

# **Key results of the national assessment on money laundering of the proceeds of tax crime in Malta**

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# Key results of the national assessment on money laundering of the proceeds of tax crime in Malta

## Background

In November 2021 Malta completed a risk assessment on tax evasion both in terms of laundering the proceeds of domestic tax evasion and in terms of potential tax evasion abroad with the laundering the foreign proceeds of crime in Malta. This is the first detailed risk assessment examining the risks of money laundering from tax evasion. The purpose of this risk assessment is two-fold: (i) to establish a common understanding of the existing risks regarding ML in Malta of the proceeds of tax crime (domestic and foreign), assess the quality of existing mitigation measures, and foster effective risk based effort in prevention detection investigation and prosecution of these crimes by all authorities; and (ii) for the benefit of the private sector, identifying red flags and indicators to assist them in their obligations with regard to preventative measures and especially improving the quality of tax related suspicious transaction reports (STRs).

This assessment was coordinated by the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC) and with intelligence shared from the Financial Intelligence Analysis Unit, the Office of the Commissioner for Revenue, the Office of the Attorney General, the Financial Crimes Investigations Department, the Malta Business Registry, Komunita' Malta, the Department of Customs and the Central Bank of Malta. The objective of this risk assessment was to assess the risks in relation to money laundering of proceeds of domestic and foreign tax crime in Malta. The methodology adopted was that of assessing the threats, the vulnerabilities and the mitigating controls in place, as well as the likelihood and consequence of such potential occurrence, to thereafter derive the residual risk.

In order to carry out this risk assessment the following statistical tools were used:

- Data from the Office of the Attorney General on the European Investigative Orders and the Mutual Legal Assistance.
- Data on the police to police requests from the Malta Police Force.
- Data on international requests from the Office of the Commissioner for Revenue in relation to income tax and VAT.
- Data on the cash-based businesses in Malta focusing on restaurants by the Office of the Commissioner for Revenue.
- Data on the submission of VAT and income tax returns by the Office of the Commissioner for Revenue by BO nationality.
- Data on tax collected and uncollected tax from the Office of the Commissioner for Revenue.
- Data from the FIAU on FIU to FIU requests.
- Data from the Centralised Bank Account Register (CBAR), that went live on the 26 October 2020 for data collection purposes.
- Data from the FIAU on incoming tax-related STRs, analysed tax-related ML cases and on analysed cross-border cash declarations.
- Data from Customs on the cash declarations/undeclared.
- Data from the Malta Police Force on the investigations and prosecutions by predicate offence.
- Data from the Asset Recovery Bureau on the frozen assets in relation to tax crime offences.

- Data from the Central Bank of Malta on the usage of cash in Malta.
- The MBR risk assessment on commercial partnerships with a particular emphasis on Beneficial Ownership.
- Data on the Malta Individual Investor Programme and the Residence Programme.
- Data from the National Statistics Office.

All these statistical tools and granular detail led to the completion of this tax risk assessment. The following sections present the key conclusions on the inherent risk, vulnerabilities and residual risk, and the recommended actions to improve the control framework to mitigate the identified risks.

## Introduction

Malta has an open economy with a developed financial sector and actively promotes financial activity. This, together with a beneficial tax regime bare the inherent risk of abuse through aggressive tax planning, tax evasion, and tax fraud. Both domestic and foreign residents may create complex financial structures (parts of which may be found in Malta and other parts of the world) for this purpose. These structures make it difficult to monitor the flow of transactions as well as the provenance/destination of funds involved. These structures may also create hurdles when it comes to identifying the parties involved in the transactions.

