Tax on corporate transactions in Malta: overview

Resource type: **Article**

Status: **Law stated as at 01-Jun-2013**

Jurisdiction: **Malta**

A Q&A guide to tax on corporate transactions in Malta.

The Q&A gives a high level overview of tax in Malta and looks at key practical issues including, for example: the main taxes, reliefs and structures used in share and asset sales, dividends, mergers, joint ventures, reorganisations, share buybacks, private equity deals and restructuring and insolvency.

To compare answers across multiple jurisdictions, visit the Tax on corporate transactions *Country Q&A tool*.

The Q&A is part of the PLC multi-jurisdictional guide to tax on corporate transactions. For a full list of jurisdictional Q&As visit *www.practicallaw.com/taxontransactions-mjg*.

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Tax authorities

1. What are the main authorities responsible for enforcing taxes on corporate transactions in your jurisdiction?

The main authority responsible for the enforcement of taxes on corporate transactions is the Commissioner for Revenue (Commissioner) who is responsible for enforcing the payment of corporate and personal taxation, stamp duty, Value Added Tax (VAT) and customs duty. The

Commissioner is assisted by the Director General (Inland Revenue), the Director General (VAT) and the Director General (Customs) who head their respective departments and have specific responsibilities which are delegated to them by the Commissioner.

Pre-completion clearances and guidance

2. Is it possible to apply for tax clearances or obtain guidance from the tax authorities before completing a corporate transaction?

An Advance Revenue Ruling can be obtained by a company before the company enters into a transaction in order to obtain clearance and guidance, and ensure that the proposed transaction does not constitute a scheme set up with the main objective of avoiding tax. An Advance Revenue Ruling can also be obtained with respect to:

- Certain transactions involving financial instruments.
- The definition of a participating holding (in order to claim the participation exemption).
- Any transaction involving international business.

Subject to certain conditions, an Advance Revenue Ruling can be binding for a specific period of time.

It is usual practice in Malta to request an opinion from the Commissioner before completing a corporate transaction. Official guidance is not always available and the procedure allows the Maltese tax treatment to be clarified in writing by the tax authorities. The Commissioner's opinion is not a statutory binding ruling, but it is persuasive concerning the tax interpretation of the transaction.

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Main taxes on corporate transactions

Transfer taxes and notaries' fees

3. What are the main transfer taxes and/or notaries' fees potentially payable on corporate transactions?

Income tax

Key characteristics. Income tax is charged on the capital gains and income accruing or derived from:

- Gains or profits from any trade or business, including the profit arising from the sale by any person of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit making undertaking or scheme.
- Dividends, premiums, interest or discounts.
- Rents, royalties, premiums and any other profits arising from property.

Income tax is charged whether the capital gain/income is accrued in, or derived from, Malta or elsewhere.

Income tax on capital gains derived by a person from certain capital assets is charged on the transfer of:

- Usufruct or ownership, or cession of any rights over immovable property and marketable securities (including shares).
- Ownership or usufruct of, or from the assignment or cession of any rights over, any securities, business, goodwill, business permits, copyright, patents, trade marks and trade names.
- Beneficial interest in a trust.

Special rules apply in the case of transfers of immovable property in Malta.

Triggering event. The tax is payable upon the actual transfer of the assets.

The tax can also be charged where:

- There is a transfer of shares in a company which holds immovable property.
- There is a transfer of immovable property between two companies.

Though these transfers are usually exempt from tax as a result of the intra-group exemption, if the companies do not remain part of the group for at least six years after the transfer, the transfer will become subject to tax.

Furthermore, tax can also become payable in the event of value shifting between shareholders of a property company. Value shifting arises where the market value of shares held by a person (the transferor) in a company has been reduced as a result of a change in the issued share capital of that company, or a change in voting rights attached to the shares, and that value passes into other shares in or rights over

the company held by any other person (the transferee). In this instance, the transferor will be deemed to have made a transfer of that reduced value to the transferee (value shift).

Liable party/parties. Income tax payable on the transfer of assets is paid on the gain made on the transfer and is payable by the transferor.

