Legal Update

July – October 2013

CAMILLERI PREZIOSI ADVOCATES

MALTA SIGNS DOUBLE TAXATION TREATY WITH UKRAINE

Malta and Ukraine signed a double tax treaty with respect to taxes on income and on capital on the 4 September 2013. This tax treaty continues to strengthen the growing network of an already vast array of double tax treaties concluded by Malta both with important trading partners, as well as with emerging countries. To date, Malta has 64 double tax treaties in force. Details relating to the ratification and contents of the double tax treaty will be public once the Treaty is published.

MALTA STOCK EXCHANGE DESIGNATED AS AN OFFSHORE SECURITIES MARKET BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

With effect from the 9th July 2013, the Malta Stock Exchange ('MSE') was confirmed as constituting a 'designated offshore securities market' by the Securities and Exchange Commission of the United States ('SEC') in terms of Rule 902(b) of Regulation S of the United States' Securities Act 1933 (the 'Act').

Regulation S provides for a safe harbour rule for the purposes of offerings of securities executed in countries outside of the US which would otherwise be subject to the registration requirement prescribed by the Act. Rule 904 provides that in order to fall outside the registration requirement, two general conditions must be satisfied, namely that:

- the offer or sale of securities occurs in an 'offshore transaction'; and
- no 'directed selling efforts' are made in the US by the seller, an affiliate, or any person acting on their behalf.

An 'offshore transaction' is deemed to take place, inter alia, when the transaction occurs on certain 'designated offshore securities markets' and the transaction is not pre-arranged with a buyer in the US.

The attainment of the status of a designated offshore securities market now provides for the possibility of equity securities and bonds issued in Malta and listed on the MSE being resold to US persons without restrictions under the Act whereby such resale is executed through the trading platform of the MSE and is not pre-arranged.

Thus, the seller need no longer present proof that the offeree or buyer of the securities is acting outside the United States.

VAT PENALTY – COMING INTO FORCE

The provisions of the Budget Measures Implementation Act came into force on 4 June 2013, with a new provision being added to the Value Added Tax Act as a result thereof. The provision, which is now deemed to have come into force by virtue of Legal Notice 259 of 2013, deals with the liability to pay an administrative penalty for default in the payment of tax declared. Article 38A in fact stipulates that persons registered under Article 10 or 12 of the VAT Act will be liable to an administrative penalty if the VAT due as declared in a VAT return or in a VAT Form 004 is not paid up or not fully paid up by the due date. The said penalty shall be equivalent to 1% of difference between the sum declared and the amount actually paid, or to €20 for every month of part thereof that elapses from the due date of the payment.

PUBLICATION OF REVISED INVESTMENT SERVICES RULES

The MFSA has recently published a revised version of the Investment Services Rules applicable to each of the Retail Collective Investment Schemes, Professional Investor Funds and Alternative Investor Funds. Pursuant to the Maltese Companies Act (Investment Companies with Variable Share Capital) Regulations, issues of fully paid up shares by a SICAV may be subject to full payment by a settlement date. Such settlement date must be disclosed in the prospectus or offering document of the SICAV and cannot exceed the number of days established in the Investment Services Rules.

Recently amended rules now provide that the settlement date by which payment of the full subscription price is to be received by the SICAV cannot be later than 5 working days from the date of issue of the shares.

IMMOVABLE PROPERTY PRICE INDEX

The Director General of the National Statistics Office has established the immovable property price index for the purposes of the relevant Maltese laws which provide for the conditions relevant to the granting of a permit to non-Maltese residents seeking to acquire immovable property and which cater for the value of immovable property. The immovable property price index is now at 148.44 as of the 1st April, 2013, and this represents a change of 3.86 per cent from 2012.

REDUCED STAMP DUTY RATES

By virtue of the amendment having effect from January 2013, the stamp duty otherwise chargeable in terms of the Duty on Documents and Transfers Act on the purchase by persons or companies of property outside an 'Urban Conservation Area'

(UCA) but within specified zones identified by the Malta Environment and Planning Authority, for the purpose of restoration and development, was reduced to the rate of 2%. This remains subject to the conditions and parameters issued by the Malta Environment and Planning Authority. Together with the notice to be given by the notary of deeds which are subject to duty, one shall also submit a certificate issued by the Malta Environment and Planning Authority establishing the conditions under which the restoration and development is permitted on the property in question.

LEGAL UPDATE TO THE INVESTMENT SERVICES ACT REGULATIONS, 2013

Legal notice 251 of 2013 amended the definition of a 'collective investment scheme'. A replacement proviso now states that an alternative investment fund that is not promoted to retail investors and that does not constitute a scheme or arrangement which operates according to the principle of risk spreading shall only be deemed to be a collective investment scheme if the scheme, in specific circumstances as may be established under the Investment Services Act, is exempt from such requirement and satisfies any conditions that may be prescribed.