According to the 2017 National Risk Assessment (NRA), where a limitation was in view of the fact that the 2017 NRA did not examine in detail the predicate offences when assessing the main drivers of the threat of foreign proceeds of crime in Malta, overall, Money Laundering / Terrorism Financing (ML/TF) risk in Malta was primarily driven by three components:

1. ML threat is high and driven by the threat of foreign proceeds of crime (especially given the size and openness of the economy and financial system) and, domestically, by local criminal groups and tax evasion;
2. Sectoral vulnerabilities reside primarily with international business activities, especially the relatively large banking, securities, gaming and Designated Non-Financial Business Professions (DNFBP) sectors; and
3. Malta has established a legal and institutional anti-money laundering / Counter Funding of Terrorism (AML/CFT) framework; however, the capacity and expertise of law enforcement agencies are not sufficient to fully support investigations, prosecutions and asset recovery, thus translating into low levels of convictions and confiscation compared with the money laundering/funding of terrorism (ML/TF) risk profile.

From the 2017 NRA onwards, all the authorities and the law enforcement agencies as a result of a better ML/TF risk-based understanding, started adopting new techniques that assist further in the identification of the ML/TF threats. This was necessary in order to be able to align the policies with the country specific ML/TF threats. To be noted, that from 2018 onwards, the Office of the Attorney General started keeping record of the European Investigative Orders and the Mutual Legal Assistance. The Malta Police Force set up an International Unit in June 2021. The objective of this office is to render assistance to foreign counterparts including the mutual recognition of freezing orders, relaying back information and evidence to foreign jurisdictions.

Another important tool is the Centralised Bank Account Register (CBAR), where at the end of 2019 the FIAU was entrusted with the setting up and management of a centralised automated mechanism for the collection and retrieval of data on bank and payment accounts identifiable by IBAN, safe custody services (“SCS”) and safe deposit boxes (“SDB”) provided by credit

and financial institutions within the Maltese territory. The CBAR system officially went live on the 26th October 2020 for data collection purposes. 31 obliged entities (22 credit institutions and 9 financial institutions) qualified for CBAR reporting purposes and all such obliged entities have registered and submitted data on their account holders, which data must be updated every seven days. To date, the Financial Intelligence Analysis Unit (FIAU) Intelligence Analysis Section and the authorities gained access to the system enabling them to access bank account information instantly without having to recur to the time-consuming process of sending out requests for information to credit institutions in Malta.

Furthermore, there was also the gathering of more granular information on incoming suspicious transaction reports (STRs) in tandem with the launch of the goAML system which enabled the FIAU to determine the predicate offence linked to STRs which would have otherwise been classified as “predicate offence unknown”. goAML was introduced in 2020, this automated software system facilitates the submission of STRs and is developed by the United Nations Office on Drugs and Crime (UNODC). The FIAU introduced different types of STRs to help identify the type of suspicion, the urgency to act upon and the level of risk it poses. The Office of the Commissioner for Revenue also started recording the monetary value attributable to the oncoming international requests from other jurisdictions in relation to direct taxation.

All these additional tools were used in order to carry out this risk assessment with the objective of having an enhanced understanding of the significance of laundering the proceeds of domestic tax evasion in Malta and the ML threat in relation potential tax evasion abroad with the laundering of the foreign proceeds of crime in Malta.

## Key conclusions on the inherent threats

This risk assessment distinguishes between the laundering of domestic and foreign proceeds of tax evasion in Malta.

From the analysis carried out, it is clear that the threat of laundering of proceeds of domestic evasion is high. This is especially so when one takes into account the fact that the majority of private companies set up in Malta (57% of the active companies totalling 27,415) are owned by a Maltese resident as well as the significant number of individuals registered as self-employed in Malta. In addition, the majority of companies that defaulted in their submissions of tax and VAT returns were owned by Maltese shareholders/Beneficial Ownership. With a significant use of cash and the size of the informal economy (estimated to range between 15.3%-23.6% of Maltese Gross Domestic Product)<sup>1</sup> there is a high inherent threat of laundering of proceeds of domestic tax evasion.