Applicable rate(s). The corporate rate of income tax in Malta is 35%. Recipients of dividend income may become entitled to refunds of company tax paid, depending on the business activity from which the profit has been generated. The quantum of the refund varies according to the nature of the profits being distributed; and whether any double tax relief has been claimed by the distributing company in respect of the profits distributed. In certain circumstances, these refunds reduce the effective tax burden on distributed profits to between 0% and 11.7%.

Duty on documents and transfers

Key characteristics. The Duty on Documents and Transfers Act (DDTA) provides that on every transfer of any immovable property (or a real right over immovable property) a duty is charged at a rate of EUR5 for every EUR100 of the higher of:

- The consideration paid for the transfer.
- The market value of the transfer.

Certain transfers of marketable securities (including any share, stock, debenture, bond and any interest in any company or corporation and any document representing the same) are also subject to the duty, which is charged at the rate of EUR2 on every EUR100 (or part of EUR100) of the higher of:

- The consideration received for the transfer.
- The market value of the marketable security.

Subject to certain conditions, where it results that 75% or more of the assets of the company whose marketable securities are being transferred consists of immovable property (or any right over immovable property), the tax is charged in the same way but at an increased rate of EUR5 for every EUR100.

Triggering event. Duty is charged on the following events:

- On the execution of certain documents (giving rise to any of the chargeable transactions listed above) in Malta.
- On the use of foreign documents in Malta, if those foreign documents would have been so chargeable under the provisions of the DDTA had they been executed in Malta.

The value shifting rules also apply as they do for income tax.

Liable party/parties. In practice, the duty is normally paid by the purchaser. However the DDTA states that the transferor in a transfer *inter vivos* and the transferee (and where the transfer is effected by public deed, the notary publishing the relative deed) are jointly and severally liable to pay the duty chargeable on that transfer or deed.

Applicable rate(s). The following rates apply:

- A transfer of immovable property (or a real right over immovable property) is charged at a rate of EUR5 on every EUR100 of either:
  - the consideration paid for the transfer;
  - the market value of the transfer (whichever amount is the higher charged against).
- A transfer of market securities (where less than 75% of the assets of the company whose marketable securities are being transferred consists of immovable property) is charged at a rate of EUR2 on every EUR100 of either:
  - the consideration paid for the transfer;
  - the market value of the transfer (whichever amount is the higher charged against).
- A transfer of market securities (where 75% or more of the assets of the company whose marketable securities are being transferred consists of immovable property) is charged at a higher rate of EUR5 on every EUR100 of either:
  - the consideration paid for the transfer;
  - the market value of the transfer (whichever amount is the higher charged against).

Notaries' fees

Corporate transactions may also give rise to notarial fees. The quantum of these fees varies and depends on the nature of the act or document required. Notaries' fees can be charged on:

- A transfer of immovable property.
- A transfer of shares.
- Registration, reduction or cancellation of hypothecs.
- Certain other transactions.

The Notarial Profession and Notarial Archives Act (Cap. 55 of the laws of Malta) specifically provides that the notary is entitled to receive a fee from the parties in respect of every act, copy, extract or declaration, as well as in respect of any other professional service as provided for under the Act. Reimbursement of expenses and other ancillary charges can also be claimed.

The Schedule to the Act provides details of the fixed fees and ancillary charges that must be paid to the notary under the Act. Certain fees are fixed, whilst other fees are proportionate to the transaction's value. However, for certain documents (for example, for any act of transfer, under any title, of any immovable property) fees proportionate to the value apply and will be charged accordingly:

- For the first sum not exceeding EUR10,000: 1% of the transaction's value.
- For any additional sum not exceeding EUR500,000: 0.5 % of the transaction's value.
- For any additional sum over EUR500,000: 0.25% of the transaction's value.

Registration fees

Registration fees are generally proportionate to either the value of the transaction, or its duration. For example, for privileges and hypothecs, on every note of registration, or renewal of registration, where the amount of debt does not exceed EUR46,587.47, the registration fee payable amounts to EUR23.29. For every EUR2,329.37 (or part of EUR2,329.37) over and above the initial EUR46,587.47, an additional registration fee of EUR2.33 is due.

Corporate and capital gains taxes

4. What are the main corporate and/or capital gains taxes potentially payable on corporate transactions?

Income tax

Income tax is potentially payable on corporate transactions (*see Question 3, Income tax*).