Also, the act also substituted the definition of 'investment service', which now stipulates that this term indicates any service falling within the First Schedule to the Investment Services Act provided in relation to an instrument. A proviso follows to qualify that the service of 'Management of Investments' in terms of the First Schedule shall also include the collective portfolio management of assets of a collective investment scheme when provided in relation to an asset that is not an instrument within the meaning of the Second Schedule to the same Act.

Additionally, in the First Schedule to the Investment Services Act, under the service of 'Management of Investments' a new paragraph is included to cover the following: 'Collective portfolio management of assets, belonging to a collective investment scheme, where the arrangements for their management are such that the person managing or agreeing to manage those assets has discretion to invest in any movable and, or immovable property.'

Further to the above notice, a second legal notice has been published which incorporates a number of provisions made pertinent pursuant to the transposition into Maltese law of the Directive on Alternative Investment Fund Managers.

QUICK REACTION MECHANISM AGAINST VAT FRAUD

In the Official Journal of 26 July 2013, Directive 2013/42/EU was published to enable immediate measures to be taken in cases of sudden and massive VAT fraud (Quick Reaction Mechanism). The Directive entered into force on the 15 August 2013 and shall be deemed applicable until the 31 December 2018. On the 31 July 2012, the European Commission published the Draft Council Directive COM (2012)428 on the introduction of a Quick Reaction Mechanism (QRM) to combat VAT fraud.

On 21 June 2013, the Council of the European Union then reached political agreement on a package of measures aimed at enabling Member States to better combat VAT fraud.
The measures will be based on two Directives:
- one aimed at enabling immediate measures to be taken in cases of sudden and massive VAT fraud (Quick Reaction Mechanism), and;
- the other allowing Member States to implement, on an optional and temporary basis, a reversal of liability for the payment of VAT on the supply of certain goods and services ('reverse charge mechanism').

The proposed Quick Reaction Mechanism would involve an accelerated procedure for allowing Member States to apply a 'reverse charge mechanism' to specific supplies of goods and services for a short period of time, by derogation from the provisions of the (EU VAT Directive (2006/112).

The proposed 'reverse charge mechanism' is aimed at closing off certain types of known VAT fraud in particular carousel fraud – by allowing liability for the payment of VAT to be shifted from the supplier (as normally required by EU rules) to the customer. Member States would have the option of applying it within a pre-determined list of transactions.

VAT Reverse Charge Mechanism on Certain Goods and Services

Directive 2013/43/EU was published on the Official Journal on the 26 July 2013 in connection with the Council's measures to combat VAT fraud, thereby allowing Member States to implement- on an optional and temporary basis-, a reversal of liability for the payment of VAT on the supply of certain goods and services (reverse charge mechanism). The Directive entered into force on the 15 August 2013 and applies until 31 December 2018. Member States introducing the reverse charge mechanism under this Directive have to apply it for a minimum period of 2 years and submit an evaluation report by the 30 June 2017 at the latest.

US Treasury Department Updates FATCA Model Agreements

The US Treasury Department has released updated model intergovernmental agreements (IGAs) for the implementation of the Foreign Account Tax Compliance Act (FATCA). The updated model IGAs are dated 19 August 2013. The updated model IGAs include a provision requiring financial institutions of a FATCA partner to register with the US Internal Revenue Service (IRS) via the IRS FATCA registration website, which was opened on 19 August 2013.

Reduced VAT on Short-Term Yacht Charters

On 29 July 2013, guidelines were issued by the Malta VAT Department in respect of the Malta VAT treatment of short-term yacht charters starting in Malta. These guidelines are, to a great extent, based on the interpretation currently applicable to long-term leases.

VAT Department Guidelines

The guidelines provide that a short-term charter of a yacht constitutes an agreement whereby the yacht owner/operator contracts the use of the yacht, for a consideration, with a crew or on a bare boat basis for not more than 90 days. For Malta VAT purposes, the short-term charter of a yacht to be placed at the disposal of a customer in Malta in order to be used for leisure purposes was, in the absence of the new interpretation, a supply of a service which was taxable at the standard rate of VAT of 18%. Subject to certain conditions, the VAT Department's interpretation now limits the Malta VAT chargeable on the charter to that portion of the use of the yacht within the territorial waters of the European Union (EU).

The VAT Department has acknowledged the difficulty in trailing the movements of a yacht in order to verify that period during which the yacht is used within the territorial waters of the EU and that period during which it is used outside the EU. To this end, the guidelines aim to establish the estimated percentage VAT taxable portion of the charter fees based on the time that the yacht is made use of within the territorial waters of the EU.