There is a high inherent threat of money laundering in Malta derived from proceeds of tax crimes committed abroad occurring through the setting up of companies in Malta. However, this only rarely involves the false declarations of the beneficial owner of the company. Supervisory thematic reviews that have been carried out by the Financial Intelligence Analysis Unit so far in collaboration with the Malta Business Registry indicate that there are few cases of concealment of Beneficial Ownership. This is true also in cases where companies have been in fact abused in money laundering schemes. The Malta Business Registry conducted assessments on the 52 legal persons arraigned in court by the Malta Police Force during 2020

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<sup>1</sup> Central Bank of Malta (2020), An analysis of the shadow economy in Malta: A Currency Demand and MIMIC model approach - WP/02/2020.

and 2021 in money laundering cases, and it was found that in these cases there was no concealment of the Beneficial Ownership (i.e. the suspected criminals in these cases identified themselves as BOs).

The majority of the companies identified as high risk for money laundering registered at the Malta Business Registry do not have a Maltese IBAN account, and only 24% (4,976) of foreign owned companies have a Maltese IBAN account<sup>2</sup>. This indicates a lower risk of abusing the Maltese financial system for laundering the foreign proceeds of tax crime by companies that are set-up in Malta. Thus, the main gatekeepers to mitigate the risk of misuse of companies for foreign tax evasion purposes are the company service providers.

Another finding is in relation to those that are granted citizenship by investment in Malta. Findings from statistical data indicate that most if not all of those granted citizenship, do not in fact introduce funds into the Maltese financial system. Furthermore, the acquisition and or leasing of property by individuals granted citizenship under the Maltese Citizenship Scheme is on the decline (in 2020 €7.7M in properties was acquired under the citizenship scheme as opposed to €22.7M in 2018). In addition, the mitigating measures in place are of a medium-high nature thereby leading to an overall residual risk for abuse of these schemes for money laundering being medium.

Money laundering of proceeds of tax crime through the acquisition of property is an inherent threat in Malta with a risk rating of ‘medium-high’. Data from the National Statistics Office indicates that there is no direct relationship between the percentage growth in the gross value added from the construction, and the duty and tax collected from property transferred, which might indicate that in this sector the threat of tax evasion is high. Furthermore, in 2021 from six cases related to tax evasion on which a freezing order was issued, immovable frozen assets accounted for 23% of the total immovable frozen assets totalling €10.2 million.

Another inherent threat relates to the misuse of Malta’s corporate income tax regime to launder the proceeds of crime (any crime and in particular drug trafficking and organised crime proceeds) that are co-mingled with legitimate proceeds. It is however to be noted that Malta’s imputation refund regime is being closely monitored in order to mitigate the risk of imputed refunds being involved in illicit money flows. Since the due diligence process has commenced in 2020, in appropriate cases refunds have been suspended. Nevertheless, further mitigating measures through a legal amendment that would provide the Office of the Commissioner for Revenue stronger powers where there is reasonable suspicion of money laundering in relation to the use of the tax refund system would lead to an overall lower residual risk. Currently, the residual risk of laundering the proceeds of foreign through tax refunds was found to be ‘medium-high’. While this inherent threat is not necessarily and specifically linked to the laundering of foreign tax evasion, the fact that Malta’s income tax regime is at risk of being misused to launder the proceeds of crime is of relevance to this Tax Risk Assessment.

The inherent threat of VAT fraud schemes and the associated money laundering is high however as a result of ongoing pre- and post-registration controls, there is increased effectiveness in the detection of suspected fraud.

Law enforcement authorities are investigating and prosecuting a growing number of money laundering stand-alone cases involving tax crime. Nevertheless, a vulnerability that may be

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<sup>2</sup> In line with the Sectorial Risk Assessment on Commercial Partnerships with a specific focus on Beneficial Ownership Information.

hindering the number of tax criminal investigations and prosecutions is the issue of the prescription period for tax offences, which is quite short and impacts the effective prosecution of tax crime. Sanitized case studies reveal the involvement of company service providers (which are the most relevant type of gatekeepers with respect to Maltese Companies) in suspected money laundering.

