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Malta's Tax System

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Malta has enjoyed a strong and consistent growth in its financial services industry and is fast becoming the jurisdiction of choice for a number of multinational companies seeking to relocate their business interests or looking for an ideal market within the EU. An efficient work force, English as a business language and a strong legal and fiscal framework have all contributed to this growth.

Malta's Tax system

Maltese tax Law finds its origins in the UK tax system and is based on UK tax principles.

A fundamental pillar of Malta's tax system is the full imputation tax system which completely eliminates the economic double taxation of company profits. Shareholders in receipt of dividends are entitled to a tax credit equal to the tax borne on the profits out of which the dividends are paid.

Since the tax rate of 35% applicable to companies is also the highest tax rate in Malta, shareholders will not suffer any additional tax on the receipt of dividends. Where the shareholder's tax on the dividend is lower than 35%, the amount by which the tax credit exceeds the tax on the dividend may be refunded to the shareholder.

The imputation tax system has always applied to residents and non-residents alike. Therefore, non-residents may also claim a refund of the underlying tax paid by companies operating in Malta.

Basis of taxation

A person's liability to tax in Malta hinges on the twin concepts of residence and domicile. Persons that are both ordinarily resident and domiciled in Malta are subject to income tax on their worldwide income and certain capital gains.

Companies incorporated in Malta are both resident and domiciled in Malta, irrespective of where the control and management of the business is exercised.

Companies that are not incorporated in Malta are considered to be resident in Malta only when the control and management of their business is exercised in Malta, in which case they would be taxed as a resident non-domiciled company.

Persons resident but not domiciled in Malta are taxable on any income and certain capital gains arising in Malta and on income arising outside Malta that is received in Malta. Such persons are not taxable on any capital gains arising outside Malta, whether received in Malta or not.

Companies resident outside Malta but deriving income which arises in Malta as a consequence of an activity carried out in Malta are subject to the same tax rules as are applicable to companies resident in Malta, subject to any double taxation conventions restricting Malta's taxing rights.

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Double taxation relief

Maltese tax law provides for three main forms of double taxation relief ('DTR') of foreign-source income. These are available in the following order:

- Treaty relief;
- Unilateral relief; and
- Flat rate foreign tax credit (FRFTC).

Treaty relief takes the form of a tax credit granted for foreign tax paid on income received from a country with which Malta has signed a tax treaty. The amount of the credit is the lower of Maltese tax on the foreign income and the foreign tax paid.

Unilateral relief operates in a similar way to treaty relief, but it only applies where treaty relief is not available. Unilateral relief may also provide relief for underlying tax borne by a foreign subsidiary on profits from which dividends are paid to a Maltese resident.

The FRFTC is another form of unilateral relief which is however only available to companies. It takes the form of a notional tax credit for foreign taxes deemed to have been suffered on qualifying income. The FRFTC is equal to 25% of the net amount received and is to be added to such amount.

Tax treaties

Successive Maltese governments have sought to conclude double taxation treaties with important trading partners as well as with emerging countries. This policy is expected to continue in the future.

Further information can be found on the Malta's Double Tax Treaties factsheet.

Malta's Tax Refund System

Upon a distribution of profits by a company registered in Malta (i.e. a company resident in Malta or a non-resident company with a branch in Malta), its shareholders may claim the following tax refunds of the Malta tax charge of the distributing company:

- **6/7 Malta Tax Refund**
  The most common Tax Refund is the 6/7ths, i.e. 30% (6/7ths of 35%). Upon distribution of dividends by a Maltese Company the recipient shareholders may be entitled to a refund of 6/7 of the tax paid by the company in Malta on the said profits resulting in an effective tax rate of 5%.
- **5/7 Malta Tax Refund**
  Where distributed profits relate to profits consisting of passive interest or royalties or of dividends derived from a non-qualifying participating holding, the refunds to which the shareholders are entitled are reduced to 5/7 of the tax paid by the company in Maltaon the said profits. The foregoing results in an effective tax rate of 10%.
- **2/3 Malta Tax Refund**
  Where a company has claimed foreign tax relief, following the distribution of profits, its shareholders would only be entitled to a refund of 2/3 of the Malta tax paid by the company in Malta on the said profits.
- **Malta Full Tax Refund**
  When the income and gains are derived from participating holdings, and the participation exemption has not been applied, the shareholders may qualify for a full refund of Malta tax paid.