Duty on documents and transfers

Duty on documents and transfers (or stamp duty) is payable on corporate transactions depending on the nature of the transaction. The duty is charged on transfers of immovable property and marketable securities (including shares in a company) (*see Question 3, Duty on documents and transfers*).

Value added and sales taxes

5. What are the main value added and/or sales taxes potentially payable on corporate transactions?

Value added tax (VAT)

Key characteristics. The VAT Act (Chapter 406 of the laws of Malta) charges a value added tax on:

- Every supply of goods or services that takes place in Malta for consideration by a taxable person acting as such.
- Every intra-community acquisition made for consideration (subject to certain criteria).
- Every importation that takes place in Malta.

A "taxable person" means a person who carries on an economic activity, whatever the purpose or result of that activity, including any trade or business or the exploitation of tangible or intangible property for the purpose of obtaining income from it on a continuing basis.

Triggering event. The following events trigger VAT.

Transfer of goods to another member state. The transfer by a person of assets of his economic activity is treated as a taxable supply of goods or services unless all of the following apply to the transfer:

- The assets are transferred to a person registered under Article 10 of the VAT Act, to whom he transfers his economic activity (or part of that economic activity which is capable of separate operation) as a going concern.
- The assets are to be used by the transferee in carrying on the same kind of activity, whether or not as part of an existing economic activity, as that carried on by the transferor.
- The transfer is recorded in the records of the transferor indicating the registration number of the transferee.

Transfer of a going concern. The transfer by a taxable person of goods forming part of his economic activity to another member state is treated as an intra-community supply of those goods for consideration.

Goods are deemed to be transferred by a taxable person to another member state if they are transported by him, or on his behalf, from Malta to another member state for the purposes of his economic activity, other than for ancillary purposes relating to that person's normal economic activity (for example, installation or assembly or for other temporary uses).

Liable party/parties. The following parties are liable to pay VAT:

- The payment of VAT on a taxable supply is made by the person making the supply.
- The payment of VAT on a taxable acquisition is made by the person making the acquisition.
- The payment of VAT on a taxable importation is made by the importer.

The payment of VAT on a taxable supply made by a person who is not established in Malta, and who is not registered under Article 10 to a person established in Malta, is the a liability of the person to whom the supply is made where the place of supply under the VAT rules is deemed to be Malta.

Applicable rate(s). The VAT on a taxable supply is usually charged at a rate of 18% of the taxable value of the supply. Certain specific supplies are charged at a rate of between 5% and 18%. A transfer of goods to another member state and a transfer of a going concern will normally be charged at a rate of 18%.

Other taxes on corporate transactions

6. Are any other taxes potentially payable on corporate transactions?

Customs duty

Key characteristics. Import duty and taxes are due when importing goods into Malta from outside of the EU.

Triggering event. The importation of goods into Malta triggers the tax.

Liable party/parties. In general, import duty is payable by the importer.

Applicable rate(s). The import duty and taxes payable are calculated on the value of the imported goods plus the cost of importing them (shipping and insurance).

Import duty rates vary depending on the type of goods. Many goods are duty free. Relief from duty and VAT can apply in special cases. Also, in some cases additional duties may be charged, depending of the country of manufacture of the goods.

Taxes applicable to foreign companies

7. In what circumstances will the taxes identified in *Questions 3* to *6* be applicable to foreign companies (in other words, what "presence" is required to give rise to tax liability)?

Income tax

Under Maltese tax law, persons (including legal persons, such as companies) ordinarily resident and domiciled in Malta are taxed on a worldwide basis. Persons who are resident but not domiciled in Malta (or vice versa) are only taxed on:

- Income arising in Malta.

- Any other foreign source income (excluding capital gains) which is remitted to Malta.

However, these persons are not taxed on any capital gains arising outside Malta, even where those gains may have been remitted to Malta. Persons who are not resident and not domiciled in Malta are only taxed on their income arising in Malta.

Bodies of persons (which include companies) that are incorporated in Malta are considered to be both resident and domiciled in Malta. Bodies of persons not incorporated in Malta can still be considered to be resident in Malta (but not domiciled) if the control and management of their business are exercised in Malta.