As of 2020 a number of professionals (such as warranted lawyers and accountants) and individual service providers providing directorship and company secretary services below certain thresholds are no longer exempt from the Malta Financial Services Authority (MFSA) licensing and therefore, required to undergo the same fitness and propriety assessments as well as ongoing scrutiny by the MFSA, as a result the residual risk regarding these has decreased.

Another high inherent threat associated with the use of cash that has been identified relates to cash intensive businesses and in particular restaurants managed through foreign owned companies (in particular Italian nationals), where there exists a high risk of uncollected income tax and indirect taxes. This threat is being mitigated by the increased monitoring for ML/TF risks by the Risk Management Unit within the Office of the Commissioner for Revenue, where surveillance visits are being carried out on a regular basis.

It is to be noted that the very few international incoming requests (Mutual Legal Assistance, European Investigative Orders, Police-Police and FIU-FIU) that are related to tax evasion are not indicative of high laundering of foreign proceeds of tax evasion. In addition, the exchange of information requests to the Office of the Commissioner for Revenue indicate that from 2019 to 2021 (October) only 3.2% of the requests were determined as criminal tax evasion cases. Based on foreign international incoming requests it appears that Italian nationals, nationals from Germany and the United Kingdom feature as potentially of higher risk for laundering foreign tax proceeds of crime in Malta. In relation to VAT fraud, Polish nationals were moreover identified to pose the highest threat.

### Key conclusions on the residual tax related Money Laundering risk

The overall residual risk score for the laundering of domestic tax evasion proceeds in Malta is considered to be 3.5/5, while the residual risk score for the laundering of foreign tax evasion is considered to be 3.2/5. This is based on an assessment of the inherent threats highlighted above and the level of controls in place to mitigate the identified threats. From the analysis carried out on the inherent threats and vulnerabilities, it is clear that the threat of laundering of proceeds of domestic evasion is high though in many cases relatively low nominal sums are involved. There is a high inherent threat of money laundering in Malta derived from proceeds of tax crimes committed abroad occurring through the setting up of companies in Malta. However, while companies set up in Malta may be used as part of complex structures to launder proceeds of foreign tax evasion (as also identified in the Beneficial Ownership risk assessment) in many cases the funds of these companies are not laundered in Malta and do not even enter the Maltese banking system which is also attributable to the high level of due diligence conducted by the Maltese banks. This indicates a lower risk of abusing the Maltese financial system for laundering the foreign proceeds of tax crime by companies that are set-up in Malta.

The paragraphs hereunder provide a summary of the residual risk conclusions.

### Laundrying of domestic tax evasion proceeds

The residual risk is mainly driven by the use of cash/informal economy, misuse of cash intensive businesses, misuse of companies and evasion of personal income tax. With regards to use of cash/ the information economy and the misuse of cash intensive business while a reduction in use of cash is being noticed and a number of measures have been undertaken by the Central Bank (including to limit the circulation of cheques and bank drafts) more enforcement of cash limits and better scrutiny by the Office of the Commissioner for Revenue and Banks on cash intensive businesses is necessary to improve the level of controls and reduce the residual risk. Further tightening in the level of controls applied by the Office of the Commissioner for Revenue is also needed to effectively mitigate the risk of laundrying of domestic personal income tax. The level of controls in place to mitigate the misuse of companies by domestic individuals are considered of medium effect, taking into account the level of AML controls and suspicion detection capabilities in place by accountants/auditors and company service providers which need improvement to lower the residual risk. Concealment of beneficial ownership in respect of Maltese companies is not commonly detected (by FIAU's and MBR's supervisory examinations) indicative that concealment of ownership is not a significant manner in which companies may be misused to launder domestic tax proceeds.