The standard rate of VAT of 18% is applied on the established percentage of the charter deemed to be related to the use of the yacht within EU territorial waters which are set according to the length of the yacht and its means of propulsion (power or sailing).The applicable percentage portions are as follows:

Yacht type	% of charter deemed to take place in EU	Computation of VAT
Sailing boats or motor boats over 24 metres in length	30%	30% of taxable value x 18%
Sailing boats between 20.01 to 24 metres in length	40%	40% of taxable value x 18%
Motor boats between 16.01 to 24 metres in length	40%	40% of taxable value x 18%
Sailing boats between 10.01 to 20 metres in length	50%	50% of taxable value x 18%
Motor boats between 12.01 to 16 metres in length	50%	50% of taxable value x 18%
All other boats 100%	100%	Taxable value x 18%

The new VAT treatment of short-term yacht chartering in accordance with the table above is applicable, provided that the following conditions are observed:

- The yacht owner/operator of the yacht charter is registered for VAT in Malta.
- The yacht charter contract indicates the place where the charter commences (i.e. Malta), the charter price and a statement that the yacht shall sail outside EU waters. The VAT Department reserves the right to request proof of any payment in connection with the charter.
- Upon application, the yacht owner/operator produces sufficient documentation identifying the yacht with regard to registration number, hull number, port of registry and any further documentation confirming the size and type of yacht.

- Following submission of these documents, and provided that the conditions are met to the satisfaction of the VAT Director General, the applicant shall be informed in writing regarding the applicable portion of the charter fee which would be subject to VAT.
- Approval must be sought in writing from the VAT Department and each application shall be considered on its own merits.

Input Tax

The owner/operator of the charter would be able to claim input tax incurred on the fuelling and provision of the yacht, in so far as such costs are recharged to the client at the standard VAT rate of 18%. If, on the other hand, the owner/operator pays such costs on behalf of the client and merely recharges them at no mark up- as is typically the case-, no input tax may be claimed by the owner/operator and no VAT would be chargeable on the relative claim for reimbursement of such expenses. Moreover, the supplier of the charter would, subject to the normal provisions of the law, be entitled to claim input VAT incurred on fuel purchased for the outward journey of the yacht to its next port of destination after the completion of the charter.

MALTA AND USA CONCLUDE FATCA NEGOTIATIONS

Malta and the USA concluded negotiations with respect to an Intergovernmental Agreement (IGA) in relation to US FATCA regulations (FATCA). Enacted in 2010 by the US Congress as part of the Hiring Incentives to Restore Employment (HIRE) Act, FATCA requires non-US financial institutions to report to the US Internal Revenue Service (IRS) information about financial accounts held by US taxpayers, or by non-US entities in which US taxpayers hold a substantial ownership interest.

The IGA has been negotiated on the basis of the latest Model 1 IGA (reciprocal version) issued by the US. The basic purpose of this IGA is to ensure financial institutions which are resident, or carrying on business, in Malta or the US, will comply with certain prescribed reporting obligations. The IGA will require financial institutions in both Malta and the US to submit the required information to their own tax authorities, which in turn will automatically share such information with the other tax authority. Such shared information will be used by the tax authorities to ensure that the relevant tax laws of the two countries are being complied with.

Financial institutions that are resident or operating in Malta and that comply with the terms of the IGA will benefit in that they will not be subject to the FATCA 30% withholding tax on the payments they receive. The IGA is also intended to reduce the administrative burden of complying with the FATCA regulations as well as to provide a mechanism for Malta financial institutions to comply with their obligations without breaching the applicable data protection laws.

LEGAL UPDATE TO THE VALUE ADDED TAX ACT, 2013

The main object of the Bill is to implement measures to review downwards the interest applicable on unpaid VAT payments and review fines for criminal offences in order to alleviate the burdens of taxable persons who fall back in VAT payments. To this end, the Bill presents an amendment to the provision in the Value Added Tax Act (the 'VAT Act') catering for payments of tax which replaces the fixed rate of interest due on any tax which is not paid by the date on which it becomes payable from 0.75% for each month or part thereof to 'a rate which the Minister shall, from time to time, by regulations prescribe for each month or part thereof'.

In addition, the Bill adds a proviso to Article 39 of the VAT Act which currently states that any person who defaults in applying for registration or giving a notice under the VAT Act shall be liable to an administrative penalty in an amount equivalent to the higher of 1% of any excess, if any, of the output tax over the deductions for the first tax period following the registration, and €20, for every month or part thereof that elapses from the date of default. The new proviso adds that where the excess, if any, of the output tax over the deductions for the first tax period following the registration is €2,000 or less, the administrative penalty shall not exceed €250. Otherwise, if the excess is more than €2,000 such administrative penalty shall not exceed 20% of such excess.

Similarly, the contents of this proviso are substantially replicated to become applicable to persons who make intra-community acquisitions and who are obliged to register under the VAT Act but are in default in this respect. In this context, the proviso will state that where the tax chargeable on the intra-community acquisitions and services received is €2,000 or less, the applicable administrative penalty shall not exceed €250. Where the tax chargeable is more than €2,000, the penalty shall not exceed 20% of such tax chargeable.

Pursuant to this Bill the provision of the VAT Act which deals with offences and punishment applicable on a failure to apply for registration, or to keep or deliver records and returns will be amended to the effect that the fines which may be payable by an offender are adjusted from not less than €5 and not exceeding €20 to a fixed fine of €5 for every day that the default continues. The same change is made by the Bill to fines payable on irregularities in records and false representations made in connection with obligations which arise under the VAT Act. Transitory provisions relating to the adjustment of these fines are applicable.

