

The corporate income tax system in Malta

The Corporate Income Tax System in Malta – an overview

- ❖ Maltese companies are subject to tax at 35%.
- ❖ Tax is ultimately borne by shareholder depending on his tax status, since Malta's tax system adopts a full imputation system.
- ❖ Effective system for relief of double taxation.
- ❖ Compliant with EU law.

Maltese corporate vehicles

- ❖ Taxed corporate vehicles:
 - ❖ Limited liability companies
 - ❖ Plc (public)
 - ❖ Ltd (private)
 - ❖ Partnership en commandite the capital of which is divided into shares.
- ❖ Taxed at 35%.
- ❖ Foreign branches in Malta treated as local companies for tax purposes.
- ❖ Annual audit/accounts to be IFRS compliant.
- ❖ Share capital may be effected in any foreign convertible currency (company's reporting currency).
- ❖ Tax is payable in the company's reporting currency.
- ❖ Any applicable refund of tax is made in the company's reporting currency.

Full imputation system

- ❖ Definition: shareholders receive full credit for any tax paid by the company on profits distributed as dividends, thereby avoiding double taxation.
- ❖ Excess imputation tax credits are refundable where the shareholder is liable to tax in Malta on the dividend at a rate which is lower than the company rate of tax (i.e. 35%).
- ❖ Tax due by company (Advanced Company Income Tax) on the earlier of:
 - ❖ 18 months from year end (subject to certain conditions), or
 - ❖ within stipulated time frame following the payment of a dividend.

Full Imputation System - Example

Taxation of Company XYZ Ltd.

	€
Chargeable Income	100
Tax @ 35%	35
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Profit after taxation available for distribution	65

Taxation of the shareholder receiving dividend

	€
Gross Dividend	100
Tax deducted by XYZ Ltd.	35
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Net dividend	65

Malta Tax Accounting

- ❖ Profits are allocated to one of the following tax accounts depending on their source and nature:
 - ❖ Foreign Income Account (FIA)
 - ❖ Maltese Taxed Account (MTA)
 - ❖ Final Tax Account (FTA)
 - ❖ Immovable Property Account (IPA)
 - ❖ Untaxed Account (UA)

Foreign Income Account (FIA)

- ❖ Profits resulting from royalties and similar income arising outside Malta and from dividends, capital gains, interest, rents, income or gains derived from a Participating Holding (PH) or from the disposal of such holding, and any other income derived from investments situated outside Malta, which are liable to tax in Malta and are receivable by a company registered in Malta.
- ❖ Profits resulting from investments, assets or liabilities situated outside Malta to a company either licensed as a bank in Malta or in possession of a licence granted under the provisions of the Financial Institutions Act.
- ❖ All profits or gains of a company registered in Malta, which are liable to tax in Malta and attributable to a PE (including a branch) situated outside Malta.
- ❖ Profits resulting from dividends paid out of the foreign income account of another company registered in Malta.

Maltese Taxed Account (MTA)

- ❖ Any profits of a company that are not included in the foreign income account and:
 - ❖ which have suffered tax;
(such as trading profits which have been subject to tax in Malta)
 - or
 - ❖ which have been exempt from tax under the provisions of any Maltese law and where the distribution of such profits by the company is also exempt from tax in the hands of the shareholders. This requirement shall cease to apply with effect from year of assessment 2008.

Final Tax Account (FTA)

- ❖ Profits subjected to final tax and derived from sale of immovable property situated in Malta taxed at 12% of sales value.
- ❖ Certain Business Promotion Act profits.
- ❖ Any distributions from this account:
 - ❖ do not carry imputation tax credits,
 - ❖ are not subject to tax in the hands of the recipient, and
 - ❖ do not need to be disclosed in the relevant tax return.

Immovable Property Account (IPA)

- ❖ Limited to immovable property situated in Malta.
- ❖ Profits/gains derived from alienation of immovable property or rights thereon.
- ❖ Profits derived from:
 - ❖ rents and premia
 - ❖ accommodation and timeshare
 - ❖ notional rental income in respect of owner-occupied immovable property situated in Malta
 - ❖ construction and project management
 - ❖ other prescribed activities
- ❖ Allocation of profits for notional rental income is based upon space occupied by the company in premises situated in Malta and owned by the said company, amongst other factors.
- ❖ Profits allocated to this account are not eligible for refund of tax when distributed to shareholders.

Untaxed Account (UA)

- ❖ Total distributable profits (or losses) – profits (or losses) allocated to other tax accounts = untaxed account.
- ❖ Includes income or gains which were exempt from tax.

Effective System for Relief of Double Taxation

- ❖ Unilateral relief, including credit system for relief of underlying tax.
- ❖ OECD-based Tax Treaty Network.
- ❖ EU Parent-Subsidiary Directive.
- ❖ EU Interest & Royalties Directive.
- ❖ Participation Exemption.