### Laundrying of foreign tax evasion proceeds

The residual risk is mainly driven by the misuse of Maltese companies and the use of complex corporate structures, the misuse of the tax refund scheme to launder the proceeds of crimes, the use of cash intensive businesses and acquisition of immovable property. Only a small proportion of foreign owned and high risk companies have an IBAN Account in Malta which when considering the tight controls applied by banks to companies leads to the conclusion that the risk of abuse through penetration of foreign proceeds into the Maltese financial system with the use of companies is limited. Nonetheless, foreign owned and high-risk companies are almost in their entirety serviced by company service providers, accountants/auditors, which judging by the level of suspicious report detection and supervisory experiences further improvement is necessary to lower the residual risk of company misuse for foreign tax evasion purposes. As stated above, concealment of beneficial ownership is not considered to constitute a significant manner in which companies may be misused.

### Use of the corporate income tax system to launder the proceeds of crime (any crime)

The use of the corporate income tax system to launder the proceeds of crime (any crime) needs to be counteracted by more robust due diligence controls by the Office of the Commissioner for Revenue with current controls considered to only have a medium level of effectiveness. Similarly, to what is stated in the previous paragraph (when commenting on the residual risks of laundrying of domestic tax evasion) further improvement in the controls applied by the Office of the Commissioner for Revenue and banks with respect to cash intensive businesses are necessary to reduce the residual risk. The acquisition of immovable properties to launder foreign proceeds of crime needs to be counteracted with more robust mitigating measures by the main gatekeepers i.e. notaries and real estate agent which judging by the level of suspicious transaction report detection and supervisory experiences are exerting only a medium level of controls. On the other hand, the laundrying of tax evasion proceeds via Maltese citizenship/residency schemes is not considered to pose significant risks considering the

significant decline in property acquisitions via such schemes and the robust controls applied by Komunita' Malta at application stage.

## Typologies and Red flags: Indicators of Tax-Related ML

A number of red flags/reasons for suspicions were identified from the analysis carried out, as well as from the findings from Suspicious Transaction Reports (STRs), from the Office of the Commissioner for Revenue on carousel fraud, from the granting of the citizenship scheme, and from a review of international requests. These red flags/reasons for suspicion contribute to the second objective of this risk assessment: that of formulating and reaching out with a set of guidelines to the private sector and help the entities understand better the risk in relation to tax evasion and thereafter mitigate appropriately. These identified red flags are as follows:

### Typologies and Red flags: Indicators of Tax-Related ML

*The typologies and red flags are being grouped into categories for ease of reference.*

#### Unusual or Suspicious Transactions

- **Structuring / Smurfing:** Transactions (usually deposits and transfers) being broken down into smaller amounts to avoid detection and questioning by financial institutions. This typology has been particularly noted with respect to individuals and entities having cash generating activities in Malta which tend to structure cash deposits through the use of various ATM machines provided by the same Bank at different locations
- **Transactions or volume of deposits not in line with the known customer profile** e.g. individuals acquiring high-end or multiple properties when their level of declared income does not support such acquisitions; or companies making transactions which do not make economic sense when compared with the known company activities
- **The establishment of a company in Malta with no presence, activity in Malta or meaningful connection to Malta or any justifiable reason for incorporation in Malta**
- **Use of shareholders' loans to finance corporate entities** – this may also be a further indicator of possible misuse of corporate vehicles for laundering the proceeds of tax evasion, especially where it results that the amounts lent to the corporate entity are not in keeping with known customer profile and financial resources
- **Entities not reporting any revenue but there exists evidence of income** – e.g. a subject person being aware of transactions occurring with another client entity indicative of commercial activity and potential income
- **Under or over valuation of goods or services** – attention should be paid where the declared value on invoices for goods and/or services does not reflect market value; when invoices are of poor quality (e.g. involving basic descriptions of goods/services supplied)
- **Transactions involving services such as consultancy, marketing or research** in particular when it results that the service provider has one or very few customers notwithstanding the relatively high turnover and/or when the service provider is located in a non-cooperative jurisdiction
- **Circular transactions or round-tripping transactions** – where funds are reinvested into the original jurisdiction after being transferred to a foreign entity
- **Commingling of personal and business accounts** – carrying out of transactions from business accounts which relate to personal non-business expenses which may be indicative of inflation of expenses and reducing tax burden, or using personal accounts to

receive payments that are business related hence reducing a company or business's chargeable income.