OECD: MALTA TAX FRAMEWORK MEETS INTERNATIONAL STANDARD

On 31 July 2013, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) announced, in peer review reports assessing the tax systems of 13 jurisdictions for information exchange, that Malta's practices are in line with international standards of transparency and exchange of information for tax purposes. The Global Forum held that Malta's legal framework ensured that ownership, accounting and bank information was available according to its international standard, and that 'the Maltese competent authority has direct access to databases from which most requested information can be retrieved, as well as broad access powers to collect further information requested for exchange of information purposes.'

The Global Forum further noted that Malta's network of exchange on information mechanisms covers more than 90 jurisdictions, including all its relevant partners. 'Feedback from its exchange of information partners attests to the high quality responses provided by Malta in a timely manner, in particular since the introduction of internal administrative guidance to streamline the process and shorten response times'.

MALTA SIGNS TAX TREATY WITH MACAU

Malta and Macau recently signed an agreement with the aim of working together to prevent tax evasion and tax avoidance. The relevant legal arrangements between both jurisdictions have been completed and the treaty is expected to enter into force in January 2014. The tax treaty will allow the authorities in Malta and Macau to access data on the financial position and income of their citizens, including information 'relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.'

Under the treaty, the tax authorities may share information held by banks or other financial institutions. They will be able to share information about the direct or indirect ownership of companies, trusts and foundations, as well as partnerships. Details of the tax treaty will be provided once it is published.

AMENDMENTS TO INSURANCE AND REINSURANCE LEGISLATION

The amendments made to Insurance and Reinsurance law were introduced in Legal Notice 183 of 2013, which in turn brought into force the *Insurance Business* (Supplementary Supervision of Insurance and Reinsurance Undertakings in an Insurance Group) (Amendment) *Regulations*. The object of these regulations was to transpose Article 1 of Directive 2011/89/EU of the European Parliament and of the Council, as well as other amending Directives. By virtue of these regulations, mixed financial holding companies are added as part of the definition of an 'insurance parent undertaking'. A mixed financial holding company is defined by the Financial Conglomerate Regulations as a parent undertaking which is not a regulated entity and which, together with its subsidiaries and other entities, constitutes a financial conglomerate, provided that at least one of its subsidiaries is a regulated entity having its head office in the EU. Pursuant to this inclusion, mixed financial holding companies now also fall within the scope of the principal regulations and are subject to supplementary supervision in accordance with regulation 4 of the principal regulations.

Additionally, this amendment adds a new regulation which provides for a potentially limited level of application of the Financial Conglomerates Regulations to mixed financial holding companies involved in the business of insurance, particularly in terms of risk-based supervision, provided that agreement to this end is reached with the pertinent supervisory body. A related amendment was made to the Insurance Business (Assets and Liabilities) Regulations, through Legal Notice 184 of 2013 – *Insurance Business (Assets and Liabilities) (Amendment) Regulations*, 2013 for the purpose of including mixed financial holding companies within the definition of an 'insurance parent undertaking' and, in turn, within the scope of the regulations.

ENTRY INTO FORCE OF THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

The Alternative Investment Fund Managers Directive (the 'AIFMD') entered into force on the 22nd July 2013. The scope of the AIFMD is broad and largely regulates the management, custody and marketing of alternative investment funds (AIFs), and unless considered to be a *de minimis* manager, the directive will apply to all non-UCITS funds, in particular, hedge funds, private equity, real estate, infrastructure and investment trusts.

As from its entry into force, new licences for investment managers of non-UCITS Collective Investment Schemes are being issued in compliance with the revised Investment Services Rules for Investment Services Providers, whereas new licences for Collective Investment Schemes targeting professional investors are being issued in compliance with the new regulatory architecture appertaining to Alternative Investment Funds (AIFs), that is the AIF Rulebook.

Malta's Professional Investor Fund (PIF) regime will be retained in parallel with the AIF Regime. In particular, *de minimis* fund managers and third country managers will be able to establish a collective investment scheme in terms of the Investment Services Act and be regulated by the Investment Services Rules for PIFs. It thus follows that the categories of schemes which shall continue to be currently licensed in Malta shall comprise:

(i) UCITS Schemes;
(ii) Non- UCITS retail Schemes;
(iii) Professional investor Funds; and
(iv) Alternative Investment Funds.

S&P'S: 'MALTA'S GROWTH PERFORMANCE HAS BEEN ONE OF THE STRONGEST IN THE EUROZONE'

On the 19th of July, Standard & Poor's Ratings Services affirmed its long and short-term sovereign credit ratings on the Republic of Malta at 'BBB+/A-2'. The outlook on the long-term rating is stable. The transfer and convertibility (T&C) assessment on the Republic of Malta remains at 'AAA'.