Malta's tax refund system is applicable to both resident and non-resident shareholders in respect of the tax borne on profits derived from both domestic and international activities, with the exception of profits derived, directly or indirectly, from immovable property situated in Malta.

Malta's introduction of tax consolidation rules allows groups of companies to form a fiscal unity in Malta.

Further information regarding the conditions, the election, the benefits and the compliance requirements can be viewed in Tax Consolidation in Malta.

Malta's Notional Interest Deduction ('NID')

Malta's NID was introduced with the purpose of achieving an equal treatment of debt and equity financing, by granting an additional deduction for the return on equity financing and can be claimed by companies and partnerships resident in Malta (including Maltese permanent establishments of foreign entities) against their chargeable income for the year.

Malta's NID is calculated by multiplying the deemed notional interest rate (comprised of a fixed premium rate of 5% and a risk free rate of return based on Malta Government Stocks) by the balance of risk capital that the undertaking has at year end. Further, the maximum deduction in any year cannot exceed 90% of the chargeable income before deducting the NID.

Risk capital includes share capital, share premium, reserves, interest free loans and any other item that is shown as equity in the financial statements.

Further information regarding the conditions can be viewed in the Notional Interest Deduction.

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Malta's participation exemption

Malta's participation exemption provides for a 100% exemption with respect to profits (namely dividends) derived from certain subsidiaries qualifying as participating holding or from the transfer thereof (namely gains on transfer).

Participating holding

A participating holding is the holding of equity shares by a company resident in Malta in another company (or other entities as described below) where the former:

a. Holds directly at least 5% of the equity shares of the company whose capital is wholly or partly divided into shares, which holding confers an entitlement to at least 5% to any two of the following rights:
   i. Right to vote;
   ii. Right to profits available for distribution;
   iii. Right to assets available for distribution on a winding up; or
b. Is an equity shareholder which holds an investment, having a value at time of acquisition, of at least €1.164 million (or the equivalent sum in another currency) in the company and such investment is held for an uninterrupted period of at least 183 days.

As indicated above, a participating holding may also be held in a partnership or European Economic Interest Grouping irrespective of whether such entity elects to be treated as a company for tax purposes in Malta, or a collective investment vehicle that provides for limited liability of investors, provided the above conditions for the application of Malta's participation exemption are satisfied.

Malta's Participation Exemption is not applicable to companies who hold, directly or indirectly, immovable property (or any rights over the immovable property) situated in Malta.

With respect to dividends, Malta's participation exemption is applicable if the company (or other entity) in which the participating holding is held satisfies certain anti-abuse provisions.

The conditions for the application of Malta's participation exemption with respect to dividends do not apply in the case of gains derived from the transfer of a participating holding.

An exemption also applies to any income or gains derived by a company registered in Malta which are attributable to a permanent establishment situated outside Malta or to the transfer of such permanent establishment (certain conditions apply).

Malta's Patent Box Regime

Malta offers benefits on certain qualifying expenditure under the Patent Box regime, which is in line with the OECD recommendation.

Further information regarding the conditions, the election, and the benefits can be viewed in Malta's Patent Box Regime.

Investment Funds

Malta is increasingly becoming an attractive jurisdiction for setting up investment funds, be they retail funds or professional investor funds (including hedge funds). Besides the fact that funds invested overseas are completely exempt from tax, Malta does not impose any tax on the net asset value of the fund. In addition, the licensing procedure which is based on EU norms is mindful and reactive to clients' needs.

For tax purposes, investment funds (a.k.a. collective investment schemes), including sub-funds, are classified as either prescribed or non-prescribed funds. A prescribed fund is defined as a fund resident in Malta, which has declared that the value of its assets situated in Malta amount to at least 85% of the value of its total assets. If a fund does not satisfy this latter requirement, it falls to be classified as non-prescribed.

A non-prescribed fund is exempt from tax on both its income and capital gains in Malta.