- **Transactions (including over complex transactional structures) for which there is no economic, commercial or logical explanation**
- **Transactions involving the transferring of assets for which there is no economic, commercial or logical rationale** - including where assets are settled on trust or transferred to similar entities in circumstances where there is no clear legal and rational choice to account for such transfers, and and/or transfer of assets to non-transparent/cooperative jurisdictions
- **Use of significant amounts of cash by non-cash intensive businesses without a commercial or reasonable justification**
- **Cash-intensive businesses whose value of cash deposits is particularly high or does not fit the average profile of similar type of businesses**
- **Sudden and unexplained increase in revenue within an entity or a non-commensurate high revenue within a newly formed company**
- **High volume of banking transactions within a short period of time** – indicative that a company or account is being used as a money conduit
- **Income/balances reported for automatic exchange of information purposes do not match declared income for tax purposes.**

#### **Entity Structure & Governance**

- **Administrative body of an entity (such as a Company's Board of Directors), manifestly lacks the skill or time to properly undertake its function** – in these cases subject persons need to achieve reasonable comfort that adequate arrangements are in place in the entity to ensure that the required functions are adequately executed
- **Use of inexplicably complex structures** – complex corporate structures with no clear, reasonable or commercial purpose for such a structure and/or use of structures which render it difficult to determine beneficial ownership
- **Creation of structures with the intention of hiding / concealing ownership** – e.g. trusts or foundations set up in jurisdictions where there is no requirement to disclose beneficiaries. Such trusts and/or foundations may be part of the corporate structure of a Maltese registered entity
- **Maltese companies who repeatedly fail to comply with their statutory duty to file copies of their financial statements with the Malta Business Registry** – this limits the ability to determine whether the nature and volume of activities conducted by the company is in keeping with what has been disclosed in the financial statements
- **Locally owned companies having no financial footprint in Malta** – Maltese companies owned by Maltese residents are expected to have a commercial or other activity going on in or from Malta which would in most case denote a local financial footprint. Whilst there may be legitimate explanations for not having a local financial footprint this is not typical.
- **Setting up of two or more trading companies in different jurisdictions having the same company name without a commercial reason**
- **Company Structure includes the use of bearer shares**
- **Use of fiduciary relationships within a structure with no clear or legitimate purpose or justification**
- **Entity maintains materially incomplete records which would undermine the integrity and reliability of the records required for the proper determination of tax due**

## Source of Funds & Source of Wealth

- **Customer is unable or unwilling to provide source of wealth or source of funds information and/or documentation when requested**
- **Doubts in relation to the source of funds or wealth information / documentation provided** – e.g. documents provided are not sufficiently clear as to the source of wealth, documents such as contracts or invoices which appear fictitious
- **Indications that funds / income has not been declared or properly declared to the tax authorities** – e.g. failure to declare income becomes evident from the customer's behaviour when asked about his source of wealth (such as by not being able to confirm that his income has been properly declared with tax authorities) or actually indicates that a part of his income is undeclared when requested
- **Transactions (incoming or outgoing) are not in line with the client's source of wealth or expected source of funds known to the subject person**
- **The source of funds information provided does not tally with the services being requested** - e.g. a customer with an allegedly moderate income or revenue requesting services that are associated with higher worth/income individuals
- **Frequent amounts of deposits from unexplained sources**
- **Sales and purchases/expenses not backed by invoices and proper documentation**
- **Bank accounts with significant imbalances between the number of deposit and withdrawal transactions** – unexplained sources for the amount of withdrawals and therefore shows that part of the imbalances resulting in bank accounts would be compensated for through undeclared cash earnings

