

Malta

Real Estate Country Summary

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1 Acquisition

1.1 *Asset deal*

1.1.1 Capital Duty

Malta levies a stamp duty which is also known as a 'duty on documents and transfers'. This is payable by the buyer on transfers of immovable property situated in Malta, certain marketable securities, insurance contracts and certain other transactions. Duty on the acquisition of immovable property is levied at 5%. Reduced rates apply when property is acquired as own residence.

1.1.2 Transfer taxes

No other transfer taxes apply upon the acquisition of property. Non resident individuals or companies owned by non residents require an AIP permit to enable them buy immovable property in Malta unless the property is situated in a Special Designated Area.

1.1.3 VAT

The transfer of real estate is an exempt without credit supply and thus not subject to any VAT.

1.2 *Share deal*

1.2.1 Set up

Real estate may be held through a limited liability company.

Companies registered in Malta are required to have a minimum share capital of €1,164.69. Contribution may be made in cash or in any other form of assets including real estate. In the absence of debt to equity ratios, companies may be financed through either debt or equity. Directors may be either individuals or corporate bodies without any residency requirements.

1.2.2 Real estate transfer tax

Duty on documents and transfers is payable by the buyer upon acquisition of shares at the rate of 5% when 75% of the fixed assets of the company is made up of real estate (otherwise the applicable rate is 2%).

Share transfers trigger capital gains by the seller which are brought to charge with the chargeable income of the company and taxed at the corporate rate of 35%.

When the number of shares transferred exceeds 25% of the issued share capital, the gain is computed by deducting the cost of shares from the higher of the market value of such shares or the consideration paid. The market value of the company is computed in accordance with the 'Capital Gains Rules' and take into account, goodwill (based on the last five years profits), the market value of any immovable property held and the market value of investments held by the company.

Capital gains tax on share transfers are applicable to non resident transferors only if the company assets are wholly or principally made up of immovable property situated in Malta, otherwise, the share transfer is exempt any tax.

1.2.3 VAT

The disposal of shares in a company does not fall within the scope of the VAT Act.

1.2.4 Mergers

The Income Tax Act contemplates an exemption from tax which may arise upon a transfer involving the exchange of shares on mergers, demergers, divisions, amalgamations and reorganisations subject to satisfying certain conditions. The cost of acquisition upon a subsequent transfer is deemed to be the cost of acquisition of the original shares.

A similar exemption is available under the Duty on Documents and Transfers Act provided the restructuring takes place within a group of companies which does not own immovable property.

The Companies Act also contemplates cross border mergers.

2. **Operations**

2.1 *Property tax*

No other taxes apply upon the transfer of property other than duty on documents on transfers for buyers and capital gains tax or property transfers tax for the sellers.

2.2 *Income tax*

Capital gains are brought to charge in accordance with the Income Tax Act provisions. Progressive rates that vary between 0% to 35% apply for individuals whilst companies pay a flat rate corporate tax rate of 35% on the taxable gain arising from the transfer of real estate.

Individuals or companies actively dealing in real estate (which may opt out of property transfers tax) may deduct expenses in the production of the income against the profits made upon disposal of real estate.

Sale of real estate not forming part of the trading activity of the company and which is not subject to the property transfer tax, is subject to tax on the capital gain after taking into account the original cost of asset, any improvements made to premises, maintenance allowance, inflation allowance and selling expenses. In this case, 7% provisional tax (calculated on the transfer value) is payable upon the deed and the eventual capital gains calculated at the self assessment stage.

Property transfers tax, which has been introduced in Malta quite recently applies to transfers of immovable property situated in Malta. Transfers of immovable property (which had previously not been acquired through inheritance) are taxed at 12% of transfer value. The tax is collected by the notary upon the deed of transfer and the property tax is full and final. The vendor has the option to opt out of this 12% final withholding tax only in certain specific circumstances. Opt out provisions from property transfers tax are available for persons non resident in Malta or persons who can prove that they are tax resident in another country.

The capital gain arising upon the transfer of immovable property which was derived through an inheritance is also paid on the transfer deed at 12% of the gain (selling price less the value which was declared upon the inheritance).

Individuals transferring their sole ordinary residence are exempt from tax (or property transfer tax) upon capital gains provided the property has been owned and occupied for at least three years and is transferred within one year from vacating the premises. There are other exemptions such as donations and group transfers.

Depreciation

Industrial buildings (including hotels) forming part of the assets held by a company or tradesman may be depreciated for income tax purposes over 50 years. No deduction is given on any other real estate held by the company or on land and buildings held.

2.3 Thin capitalization rules – Transfer pricing regulations / deduction of interest

No thin capitalisation rules apply however general anti avoidance provisions are applicable.

Interest and expenses incurred in the production of income are deductible from the income of the company. No transfer pricing rules or debt to equity ratios apply in Malta, however, transactions should be at an arms length principle.

Advance Revenue Rulings may be obtained from the Inland Revenue Department on the tax treatment of any transaction forming part of international business.

2.4 Repatriation of profits

2.4.1 Interest payment

Malta does not levy any withholding tax on interest payments.

2.4.2 Dividends

No withholding taxes apply upon payment of dividends to either residents or non residents.

2.4.3 Redemption of shares

Redemption of shares fall within the definition of 'transfer of shares' and thus capital gain taxes may apply in the same manner as for transfer of shares.

2.4.4 Upstream loans

Loans may be given to shareholders, related parties or third parties alike as long as these are deemed to be made at arm's length.

2.4.5 Repayment of Loan

Repayment of a loan is not a taxable event since it is deemed to be a capital transaction which is not brought to charge in Malta.

2.4.6 VAT

Both transfer of immovable property and letting of such property are exempt without credit supplies unless the letting of immovable property is made up of any of the following:

- the letting of or the provision of accommodation in any premises which requires a license under the Malta Travel and Tourism Services Act;
- the letting of premises and designated sites for parking vehicles;
- the letting of permanently installed equipment and machinery and the hire of safes;
- the letting of property by a limited liability company to a person registered under article 10 for the purpose of the economic activity of that other person.

In case of the above exceptions, letting will fall within the provisions of the VAT Act and the VAT charged at 18%. Any input VAT may be claimed.

3. Exit

No exit taxes apply upon the transfer of real estate situated in Malta apart from capital gains tax or property tax.

3.1 *Asset deal*

3.1.1 Corporate income tax

The sale of property by companies is subject to tax on any gain made upon the transfer at the company income tax rate of 35% (if sold within five years from purchase) or pay a final property tax of 12% on the sales value of property sold.

Where real estate is used in a business for a period of at least three years is transferred and replaced within one year by an asset used solely for a similar purpose in the business, any capital gains realised on the transfer is not taxed but the cost of acquisition of the new asset is reduced by the said gain (roll-over relief).

The transfer of immovable property between two companies forming part of a group is also exempt from tax, however, the cost of immovable property when transferred to third parties is deemed to be the original cost of asset.

3.1.2 Transfer taxes

No other transfer taxes apply upon sale of immovable property (apart from capital gains tax or property transfers tax).

3.2 *Share deal*

3.2.1 Corporate income tax

Unless otherwise provided for in a double taxation agreement, share transfers made by shareholders resident in another country, is taxable in Malta. This applies when the activities of the company in which shares are being transferred are wholly or principally made up of immovable property situated in Malta as discussed above. Otherwise, share transfers made by non residents are exempt from income tax.

3.2.2 Transfer taxes

Apart from duty on documents and transfers which is due by buyers and the income tax on the chargeable gain which is brought to charge on the sellers, no other taxes apply.

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