Furthermore the Malta tax that will be suffered by the fund manager on his fees may benefit from Malta's refund system described above.

The distribution of income of a fund to foreign investors is not taxed in Malta. There are also no Maltese capital gains taxes imposed on the disposal of units in both prescribed and non-prescribed funds.

Highly Qualified Expatriates

Expatriates are generally taxed at progressive rates of tax up to 35%. However, expatriates employed in the senior-most positions with companies licensed or recognised by the Malta Financial Services Authority, Transport Malt (for undertakings holding an air operators' certificate issued in terms of Maltese law) and the Malta Gaming Authority and in receipt of a minimum annual salary of €98,436 (in 2024), may benefit from a flat rate of tax of 15% for a determined number of years, subject to the fulfillment of certain conditions.

In addition, investment services expatriates and insurance expatriates who do not qualify for, or opt not to benefit from, the 15% flat rate of tax, may benefit from an exemption from tax on certain fringe benefits, including a monthly subvention of €600, accommodation and vehicle expenses.

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The Anti-Tax Avoidance Directive

Further to the transposition of the EU Anti-Tax Avoidance Directive, Malta transposed measures pertaining to controlled foreign companies, exit taxation, interest limitation rules and anti-hybrid rules.

Further information regarding these rules, their scope and application can be viewed in the Maltese Implementation of the Anti-Tax Avoidance Directive.

Transfer Pricing

The local Transfer Pricing Rules (the "TP Rules") came into effect as from basis years commencing on or after 1st January 2024, with the possibility of grandfathering in certain cases. The TP Rules regulate cross-border arrangements between related parties entered into on or after such date, including any arrangements which, albeit entered into before that date, were subsequently materially changed. The TP Rules also provide for a limitation of scope whereby micro, small or medium enterprises that do not meet the size thresholds on a group basis, fall outside scope; moreover, the *de minimis* threshold excludes from scope entities whose total related party cross-border transactions do not exceed €6 million/ €20 million (revenue and capital respectively) measured in the preceding financial year.

Further information can be found on the Transfer Pricing factsheet.

Minimum Tax Directive (Pillar Two)

MAs part of the implementation of the EU Minimum Tax Directive, groups with annual consolidated global revenues of over €750m shall be subject to a minimum global effective tax rate of 15%. In this respect, Malta has exercised its discretion to defer the implementation of a top-up tax for fiscal year 2024.

Transfer duties

A duty on documents and transfers applies on certain transactions where the document is executed in Malta or a document executed outside Malta is made use of in Malta. The most significant of these is a duty of 5% on the transfer of immovable property. The duty of the transfer of company shares holding principally immovable property is also of 5%. In other cases the transfer of company shares is dutiable at 2%, but numerous exemptions apply making such duty applicable only in specific circumstances.

Company formation and re-domiciliation

Incorporation of Maltese companies

The incorporation process is relatively swift provided that all the necessary information and documentation is in place.

The minimum issued share capital is of €1,165 or equivalent in foreign currency. 20% of the share capital has to be paid up on incorporation. The number of shareholders is normally two; however, a "single member company" may also be registered.

Re-domiciliation

Maltese company law provides for the re-domiciliation of foreign companies to Malta and of Malta companies to foreign jurisdictions without the need to dissolve the entity and set up a new company. Re-domiciliation is currently permitted to and from all jurisdictions, other than those on the Financial Action Task Force (FATF) black list. For a company registered in Malta to be continued outside Malta, the laws of the approved jurisdiction must also allow this procedure.

Step-up in income tax basis

Persons transferring their residence and / or domicile to Malta may claim a step-up in the tax basis of assets situated outside Malta which were acquired prior to their transfer of residence and / or domicile.

The taxpayer may therefore elect that, for Maltese tax purposes, the cost of acquisition of the assets held outside Malta prior to their transfer of residence and / or domicile be the market value of such assets at the time of the transfer, as proved to the satisfaction of the Commissioner of Inland Revenue.

Capital taxes

Malta has no net worth tax or similar taxes on capital.

Withholding Taxes

Malta does not impose any withholding taxes on interest, royalties, dividends and proceeds from liquidation.

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