## Customer's Identification Information

*The red flags hereunder may be identified during the customer on-boarding process or at any time throughout a business relationship, typically through information and document relating to the customer's identity*

- Customers failing to disclose dual citizenship or tax residence

## Customer Interaction and Behaviour

*Customer's behaviour, including the way they communicate with, make requests to or respond to requests made by subject persons*

- **Customers showing uncommon interest in tax-related issues:** e.g. customers asking whether a particular transaction or activity would be declared or reportable and/or customers asking about tax disclosure requirements other than for legal tax planning purposes
- **Customer providing information indicative that the service is being used in relation to undeclared funds**
- **Customers requesting the use of a tax adviser's client account without reasonable or commercial justification**
- **Customers do not file one or more tax returns or other prescribed documents and refuses to correct defaults**
- **Customers who did not settle tax due on time and refuse to correct defaults and/or settle unpaid tax**
- **Customers insisting that they should not be contacted directly by the subject person**
- **Customers demanding exceptionally high and atypical levels of confidentiality**

- **Customers opening accounts or requesting services in Malta without an apparent link to Malta or substantial reason in terms of assets, liabilities or activities to justify so**
- **Customers requesting the closure of accounts or termination of business relationships or showing no interest in pursuing the establishment of a business relationship upon being asked for due diligence information including information on their tax affairs (e.g. information on the declared income in their country of residence)**
- **Customers opening up accounts in Malta to transfer funds from non-cooperative jurisdictions or jurisdictions with recent material changes in their tax regime**
- **Customers refusing to provide information required to comply with international tax obligations including documentation regarding declared income in their country of origin**
- **Customers suspected not to be complying with their tax reporting obligations in their tax domicile jurisdiction**
- **Customer suggest or request not to disclose any pertinent information to the tax authorities where the disclosure of that information is required in terms of law**
- **Abandonment of companies shortly after establishment**
- **Customer subject to adverse media – such as allegations of tax fraud and/or tax evasion investigations, prosecutions and convictions**
- **Customer unwilling to take advantage of tax mitigation opportunities available in certain specific circumstances with no reasonable explanation for such unwillingness**
- **Customers requesting advice in connection with the repatriation of income or capital from a foreign jurisdiction without a reasonable or commercial justification related to the origin of the wealth**
- **A change in auditor normally during the period when the audit is being carried out**
- **Customers having a history of tax advisor/other advisors shopping with no satisfactory explanation**

## Recommended Actions

The recommendations that emanated from this national tax risk assessment are being presented here:

### **Recommended action to address the threats in relation to the acquisition and exploitation of legitimate Maltese businesses by illicit foreign and domestic proceeds of crime**

- **Raise more awareness with local Banks about the ML typologies associated with the misuse of cash intensive businesses. Consider providing further guidance in this regard through the Bank's Sector Specific Procedures and discuss these risks with the Banking Sector (such as through the FINREP Committee).**
- **Raise more awareness with accountants and auditors about the importance of adequately monitoring transactions and activities undertaken by companies/businesses (paying particular attention to cash intensive businesses) being audited or provided with accountancy services, to detect potential ML suspicions. This should be achieved through Sector Specific Guidance and Training.**

- Commissioner for Revenue (assisted by other competent authorities) should identify cash intensive businesses owned by foreign nationals (especially those of Italian origin) in particular those that are not duly paying their taxes and carry out financial and other investigations on such businesses, to detect possible co-mingling of proceeds of crime and business incomes.
- Take more robust and swift action against Maltese Companies owning or operating cash intensive business that are not declaring / submitting financial statements or tax returns and/or paying taxes that are owed. and tax owed.