Any income or gain derived from the transfer of any asset situated in Malta where that gain or profit gives rise to capital gains (for example, a transfer of shares or immovable property (*see Question 3, Income tax*)) is deemed to arise in Malta. Accordingly, in the case of a transfer of immovable property situated in Malta, or shares in a company incorporated in Malta, that gain or profit will be taxable in the hands of the transferor (irrespective of the transferor's residence or domicile). In accordance with the *lex situs* principle, the main connecting factor in relation to the income tax payable on capital gains is the location of the property being transferred.

However, there is an exemption granted on any gains or profits accruing to or derived by any person not resident in Malta (*see Question 12, Advantages*).

Duty on documents and transfers

Duty is charged upon:

- The execution of certain documents (giving rise to any of the chargeable transactions listed above) in Malta.
- The use of foreign documents in Malta, if those foreign documents would have been chargeable under the provisions of the DDTA had they been executed in Malta.

Therefore, the main connecting factor for the duty to be charged is the "use" of the document in Malta. However, the DDTA also refers to the residence factor when charging duty on transfers of marketable securities (including shares in a company (*see Question 3, Duty on documents and transfers*)). For example, subject to certain exemptions, an *inter vivos* transfer of any foreign marketable security made by or to any person resident in Malta, and any transfer of any other marketable security which is made in Malta, are subject to the duty. Furthermore, the DDTA also refers to the basis of residence when exempting certain transfers from the payment of the duty.

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Dividends

8. Is there a requirement to withhold tax on dividends or other distributions?

Under Maltese law, no withholding tax is levied on dividends. Malta adopts the full imputation system of taxation where, upon a dividend distribution to the shareholder, the tax paid by a company (35%) is imputed to the shareholder as a tax credit. This will result in tax refunds payable to shareholders in the case that the tax due by them is less than the tax paid by the company. This system ensures that no economic double taxation is suffered by shareholders in receipt of a dividend.

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Share acquisitions and disposals

Taxes potentially payable

9. What taxes are potentially payable on a share acquisition/share disposal?

Income tax

Income tax is potentially payable on corporate transactions (*see Question 3, Income tax*).

Duty on documents and transfers

Duty on documents and transfers is payable on corporate transactions depending on the nature of the transaction. The duty is charged on transfers of immovable property and transfers of marketable securities (including shares in a company) (*see Question 3, Duty on documents and transfers*).

VAT

As mentioned in our reply to question 5, A transfer of goods to another member state and a transfer of a going concern may bring about a VAT charge on the supply (*see Question 5, Value added tax (VAT)*).

Exemptions and reliefs

10. Are any exemptions or reliefs available to the liable party?

The following is a list of exemptions and reliefs available to the acquiring and disposing party in share transfer transaction. See *Question 11* and *Question 12* for further details of the exemptions and reliefs available, which are:

- Exemption for non-resident persons.

- Participation exemption.
- Intra-group company provisions.
- Exemption upon an exchange of shares.
- Stamp duty exemption for foreign owned companies or companies with business interests outside Malta.

Tax advantages/disadvantages for the buyer

11. Please set out the tax advantages and disadvantages of a share acquisition for the buyer.

Advantages

Income tax. The following advantages apply:

- **Step-up in cost base.** If none of the assets owned by the company on the day of the merger were owned by any merging company which was domiciled and/or resident in Malta at any time prior to the date of the merger, and that company has made the required election to the Commissioner, then all assets which are situated outside Malta are deemed to be assets acquired on the date of the merger, at a cost which is proved to the satisfaction of the Commissioner to be the market value.
- **Wear and tear deductions.** Subject to certain anti-abuse considerations and provided that the assets continue to be used or employed in the production of the company's income following the merger, wear and tear tax deductions on assets may be available.
- **Use of tax losses.** Subject to certain anti-abuse considerations and provided that the company continues to be used or employed following the merger, any tax losses available may be utilised.

Stamp duty. The following advantages apply:

- **Stamp duty exemption for foreign owned companies or companies with business interests outside Malta.** Acquisitions or transfers of marketable securities by certain persons (as defined in the DDTA) are exempt. These persons include:
    - companies which have the majority of their business interests outside Malta;
    - companies beneficially owned and controlled by persons not resident in Malta.