In coming to its decision on Malta's ratings, Standard and Poor took into consideration the following key reasons/comments:

- The ratings are supported by our view of Malta's relatively strong institutional and governance effectiveness, and its prosperous economy;
- We expect Malta's real GDP per capita growth to increase marginally to 0.7% in 2013 and to remain below pre-crisis rates for the next few years;
- Malta's growth performance has been one of the strongest in the European Economic and Monetary Union (eurozone) with real GDP per capita averaging just below 1% annually between 2007 and 2012. Manufacturing and services exports have been key drivers of the economy;
- Malta's domestic financial system appears stable. The presence of internationally oriented banks poses little threat to the government by way of contingent liabilities.

MFSA CIRCULAR ON BINARY OPTIONS

Following guidance from the European Commission, the MFSA has recently issued a circular advising that binary options are to be considered as instruments falling within the ambit of the Second Schedule of the Investment Services Act (Cap. 370 of the Laws of Malta), which is itself modelled on the MiFID Directive (Directive 2004/39/EC). It is now clear that any person carrying out investment services in relation to binary options in or from Malta would require an investment services licence.

Binary options are derivative contracts, in which the payoff depends on whether the underlying asset increases or decreases in value. It is structured as an all-or nothing payout structure where, by way of example, investors betting on an increase in stock price, face two possible outcomes upon the expiry date of the contract: they either receive a pre-determined amount of money if the strike price is met by the expiration date, or nothing at all if the price of the underlying security is trading below the option strike price at expiration.

FINANCIAL CONGLOMERATES REGULATIONS

The Financial Conglomerates Regulations, issued by means of Legal notice 183 of 2013, have the purpose of implementing the provisions of the Financial Conglomerates Directive as currently in force and as amended from time to time, that is more specifically Directive 2011/89/EU (the 'Amending Directive'). The original Financial Conglomerates Directive made provision for the application of supplementary supervision by national authorities in the case of financial conglomerates, in particular in the case of banking and insurance supervision. The aim was that of controlling group risks and the risk arising from double gearing by means of a number of companies pooling their overall risk by placing capital with each other.

The Amending Directive, on the other hand, aims at ensuring appropriate supplementary supervision of financial entities in a financial conglomerate whilst also adapting financial supervision to the new European supervisory structure.

The major amendments introduced by these regulations constitute the following:
- the inclusion of asset management companies in the threshold tests for identifying a conglomerate;
- the inclusion of a waiver for smaller groups if the relevant supervisor assesses the group risks to be negligible;
- allowing for risk-based assessments, in addition to existing definitions relating to size, in identifying financial conglomerates; and
- allowing for supervision which supplements but does not substitute sectoral supervision when a group is headed by a financial or insurance holding company.

The Amending Directive also amends the Capital Requirements Directive and the Directive on Supplementary Supervision of Insurance Undertakings in Insurance Groups.

MALTA STOCK EXCHANGE MARKET MAKING RULES AND STRUCTURES

The Malta Stock Exchange (MSE) has recently presented an outline of the rules set to regulate market making activities on the local market with effect from the 1st October 2013. The presentation given by the MSE, sought to provide MSE members, listed companies, representatives of the Treasury, the Central Bank of Malta and the MFSA a general overview of the market making bye-laws which the MSE is proposing to implement. The introduction of market making activities to the securities traded on the MSE is expected to increase the liquidity of the Maltese market since the main factors affecting the liquidity of our market are the size of the market itself and the nature of investors (generally retail in nature with a tendency to buy to hold rather than for trading purposes).

The MSE requires at least two duly authorised market makers per instrument traded. Market making will be possible in relation to all instruments listed and traded on any of the MSE's markets. The market makers- who will be required to be members of the MSE and hold a Category 3 license (issued in terms of the Investment Services Act for the provision of any investment service and the holding and control of clients' money or customers' assets) or equivalent authorisation issued by a EEA competent authority having its services passported in Malta-, will be required to sustain a continuous bid and offer price, whilst being subject to a minimum order quantity when operating within a defined spread.

The members of the MSE were consulted prior to the approval and issue of the bye-laws which were recently presented to the wider market with a view to receiving feedback by the end of July.

EUROPEAN LONG TERM INVESTMENT FUNDS (ELTIFS)

On 26 June 2013, the European Commission published a legislative proposal for a Regulation on European long-term investment funds (ELTIFs). The proposed ELTIF is a new kind of collective investment fund framework which will allow individual and institutional investors to put money into companies and projects that need long-term capital and is designed to increase the amount of non-bank finance available to companies investing in the real economy of the EU.

ELTIFs would be available to all types of investors across Europe subject to certain requirements set out in EU law. These requirements include the types of long-term assets and firms that the ELTIFs are allowed to invest in and the information they have to provide to investors. Any ELTIF manager would also have to comply with all of the stringent requirements of the Alternative Investment Fund Managers Directive.

Under the new proposal, ELTIFs would have to meet a set of common rules so that they: (i) always have a depositary to keep assets safe; (ii) comply with rules on spreading assets to prevent too much money going into one asset; (iii) only use derivatives to manage currency risks in relation to the assets they hold, and not for speculation; (iv) and obey limits on the amount they can borrow.

