



SECURITISATION TRANSACTIONS (DEDUCTIONS) RULES

Rules establishing the taxation of securitisation vehicles have been recently introduced into Maltese tax law. Such rules provide for tax neutrality in respect of a securitisation transaction. Indeed, in terms of such rules, the income derived by a securitisation vehicle in respect of a securitisation transaction may effectively not be subject to any Maltese income tax.

Securitisation has been part of the Maltese legal framework since 2006 by virtue of the enactment of the Securitisation Act, Chapter 484 of the Laws of Malta (“the Act”). More recently, Legal Notice 324 of 2011 entitled Securitisation Transactions (Deductions) Rules (the “Rules”), which came into force on 12 August 2011, now provides rules regulating the taxation of income derived by a securitisation vehicle.

A brief outline of the Rules is set out hereunder.

What is a securitisation transaction?

A securitisation transaction is considered a transaction or arrangement whereby a securitisation vehicle, directly or indirectly:

- acquires securitisation assets (any assets) from an originator by any means; or
- assumes any risks from an originator by any means; or
- grants secured loan or other secured facilities to an originator;

and finances (even partly) any or all of the above, directly or indirectly, through the issue of financial instruments.

The originator or assignor is the person who transfers the securitisation asset to the securitisation vehicle.

What is a securitisation vehicle?

A securitisation vehicle may take various forms including a company, a commercial partnership, a trust created by a written instrument or any

other legal structure permitted by the Malta Financial Services Authority.

Such securitisation vehicle does not require any form of licence unless the vehicle is considered a public securitisation vehicle (i.e. a vehicle that issues financial instruments to the public on a continuous basis).

A securitisation vehicle must have its objects limited to carrying out securitisation transactions and its statute must also expressly state that such vehicle is subject to the provisions of the Act.

Taxation of a securitisation vehicle

A securitisation vehicle is generally subject to income tax on its income and gains (after allowable deductions) arising in the year in which such income or gains fall to be recognised for accounting purposes.

Allowable deductions

In terms of the Rules, when determining the total chargeable income of a securitisation vehicle, apart from claiming any allowable expenses/ outgoings in terms of the Income Tax Act (“ITA”), the following additional deductions may also be claimed:

- i. any sum paid by the securitisation vehicle to the originator or assignor for the transfer of the securitisation asset or the transfer of any risks;
- ii. premiums, interest or discounts connected to the financial instruments issued, or funds borrowed by the securitisation vehicle when financing the acquisition of the securitisation asset or the assumption of risks; and
- iii. any expenditure incurred by the securitisation vehicle in respect of the day to day administration of the securitisation vehicle (or if the administration is delegated, the fees paid for the administration services), including expenditure relating to statutory requirements, and of its assets and risks, including the collection of any relevant claims.



The Rules stipulate that any item of expenditure/outgoing considered tax-deductible in terms of both the Rules and the general deductibility provisions of the ITA may be deducted only once.

The Rules also grant the securitisation vehicle the option of claiming as a further deduction, an amount equal to any chargeable income remaining after deducting all allowable expenditure and any further deductions referred to in i. to iii. above (“the Optional Deduction”). The Optional Deduction effectively reduces the chargeable income of a securitisation vehicle to nil.

In order for the said option to be exercised by the securitisation vehicle, the Commissioner of Inland Revenue must be satisfied that the originator or assignor has given his irrevocable, written consent to the exercise of such option.

In the event this option is exercised, the amount of the Optional Deduction will be deemed to be chargeable income in the hands of the originator or assignor of the particular securitisation asset (as explained below).

Taxation of deemed income received by the originator/ assignor

The Rules provide that the amount claimed as a deduction by the securitisation vehicle referred to in (i) above and the Optional Deduction claimed by the securitisation vehicle should both give rise to an amount of deemed income at the level of the originator or assignor.

The said deemed income should be considered to arise in Malta in the hands of the originator or assignor unless the control and management of the originator’s/assignor’s business is not exercised in Malta.

Accounting issues

Securitisation vehicles are to account separately for different securitisation contracts. In this manner, the securitisation vehicle will determine the chargeable income for each securitisation contract.

Where the securitisation vehicle is constituted as a company, an amount equivalent to the Optional Deduction must be allocated to the final tax account of the company.

Consequently, any distribution of profits by the securitisation vehicle from such taxed account should not be subject to any further tax in Malta.

Restrictions and anti-abuse

The Rules restrict the application of group relief contemplated in Articles 16 to 22 of the Income Tax Act in the case of a securitisation vehicle. Consequently, any trading losses suffered by a securitisation vehicle cannot be surrendered to a group company and a securitisation vehicle cannot claim any trading losses suffered by a group company.

Furthermore, any losses made by an entity during a period in which it was a securitisation vehicle cannot be deducted by such entity once it is no longer considered a securitisation vehicle.

The Rules also contain a general anti avoidance provision to challenge transactions that are structured in a manner which does not reconcile to the object and purpose of the Rules.

The notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners and/or Senior Consultants of the firm. For further details please do not hesitate to contact:

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