- **Intra-group company provisions.** Subject to certain restrictions in the case of companies owning immovable property in Malta, no duty is chargeable upon any restructuring of holdings through mergers, demergers, amalgamations and reorganisations within a group of companies (essentially including companies which are controlled and beneficially owned (directly or indirectly) by more than 50% by the same shareholders).

VAT. Certain transactions (including negotiations in shares, interests in companies or associations, debentures and other securities) are exempt from VAT (though the VAT credit cannot be claimed). However, certain interests in immovable property which give the interest holder the right to use, own or possess the immovable property are not exempt.

Disadvantages

Income tax. The following disadvantages apply:

- **De-grouping provisions.** An acquisition may be exempt from tax under the group company provisions. If the company ceases to be a member of the original group before the lapse of six years from the date of the acquisition, and on the date of the acquisition the company owned (directly or indirectly) any immovable property situated in Malta (or any real rights over that property), it will be treated as if, immediately after its acquisition of the shares, it had transferred and immediately re-acquired the shares at that time, therefore incurring any capital gains and stamp duty (as may be applicable).

- **Restricted deduction of interest expense.** The deductibility of interest against any chargeable income earned by the acquiring company is dependent on whether the interest was payable on capital employed in acquiring that income. In a share purchase deal, interest is solely deductible when profits emanating from those shares are distributed to the company. Tax inefficiencies may be suffered due to the non-utilisation of interest deductions.

- **Other considerations.** Any change in the shareholding of a company may be scrutinised by the authorities to ensure that the transaction was not part of a scheme entered into solely or mainly for the purpose of obtaining the benefit of any loss (or of the balance of any loss) incurred by the company, or of any wear and tear or initial allowances (or of the balance of any such allowances due) so as to avoid liability on the part of that company or of any other person.

Stamp duty. There are property owning companies provisions which apply. The acquisition of a company which has 75% or more of its assets (excluding all current assets other than immovable property) consisting of any immovable property or any right over immovable property will be charged stamp duty at one of the following rates:

- EUR5 for every EUR100 (or part of EUR100) of the consideration paid for the acquisition.

- EUR5 for every EUR100 (or part of EUR100) of the market value of the acquisition.

Whichever rate is the higher will be applied.

Tax advantages/disadvantages for the seller

12. Please set out the tax advantages and disadvantages of a share disposal for the seller.

Advantages

Income tax. The following advantages apply:

- **Exemption for non-resident persons.** Any gains or profits accruing to, or derived by, any person (natural or legal) not resident in Malta on a transfer of any shares or securities in a company (which for the avoidance of doubt includes redemption, liquidation or cancellation) which is not a company that owns (directly or indirectly) any immovable property situated in Malta (or any real rights in immovable property situated in Malta) are exempt from tax. The exemption applies provided that the beneficial owner of the gain is a person not resident in Malta and that person is not owned and controlled by (directly or indirectly) nor acts on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta. It is further provided that this exemption will not apply in respect of any year in which the relevant person is engaged in trade or business in Malta through a permanent establishment situated in Malta.

- **Participation exemption.** Any income or gains derived by a company registered in Malta from a participating holding (as defined in the Income Tax Act) or from the transfer of such holding is exempt from tax in Malta. It must be noted that a participating holding excludes a holding in a company which owns (directly or indirectly) any immovable property situated in Malta or any real rights in immovable property situated in Malta.

- **Intra-group company provisions.** Where shares in a company are transferred from one company to another company, and those companies are deemed to be a group of companies that are controlled and beneficially owned (directly or indirectly) by more than 50% of the same shareholders, it is deemed that no loss or gain has arisen from the transfer.

  Where the shares transferred are shares in a property company, the group company exemption only applies where both:

- the individual (direct or indirect) beneficial owners of the companies are the same;
- each individual beneficial owner holds (directly or indirectly) substantially the same percentage interest in the nominal share capital and voting rights in each of the companies.

- **Exchange of shares.** Where a transfer involving the exchange of shares on restructuring upon mergers, demergers, divisions, amalgamations and reorganisation takes place, it is deemed that no loss or gain has arisen from that transfer. In addition, the cost of acquisition upon a subsequent transfer of the original shares or the new shares will be deemed to be the cost of acquisition of the original shares.