### **Recommended action for increased monitoring and suspicion detection by subject persons**

- Disseminate identified tax-related typologies and red flags, in particular with those sectors mostly exposed to tax-related ML threats (i.e. the Banking, Trust and Company Service Providers and Accountancy and Auditors Sector).
- Engage with Banks (and potentially correspondent banks) to avoid further de-risking initiatives on Company Service Providers (CSPs), to ensure the retention of a financial footprint for Maltese Companies in Malta.
- Ensuring proper outreach and guidance to the private sector in order to ensure that there is high quality suspicious transaction reporting and a risk-based approach in their day to day activities as this would help the entities understand better the risk in relation to tax evasion and thereafter mitigate appropriately.
- Monitor through the establishment of criteria improvement in the reporting of more serious and complex type of tax evasion cases by the most relevant sectors.

### **Recommended action for the misuse of Maltese companies**

- Disseminate information on risks associated with the misuse of companies to assist CSPs in taking a more risk-based approach to the implementation of their obligations drawing information from uncovered ML trends.
- Ensure a wider coverage of CSPs (in particular high-risk ones).
- Focus more on the implementation of client profiling, source of wealth checks and on-going monitoring by CSPs in line with the guidance provided under the CSP Sector Specific Procedures.
- Identify low reporting CSPs and carry out dedicated training sessions to raise awareness on ML risks, trends and typologies with this such pool of CSPs.

### **Recommended actions for the set-up of companies to abuse the tax system**

- Strengthen the powers of the Commissioner for Revenue and the Commissioner for Police in the fight against tax evasion by
  - Considering increasing the punishment for tax related offence and consequently, the period of prescription, during which tax offences may be prosecuted.
  - Allowing more time (beyond the current 14-day period) for the Commissioner for Revenue to carry out due diligence exercises in view of anti-money laundering issues where necessary prior to issuing tax refunds.
  - Introducing further mitigating measures through provisions in the tax law that would enable the OCfR to suspend tax refunds when there is suspicion of money laundering.

### **Recommended action to address the inherent threat of abuse of the Maltese system by foreigners registering companies with no local substance**

Through the risk assessment carried out by the Malta Business Registry there was an assessment of the 16,041 companies (as at July 2021) that do not have a Maltese director and are categorized as high risk of money laundering. Out of the 16,041 companies, it was identified that only 2,940 companies do not have a director that would be resident within the EU. Therefore, without underestimating the highlighted risk, the number of companies without an EU director is not to be considered as 'high' but rather as 'medium-high' therefore of a lower severity. Nonetheless, measures that would mitigate any risks emanating from such companies need to be taken. Legal amendments to address the high risk linked with a lack of local substance in Malta are crucial, where a sufficient local substance in Malta is deemed to include that:

- (a) At least one director is a person resident in Malta or the EU, or
- (b) More than half of the beneficial owners are resident in Malta, or
- (c) The company provides sufficient documentary proof to the Registrar that it has a place of business and trades in Malta, or
- (d) The company is a subsidiary or holding company of another company that satisfies any condition contained in (a) to (d).

Applied prospectively for companies registered from now onwards only, the above would:

1. Be addressing the identified high-risk area through the required appropriate actions by the Malta Business Registry;
2. Minimize the future potential abuse of the Maltese system by companies registered by foreigners with no sufficient local substance.

### **Recommended action to ensure that there are enough resources in the law enforcement agencies**

Continue identifying and addressing gaps in skills as already set in the National Anti-Money Laundering / Counter Terrorism Financing / Targeted Financial Sanctions Strategy for 2021-2023.

### **Recommended action to reduce the use of cash in Malta**

- Give effect to Directive No. 19 to limit the transferability of and amounts that may be transacted via the use of cheques and bank drafts thus limiting the use of these instruments to move funds with limited traceability facilitating their possible misuse to conceal declarable income
- Take further measures to incentivise the use of non-cash payment methods
- Fully setup the Cash Restriction Section within the FIAU to boost its operations and enhance the capability of monitoring, detecting and sanctioning breaches of the Cash Limitation Law.

### **Recommended action to reduce the personal income tax evasion**

- More ongoing monitoring in order to address the high risk of personal income tax evasion, with an emphasis on the self-employed.