In contrast to UCITS, ELTIFs will focus on investments in illiquid assets, hence increasing their allure to investors such as pension funds and insurance companies, seeking long-term returns within well-regulated structures.

CONVENTION ON MUTUAL ASSISTANCE IN TAX MATTERS

Legal Notice 180 of 2013 has declared that it is expedient that the arrangements specified in the Convention on Mutual Administrative Assistance in Tax Matters (the 'Convention') ratified by Malta on the 23rd May 2013, should have effect within the Maltese jurisdiction. The Convention, which was developed jointly by the Council of Europe and the OECD, is a multilateral agreement designed to facilitate international co-operation among tax authorities to improve their ability to tackle tax evasion and avoidance and ensure full implementation of their national tax laws, while respecting the fundamental rights of taxpayers. The Convention is the most comprehensive multilateral instrument available for tax cooperation and exchange of information. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes.

The scope of the Convention is broad, in that it covers a wide range of taxes and goes beyond exchange of information on request. It also provides for other forms of assistance such as spontaneous exchanges of information, simultaneous examinations, performance of tax examinations abroad, service of documents, assistance in recovery of tax claims and measures of conservancy and automatic exchange of information. It can also facilitate joint audits. The Convention also includes extensive safeguards to protect the confidentiality of the information exchanged.

COMPANIES ACT AMENDMENT REGULATIONS - INVESTMENT COMPANIES WITH VARIABLE SHARE CAPITAL

Article 84(6) of the Companies Act provides that shares of an investment company with variable share capital (SICAVs) which have been purchased by the company itself shall be cancelled, with the sum of the company's issued share capital being reduced by the amount of the consideration paid by the company for the purchase of the shares.

By virtue of LN 165 of 2013, a multi-fund company opting for the segregation of assets and liabilities may now, on behalf of any of its sub-funds and whether by subscription or transfer, acquire for consideration any shares of any of its other sub-funds and the provisions of article 84(6) of the Companies Act shall not apply. This will be allowed in specific circumstances as shall be prescribed by the competent authority in the Investment Services Rules and subject to specific and appropriate disclosure in the constitutional documents and the offering memorandum or prospectus of the relevant Scheme. This amendment to regulation 7 of the principal regulations goes on to provide that multi-fund companies performing activities as aforesaid, shall take all necessary measures to comply with the requirements prescribed therein within 6 months from the date of publication the coming into force thereof. The MFSA may issue Investment Services Rules for the better carrying out of this new sub-regulation.

Additionally, a new regulation has been introduced relating to the issue of shares which may be subject to full payment by a date as determined by the prospectus or any other offering document issued by the SICAV (settlement date). This new regulation provides that an issue of shares by a SICAV for a cash consideration which is subject to full payment by a settlement date shall be deemed to be a lawful issue of fully paid up shares, provided that the following conditions are satisfied:
1. the SICAV is authorised to issue shares in such manner by its M&A;
2. the settlement date and terms of payment are clearly disclosed in the prospectus and any other offering document issued by the SICAV; and
3. the person acquiring the shares undertakes in writing to pay the full subscription price by not later than the settlement date.

RECENT DEVELOPMENTS REDOMICILIATIONS TO MALTA

The Registrar of Companies (ROC) has recently issued a Provisional Certificate of Continuation to a French company seeking to continue into Malta even though French law has no legislation expressly permitting the continuation of companies. This might mean that it will be possible for EU companies seeking to continue to Malta to do so despite the fact that the laws of their country of residence or incorporation do not expressly authorise company continuations.

The ROC took the novel approach of relying on a legal opinion issued by French legal counsel which confirmed, *inter alia*, that the continuation process was possible under French law. The opinion is based on Article 49 and 54 of the Treaty on the Functioning of the European Union (freedom of establishment) and on a wide interpretation of relevant provisions of the French Commercial and Civil Code. The ROC's decision may in this case constitute a precedent for the continuation into Malta of other companies incorporated in the EU under similar circumstances. Having said this, the matter is still subject to further development, given that the French company in this case is yet to be de-registered in France before the ROC can issue a Final Certificate of Continuation. Thus, it remains to be seen whether this approach will be successful and whether it will be adopted in repeat cases. This notwithstanding, the ROC's behaviour is still noteworthy.

MALTA'S TRANSPOSITION OF THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

The Alternative Investment Fund Managers Directive (AIFMD), which is applicable to the marketing or management of alternative investment funds (AIFs) in Europe, seeks to regulate the non-UCITS fund sector, in particular hedge funds, private equity, real estate, infrastructure and investment trusts.