Stamp duty. There is an exemption for foreign owned companies or companies with business interests outside Malta. Disposals or transfers of marketable securities by certain persons (as defined in the DDTA) are exempt. These persons include:

- Companies which have the majority of their business interests outside Malta.
- Companies beneficially owned and controlled by persons not resident in Malta.

Disadvantages

Income tax. The following disadvantages apply:

- **Property owning companies provisions.** Capital gains derived by a person from the transfer of any securities in a company which owns immovable property situated in Malta (or any real rights in immovable property situated in Malta), or a company which holds (directly or indirectly) shares or other interests in any entity or person which owns immovable property situated in Malta (or any real rights in immovable property situated in Malta) where 5% or more of the total value of the shares or other interests so held is attributable to that immovable property or rights are charged to tax.
- **Value shifting provisions.** The implications of the value shift arise when the transaction requires a fresh issue of shares in the relevant company and rather than being relevant solely to the seller, may be relevant to those shareholders who remain shareholders of the relevant company following the transaction. It is provided that these considerations will only apply where the relevant company owns (directly or indirectly) any immovable property situated in Malta or any real rights in immovable property situated in Malta.

Stamp duty. As a result of a value shift, a person may be deemed to have acquired shares in a company in Malta. That acquisition is chargeable at EUR5 for every EUR100 (or part of EUR100) of either:

- The amount or value of the consideration deemed to be paid.
- The market value of the shares deemed to be acquired.

The higher amount is charged.

This provision will only apply where the company has 75% or more of its assets (excluding all current assets other than immovable property) consisting of any immovable property, or any right over immovable property.

Transaction structures to minimise the tax burden

13. What transaction structures (if any) are commonly used to minimise the tax burden?

Maltese holding company

A special purpose vehicle in the form of a limited liability company is the traditional structure used for M&A transactions. Companies are considered to be resident and domiciled in Malta upon registration and are taxed on their worldwide income at a rate of 35%. No further taxes (by way of withholding tax or otherwise) are levied on shareholders on the distribution of dividends. In addition, upon the receipt of dividends, shareholders may be entitled to claim a tax refund of the tax paid in Malta. The refund can be paid at a rate of 5/7ths, 6/7ths or 2/3rds, depending on:

- The type of income earned.
- The structure of the income earning activity of the company paying the dividend.

Companies are also allowed to claim:

- Credit on foreign taxes incurred under a double tax treaty.
- Unilateral relief.
- A deemed flat rate foreign tax credit.

In addition, Maltese tax law allows for a participation exemption on dividend income and certain capital gains earned from qualifying equity shareholdings.

Registration of a branch or a place of business in Malta

A company incorporated in a foreign jurisdiction but deemed to be resident in Malta (on the basis that its management and control are carried out in Malta) is taxed on Malta source income and capital gains and on income remitted to Malta. Capital gains arising outside Malta are not considered for income tax purposes. Structuring M&A transactions through a branch or a place of business in Malta can be tax effective if advantage is taken of Malta's double tax treaty network. In addition, on a distribution of dividends by the company of which the branch forms part, the company's shareholders can claim a tax refund on the tax paid in Malta on the income attributable to the branch.

Double-tier structure

A possible advantage may be gained by setting up the Maltese activity using a double-tier (double company) structure where one Maltese registered company will hold the entire share capital of the other company in Malta. The advantages relating to this structure are twofold:

- **Management of funds.** By including another holding company, the funds received from the dividend distribution and refund on Malta tax can be received by this holding company. Once the refunds on Maltese tax are received, this will allow the Malta holding company to either re-distribute dividends to its shareholders (outside of Malta) or choose an optimal manner to re-invest these funds.

- **Change of source of income.** Whilst the dividends received may be a widely recognised form of income and benefits from double tax treaties may be claimed with regards to withholding taxes, the treatment of the Malta tax refunds may be somewhat more complex. The double-tier structure will eliminate this level of uncertainty by altering the source of the income received by the shareholder into one single dividend distribution from the Maltese holding company.

Debt versus equity considerations

The main difference between funding an acquisition transaction by debt or equity lies in considering what amounts can be tax deductable. The Income Tax Act only allows amounts to be deducted from chargeable income if these were wholly and exclusively incurred in the production of the income. Equity funded transactions do not result in any payments being made that may then be available as deductions against income.