Unilateral Relief

- ❖ Allowed in cases where foreign tax is suffered on income received from a country with which Malta has no tax treaty.
- ❖ The foreign tax suffered is allowed as a credit against the tax chargeable in Malta on the gross chargeable income.
- ❖ Credit shall not exceed the total tax liability in Malta on the foreign sourced income.
- ❖ When claiming unilateral relief, the taxpayer must provide evidence to the satisfaction of the Commissioner:
 - ❖ that the income arose overseas
 - ❖ that the income suffered foreign tax; and
 - ❖ the amount of foreign tax suffered.

Double Taxation Treaties

DTTs in Force in 2007:-

Albania Australia Austria Barbados Belgium Bulgaria Canada China, P.R. Croatia Cyprus Czech Republic Denmark	Egypt Estonia Finland France Germany Hungary Iceland India Italy Korea (Rep. Of) Kuwait Latvia	Lebanon Libya Lithuania Luxembourg Malaysia Morocco Netherlands Norway Pakistan Poland Portugal Romania	San Marino Slovakia Slovenia South Africa Spain Sweden Switzerland* Syrian Arab Republic Tunisia United Kingdom United States of America*
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*Agreement limited to profits derived from operation of ships or aircraft in international traffic

Tax Treaties in the pipeline

Thailand

Turkey

Russia*

Ukraine

Singapore*

Switzerland

France^

Ireland

Greece*

Jordan

United Arab Emirates*

Serbia & Montenegro

* Signed but not in force

^ Protocol amending existing DTT

Participating Holding (PH)

- ❖ A PH arises where the Malta Company:
 - ❖ Holds > 10% of the equity shares of a foreign company; or
 - ❖ Holds at least 1 equity share in said foreign company and has an option over the balance; or
 - ❖ Holds at least 1 equity share in said foreign company and has a right of first refusal over the balance; or
 - ❖ Holds at least 1 equity share in said foreign company and has the power to appoint a director; or
 - ❖ Has an equity shareholding in said foreign company of at least €1.165m which has been held for an uninterrupted period of at least 183 days; or
 - ❖ Holds equity shares in said foreign company in furtherance of its business provided that it is not held as trading stock.

- ❖ Equity shares' are shares which confer upon the holder the entitlement to:
 - ❖ dividends upon distribution;
 - ❖ votes at a meeting;
 - ❖ surplus assets upon a winding up.

Participating Holding (PH) - Participation Exemption

- ❖ At the option of the taxpayer, dividends and capital gains derived from a PH are exempt from Malta tax.
- ❖ If the PH is acquired after 01/01/2007, the foreign Company must:
 - ❖ be resident or incorporated in an EU country or territory; OR
 - ❖ be subject to any foreign tax of at least 15%; OR
 - ❖ not have more than 50% of its income derived from passive interest or royalties.

Where none of the conditions set out above are satisfied then both of the following two conditions must be satisfied for the income to be eligible for the participation exemption:

- ❖ the equity holding by the company registered in Malta in the body of persons not resident in Malta is not a portfolio investment and for this purpose the holding of shares by a company registered in Malta in a body of persons not resident in Malta which derives more than 50% of its income from portfolio investments shall be deemed to be a portfolio investment; AND
- ❖ the body of persons not resident in Malta or its passive interest or royalties have been subject to any foreign tax at a rate which is not less than 5%.

Compliant with EU law - Outline of 2007 Reform

- ❖ Extension of Malta tax refund system to dividends derived by all persons from all sources with the exception of profits derived from immovable property situated in Malta.
- ❖ Phasing out of the International Trading Company regime.
- ❖ Extension of Malta tax refund system to the shareholders of companies having a Malta branch.
- ❖ Introduction of Participation Exemption.

Tax Rulings

- ❖ Procedure for formal rulings exists
 - ❖ Provide certainty on the legal application to a specific transaction;
 - ❖ Binding on Inland Revenue for 5 years;
 - ❖ Survives a change in law for 2 years;
 - ❖ Issued within 30 days of application.

- ❖ Informal system of Revenue guidance is also possible
 - ❖ In the form of a letter of guidance from Revenue;
 - ❖ Not expressly regulated in terms of law;
 - ❖ Creates a legitimate expectation on which the taxpayer may rely;
 - ❖ Considered by the Inland Revenue Department as binding.

Malta - other general points

- ❖ EU Member since 1st May 2004.
- ❖ Local currency as from 1st January 2008 – Euro (€).
- ❖ Stability.
- ❖ High quality workforce, multilingual.
- ❖ Convenient European Time Zone (GMT +1).
- ❖ Availability of professional services.
- ❖ Accessibility / flexibility of Regulator.

Malta - key company law points

- ❖ Basis of Company/partnership and contract law.
- ❖ Choice of accounting year-end.
- ❖ Variable share capital companies (SICAVS).
- ❖ Defined capital reduction rules.
- ❖ Relative ease of incorporation for non-regulated entities.
- ❖ Low minimum capital requirements.
- ❖ Low registration and maintenance costs.
- ❖ Audited accounts must be prepared in accordance with IFRS and filed for public inspection.

Malta - other key tax points to note

- ❖ No withholding taxes on interest and royalties to non-residents.
- ❖ No withholding tax on dividend payments.
- ❖ Group relief system.
- ❖ Possible to migrate companies to and from Malta.
- ❖ No capital duties or wealth taxes – maximum company registration fees €1,753.