On 27 June 2013, the MFSA launched the new Investment Services Rulebooks which include the new parts regulating Alternative Investment Fund Managers (AIFMs) and Alternative Investment Funds. This publication of the final implementing measures of the directive makes Malta one of the first implementing jurisdictions. Moreover, the MFSA is now accepting applications for licences for managers which wish to be authorised as AIFMs.
Hereunder is an outline of the salient implementing measures further to an initial review:

Use of transitional periods by Malta

Malta is availing itself of the following transitional periods made available in terms of the AIFMD:

(i) Transitional period for existing licence holders: a full 1 year transitional period until 22 July 2014 is available for existing fund managers and self-managed funds to upgrade their licence into full AIFMs / self-managed AIFs or *de minimis* AIFMs. Existing licence holders are to complete the self-assessment forms (find attached as Self-Assessment Forms) and submit them to the Authority by 31 March 2014.

(ii) Third country services arrangements: non-EU fund managers may continue to manage / market without a passport non-EU AIFs / EU AIFs without requiring full AIFMD compliance until 2015.

(iii) Depository arrangements: the MFSA has negotiated a derogation at EU level which has been incorporated in the AIFMD and which will allow Malta-based AIFs and AIFMs to make use of the services of an AIFMD-compliant depositary based in another EU or EEA Member State until 22 July 2017.

Introduction of new Malta Alternative Investment Fund Regime alongside PIF Regime

Alongside the successful Maltese Professional Investor Fund regime, which has been retained, refined and will remain available to de minimis fund managers, non-EU

AIFMs and EU AIFMs, a new AIF regime has been launched. The new AIF regime will mainly apply to funds managed by 'sub-threshold' AIFMs which are not required to be licensed under the Directive, funds managed by AIFMs which are in full compliance with the Directive, and AIFMs based outside the EU, which are, for the time being, not required to be authorised under the AIFMD.

Passporting of ancillary services by AIFMs

If requested by a manager, the MFSA has confirmed that it will include the additional investment services, including discretionary portfolio management on a client-by-client basis, in the passport notifications it will make to host EU Member States.

Delegation

The MFSA has indicated that it will allow certain portfolio and risk management tasks to be delegated (including partial delegation of both activities) in accordance with the AIFMD's restrictions, and that it will determine the extent of the delegation permitted on a review of each proposed delegation structure.

Remuneration

The MFSA has confirmed that it will only apply the remuneration rules under the AIFMD's and the European Securities and Markets Authority's (ESMA) Guidelines to the AIFM and not to any delegate of the AIFM.

Co-operation Arrangements

The MFSA has signed co-operation arrangements with 34 non-EU securities regulators which are responsible for the supervision of AIFs, including jurisdictions such as the USA, Canada, Brazil, India, Switzerland, Australia, Hong Kong and Singapore. ESMA negotiated the agreements on behalf of all 27 EU Member State securities regulators and is co-ordinating the finalisation of the process.
The MFSA is also in the process of uploading an FAQ on Malta's implementation of AIFMD and guide to establishing AIFMs in Malta each of which will be able from the MFSA's dedicated AIFMD page.

FINANCIAL COLLATERAL ARRANGEMENTS REGULATIONS, 2013

The MFSA issued a consultation note regarding proposed amendments to the Financial Collateral Arrangement Regulations (S.L. 459.01). The proposed amendment aims to widen the definition of 'credit claims' to also include pecuniary claims due to a non-natural person, provided however, that the debtor of the claims granted as collateral is also a non-natural person. The phrase 'non-natural person' will be in turn taken to mean any legal person, unincorporated firm or body of persons or partnership not being an individual.

The draft amendment proposes for the obligation placed on a pledgee of shares in a public company to offer pledged shares to the shareholders of such company prior to applying for the judicial sale of such shares or securities to become inapplicable with respect to pledges of shares provided in accordance with the proposed regulations. This shall protract its application to the offer of shares on a pre-emptive basis to other shareholders in terms of the Companies Act (Investment Companies with Variable Share Capital) Regulations.

With regards who may act as a collateral taker and a collateral provider, the draft proposal recommends the inclusion of the following into the remit:
- corporations or other legal persons, in either case established by law; and
- securitisation vehicles as defined in article 2 of the Securitisation Act.

The amendment also proposes to widen the scope of the manner in which the collateral taker may realise any financial collateral provided under a security financial collateral arrangement to include- in relation to instruments consisting of securities of a SICAV-, that the financial collateral may also be realised in the manner and in accordance with the value as contemplated in regulation 14(6)(iii) of the Companies Act (Investment Companies with Variable Share Capital) Regulations. The latter provision in turn provides that in the event of a default, the pledgee shall be entitled to request the SICAV to purchase the pledged securities in settlement of the debt due to him or part thereof.

NEW EU MARKET ABUSE REGULATION

The EU Permanent Representatives Committee approved, on the 26th June 2013, on behalf of the Council, a compromise reached with the European Parliament with regards a draft regulation aimed at tackling insider dealing and market manipulation on securities markets. The draft regulation, together with a proposed directive on criminal sanctions, is aimed at enhancing market integrity and the protection of investors as well as amending and replacing the existing Market Abuse Directive (2003/6/EC). The latter directive prohibits insider dealing and the manipulation of financial instruments that are admitted to trading on regulated markets, even though the emergence of new trading venues as well as over-the-counter (OTC) trading have brought more competition to regulated markets, making it more difficult to monitor for possible market abuse.