In the case of a share purchase transaction, the income earned following the transaction will be in the form of dividends. If the transaction is funded by interest bearing loans, that interest expense can only be attributed to the amount of income earned from the dividends received from the acquired shares.

In the case of an asset purchase, it is likely that such assets will be employed in acquiring the income of the company and as such any interest borne will be deductible against most of the income earned by the company.

However, equity financed transactions allow the shareholders of a company in Malta to claim refunds of the tax paid in Malta at the company level (*see above, Maltese holding company*).

Anti-abuse considerations

Malta does not have any specific transfer pricing, thin capitalisation or controlled foreign company legislation. A general provision against the use of schemes for the sole purpose of tax avoidance is always considered by the Commissioner when scrutinising any transaction.

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Asset acquisitions and disposals

Taxes potentially payable

14. What taxes are potentially payable on an asset acquisition/asset disposal?

See *Question 9*.

Exemptions and reliefs

15. Are any exemptions or reliefs available to the liable party?

The following reliefs (which are relevant to *Question 16* and *Question 17*) are available:

- Participation exemption.
- Intra-group company provisions.

Tax advantages/disadvantages for the buyer

16. Please set out the tax advantages and disadvantages of an asset acquisition for the buyer.

Advantages

The following income tax provisions apply:

- **Step-up in base cost.** All assets brought into Malta which were situated outside Malta are deemed (following an election to the Commissioner) to be assets acquired at a cost which is proved to the satisfaction of the Commissioner to be the market value which it had on the date of the acquisition or merger.

- **Deductibility of expenses.** Malta's laws only allow outgoings and expenses wholly and exclusively incurred in the production of the income as deductable expenses. This is particularly important if the asset acquisition was financed by an interest bearing loan, as the interest expense can only be deducted where the Commissioner is satisfied that the interest was payable on capital employed in acquiring the income.
- **Wear and tear deductions.** Deductions for wear and tear arising out of the use or employment of the assets in the production of the income can be claimed on the assets acquired (including certain intangible assets).

Disadvantages

VAT will be charged if the transaction is considered to be a chargeable transaction. This is particularly relevant where the assets are transferred to a person not engaged in any economic activity (meaning that they are not registered for VAT purposes in Malta). VAT may be charged and any VAT incurred will be a non-recoverable expense to the company.

Tax advantages/disadvantages for the seller

17. Please set out the tax advantages and disadvantages of an asset disposal for the seller.

Advantages

The following income tax provisions apply:

- **Malta tax refunds.** The disposal of a capital asset (that is, securities, business, goodwill, business permits, copyright, patents, trade marks and trade names) will make the selling company liable to income tax in Malta on the value of the gains earned from the disposal. However, upon the distribution of those gains, the shareholders of the company may be entitled to claim a refund of the tax paid in Malta (the refund can be paid at a rate of 5/7ths, 6/7ths or 2/3rds, depending on a number of factors, including whether or not any foreign tax has been paid).
- **Participation exemption.** Any income or gains derived by a company registered in Malta from a disposal of shares in a participating holding (defined in the Income Tax Act) is exempt from tax in Malta. It must be noted that a company which holds immovable property in Malta may not qualify as a participating holding.

- **Intra- group company provisions.** Where an asset is transferred from one company to another company and those companies are deemed to be a group of companies (or are controlled and beneficially owned directly or indirectly by more than 50% of the same shareholders), it is deemed that no loss or gain has arisen from the transfer.
- **Balancing statement.** On the disposal of an asset upon which deductions for wear and tear would have been claimed, the transferring person is required to produce a balancing statement of any gains or losses made on the sale of those assets. Any shortage received from the sales proceeds may be deducted as an allowance against the chargeable income of the company.

Disadvantages

The asset disposal is subject to the balancing statement (*see above*), and so any excess received from the sale proceeds may be chargeable to income tax.

Transaction structures to minimise the tax burden

18. What transaction structures (if any) are commonly used to minimise the tax burden?

The following structures are commonly used (*see Question 13*):

- Maltese holding company.
- Registration of a branch or a place of business in Malta.
- Double-tier structure.
- Debt versus equity considerations.
- Anti-abuse considerations.

