in Malta at a flat rate of 35%. **In reality, Malta applies a full imputation system to relieve the economic double taxation otherwise arising on the taxation of dividends received by shareholders, which reduces the effective tax rate to just 5% for trading companies**. Shareholders can receive a tax refund of up to six-sevenths of their tax paid in Malta. This system is applicable to both resident and non-resident shareholders, which is why it is not considered a selective tax advantage according to European competition law.

In addition, Malta appears to be an interesting place for companies to locate their intellectual property rights. Its low taxation on intellectual property income is considered by some to directly promote or prompt aggressive tax planning structures. This is combined with a lack of national anti-tax avoidance measures such as no interest-deduction-limitation rules, no controlled foreign companies rules or no rule to counter a mismatch in tax qualification of domestic partnership or company.

In addition, the Panama Papers, which were released in April 2016, revealed how Maltese Minister without Portfolio Konrad Mizzi (Energy Minister at the time of the revelations) and the Prime Minister's chief of staff Keith Schembri have offshore interests and were connected to the now famous law firm Mossack Fonseca. Former Nationalist Party Minister Ninu Zammit's name was also among the list of Maltese names found in the Panama Papers. **This possibly casts doubts on Malta's ability to push through EU anti-money laundering and tax reforms when it holds the European Presidency.**

Interestingly, the Maltese Presidency will have to supervise the screening of third country jurisdictions for the future EU blacklist of tax havens during its six-month mandate. Even if the screening process is going to be done for non-European countries only, this report has looked at whether Malta would pass the test itself. While Malta is likely to be compliant on the “tax transparency” and “implementation of the OECD Base Erosion and Profit Shifting agenda” criteria, it is the “fair taxation” criterion that would be problematic for Malta. Our analysis of the Maltese tax system shows the presence of preferential tax measures that could be regarded as harmful and facilitating offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the country. **Depending on the interpretation of the criteria by the EU and the listing process, Malta could - if EU countries were also screened - possibly end up in the future EU list of non-cooperative jurisdictions.**

In the past, as the European Commission promoted a number of initiatives to tackle tax avoidance, Malta rarely sided with the group of European countries supporting ambitious tax reforms. **While its Presidency priorities do not even mention the word “tax” and with important upcoming negotiations on a Common Consolidated Corporate Tax Base or a Public Country-by-Country Reporting, Malta simply cannot adopt a wait-and-see approach on European corporate tax reforms in the next six months.**

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