



Guidelines on Exchange of Information on Request. (S.L. 123.127)

These Guidelines are issued in terms of Article 96(2) of the Income Tax Act and the Information provided therein shall be read and construed as one with the applicable legislation and shall have effect to the extent that such guidelines, explanations or instructions are not in conflict with Malta's international commitments.

While every effort has been made to ensure that the above information is consistent with existing policies and practice, should there be any changes, the Commissioner for Revenue reserves the right to vary its position accordingly.

Background

Exchange of information on request is one of the legislative tools implemented in pursuance of Malta's international commitments to combat cross-border tax fraud and tax evasion. The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) developed the international standard in relation to exchange of information on request in 2009, which standard was updated in 2016. Malta is committed to applying this standard. The Cooperation with Other Jurisdictions Regulations (S.L. 123.127) implement this standard as well as the EU Council Directive 2011/16/EU and its subsequent amendments.

The Regulations relating to exchange of information on request found in S.L. 123.127 shall be interpreted in accordance with these Guidelines. These Guidelines shall be reviewed and updated to reflect any changes or other clarifications that the Commissioner for Revenue (CfR) may deem necessary for the purposes of a more correct application of the above-mentioned international standard and EU Directive. In the case of any changes, the revised version of the guidelines will be published on the CfR's website. Thus, it is within the interest of the reader to ensure that the most recent published implementing guidelines are being viewed.

Interpretation of the Definition of “beneficial owner” in Regulation 2 of S.L. 123.127

The term “beneficial owner” is defined in Regulation 2 of S.L. 123.127. This definition is to be interpreted in light of the international standard on exchange of information on request as developed by the Global Forum¹.

Interpretation of Regulation 4 of S.L. 123.127

(i) Regulation 4(1) and Beneficial Owners

¹ <https://www.oecd.org/tax/transparency/about-the-global-forum/publications/terms-of-reference.pdf>



The provisions of Regulation 4(1) of S.L. 123.127 provide that all entities are to keep updated information that identifies their owners and the level and type of their respective ownership stakes in such entities. This provision specifies that such information includes both legal and beneficial ownership information. This provision is not restricted in any way by the definition of the term “owners” in the same Regulation 4(1), which definition is not exhaustive in its scope. Consequently, all entities need to keep updated information that identifies beneficial owners as defined in Regulation 2 of S.L. 123.127.

(ii) *Regulation 4(4) and Beneficial Ownership*

The provisions of Regulation 4(4) provide that trustees established under the laws of Malta or that are resident in Malta are to 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). Furthermore, persons that are established under the laws of Malta or that resident in Malta that are entrusted with the administration of express trusts (whether the proper law of such trusts is that of Malta or elsewhere) also have these same obligations. The term “beneficiaries” under Regulation 4(4) shall mean both beneficiaries under Article 2(1) of the Trusts and Trustees Act (Cap. 331) as well as beneficial owners as defined in Regulation 2 of S.L. 123.127. Consequently, trustees and persons entrusted with the administration of express trusts referred to above have the obligation to keep information on the natural persons referred to in the definition of “beneficial owners” in Regulation 2 of S.L. 123.127 in relation to trusts.

(iii) *Regulation 4(11) and Beneficial Ownership*

The provisions of Regulation 4(11) provide that banks are to ensure that banking information is kept on all account holders in relation to their banking activity in Malta and that “banking information” include all records pertaining to the accounts as well as to related financial transactional information. This definition is not exhaustive and should be interpreted to include information regarding both the legal owners of the accounts as well as their beneficial owners as defined in Regulation 2 of S.L. 123.127.

(iv) *Regulation 4 and Updating Information*

Regulation 4 provides in various instances that updated information is required to be kept. Persons having this obligation are required to take reasonable measures in order to update this information. Such measures may vary from one person to the next, however, it is expected that measures are taken at least every 3 months to ensure that the required information is kept updated.