The new market abuse regulation thus extends the scope of the rules to financial instruments traded on new more recently-created venues such as multilateral trading facilities and organised trading facilities and OTCs and adapts rules to new technology such as High Frequency Trading.
The manipulation of benchmarks, such as LIBOR, will be explicitly prohibited and subject to administrative sanctions. Market abuse occurring across both commodity and related derivative markets will also be prohibited, and cooperation between financial and commodity regulators will be reinforced.

A number of measures will be introduced to ensure regulators have access to the information they need to detect and sanction market abuse. Since the sanctions currently available to regulators often lack a deterrent effect, tougher and more harmonised sanctions will be introduced. Moreover, these rules are set to reduce the administrative burden on SME issuers.

MALTA - A SAFE EUROPEAN OPTION FOR INTERNATIONAL BUSINESS

The fiscal implications of any transaction are typically at the forefront of the decision-making process when determining whether a particular jurisdiction offers an attractive proposition. In this regard, over the past two decades, one of Malta's key strengths as a financial services centre has been its rigorous yet flexible and constantly updated fiscal regime which is fully compliant with EU directives and Regulations, thereby rendering Malta a safe European option for conducting International Business.

MFSA CONSULTATION ON THE PROPOSALS FOR REINSURANCE SPECIAL PURPOSE VEHICLES REGULATIONS

On 31 May 2013, the Malta Financial Services Authority (MFSA) issued a consultation document on Reinsurance Special Purpose Vehicles Regulations (Proposed Regulations) to be issued under the Insurance Business Act (Cap. 403 of the laws of Malta). Directive 2005/68/EC of the 16th November 2005 on Reinsurance (Reinsurance Directive) provides Member States with the discretion to allow the establishment, within their territory, of special purpose vehicles to assume risks from insurance or reinsurance undertakings (RSPVs), subject to such RSPVs attaining prior official authorisation by the relevant competent authority of the home member state.

The MFSA's consultation document called for comments on the draft regulations drawn up pursuant to the requirement set out in the Reinsurance Directive for Member States opting to cater for the creation of RSPVs to establish a legal framework regulating the authorisation, regulation and monitoring of RSPVs in Malta and the respective conditions under which their activities are to be carried out.

2013 GLOBAL RESIDENCE PROGRAMME RULES

EU Nationals

Legal Notice 167 of 2013 has replaced the High Net Worth Individuals ('HNWI') scheme by introducing new regulations for the acquisition of special tax status by non-EU nationals, the applicability of which, however, does not extend itself to EEA nationals or Swiss nationals.
Some of the more salient features of the new Global Residence Programme include the following:

- In order to qualify for residency, an applicant must purchase immovable property in Malta, the value of which must be of at least €275,000. This notwithstanding, if the property is in the South of Malta or in Gozo, the minimum value can be of €220,000;

- An applicant will also be eligible by renting immovable property in Malta on an annual basis for at least €9,600 per annum, or €8,750 per annum if the property is in the South of Malta or in Gozo;
- Tax flat rate is 15% chargeable only on a remittance basis;
- The minimum amount of tax to be paid in Malta has been reduced to €15,000;
- A standard application processing fee of €6,000 is applicable, or of €5,500 if property is purchased in the South of Malta or in Gozo;
- There are no minimum stay requirements. However, in order to be eligible an applicant may not spend more than 183 days per annum in any other jurisdiction.

The table below highlights the comparison of the new version previous scheme:

	Previous HNWI Scheme	New Global Residence Programme	
	€	North Malta €	Gozo & South Malta €
Purchase of Immovable Property	400,000	275,000	220,000
Rental	20,000	9,600	8,750
Bond (in substitute of visa renewal)	500,000 plus 150,000 per dependent	None	None
Minimum Tax to be Paid	25,000 plus 5,000 per dependent	15,000	15,000
Application fee	6,000	6,000	5,500

In granting a Global Residence Permit as well as Uniform Residence Permits, the authorities will verify that the applicant and dependents are covered by an all-risks medical insurance in Malta.
Applications are now open under the new Global Residence Programme and should be made through an authorised mandatory that is authorised to act by the Commissioner for Revenue. The authorised registered mandatory is to act on behalf of the permanent resident in respect of all applications, correspondence, submissions, filings and notifications contemplated under the scheme.

Non-EU/Non-EEA/Non-Swiss Nationals

Legal notice 178 of 2003 suspends the previous High Net Worth Individuals scheme available to non-EU, non-EEA and non-Swiss Nationals, the cut-off date being 30th June 2013. By virtue of this legal notice, persons who are in possession of special tax status granted under the principal rules may request the Commissioner for Revenue to be granted special tax status under the new Global Residence Programme scheme. If an application was made under the old rules but a determination thereon had not yet been issued by the Commissioner for Revenue, the applicant may request that such application be considered to have been made under the new Global Residence Programme Scheme. Such requests are to be made through the services of an authorised registered mandatory.