Registration of a branch or a place of business in Malta will be of particular interest to asset acquisitions and disposals as capital gains arising outside Malta and income not remitted to Malta will not be considered for income tax purposes, therefore reducing the amount of income chargeable to tax in Malta.

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Legal mergers

Taxes potentially payable

19. What taxes are potentially payable on a legal merger?

Malta has transposed and implemented Directive 2005/56/EC on cross-border mergers of limited liability companies (Cross-border Mergers Directive). The taxes potentially payable on a legal merger are:

- Income tax.
- Duty on documents and transfers.

See *Question 3*.

Exemptions and reliefs

20. Are any exemptions or reliefs available to the liable party?

The following exemptions apply:

- Exemption upon an exchange of shares.
- Intra-group company provisions.

See *Question 10*, *Question 11* and *Question 12*.

Transaction structures to minimise the tax burden

21. What transaction structures (if any) are commonly used to minimise the tax burden?

The same structures considered in *Question 13* apply because the structure used does not affect the taxes imposed or the exemptions or reliefs available on a merger:

- Maltese holding company.
- Registration of a branch or a place of business in Malta.
- Double-tier structure.
- Debt versus equity considerations.
- Anti-abuse considerations.

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Joint ventures

Taxes potentially payable

22. What taxes are potentially payable on establishing a joint venture company (JVC)?

There are no particular provisions applicable to joint ventures in Malta. The answer to *Question 3* applies and the taxes potentially payable are:

- Income tax.
- Duty on documents and transfers.

Exemptions and reliefs

23. Are any exemptions or reliefs available to the liable party?

The list of exemptions and reliefs available upon the acquisition and disposal of shares in a company apply. The answer to *Question 10* applies and the exemptions and reliefs available are:

- Exemption for non-resident persons.
- Participation exemption.
- Intra-group company provisions.
- Exemption upon an exchange of shares.
- Stamp duty exemption for foreign owned companies or companies with business interests outside Malta.

Transaction structures to minimise the tax burden

24. What transaction structures (if any) are commonly used to minimise the tax burden?

The same structures considered in *Question 13* apply because the structure used does not affect the application of the taxes or the exemptions or reliefs available to a joint venture. The following structures are therefore commonly used:

- Maltese holding company.
- Registration of a branch or a place of business in Malta.
- Double-tier structure.
- Debt versus equity considerations.
- Anti-abuse considerations.

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Company reorganisations

Taxes potentially payable

25. What taxes are potentially payable on a company reorganisation?

The taxes potentially payable on a company reorganisation are:

- Income tax.
- Duty on documents and transfers.

See *Question 3*.

Exemptions and reliefs

26. Are any exemptions or reliefs available to the liable party?

The following exemptions or reliefs are available:

- Exemption upon an exchange of shares.
- Intra-group company provisions.

See *Question 10*.

Transaction structures to minimise the tax burden

27. What transaction structures (if any) are commonly used to minimise the tax burden?

The same structures considered in *Question 13* apply because the structure used does not affect the application of the taxes or the exemptions or reliefs available on a company reorganisation. The following structures are therefore commonly used:

- Maltese holding company.
- Registration of a branch or a place of business in Malta.
- Double-tier structure.
- Debt versus equity considerations.
- Anti-abuse considerations.

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Restructuring and insolvency

28. What are the key tax implications of the business insolvency and restructuring procedures in your jurisdiction?

Tax implications for the business

Any transfer of a capital asset by a company to its shareholders in the course of winding-up the company or in the course of a distribution of assets to its shareholders under a scheme of distribution is considered to constitute a transfer which may give rise to a capital gain.

Tax implications for the owners

Distributions to a company's shareholders by a liquidator in the course of winding-up the company to the extent to which they represent income derived by the company (whether before or during liquidation) are deemed to be dividends paid to the shareholders by the company out of the profits derived by it.
With respect to property transfers, no tax is chargeable on a transfer of immovable property by a company to its shareholder (or to an individual related to its shareholder) in the course of winding-up or in the course of a distribution of assets under a scheme of distribution, provided that the shareholder is an individual (or his spouse) who owns (or own), directly or indirectly, not less than 95% of the share capital and voting rights of the company transferring the property. However, this exemption will only apply where the property being transferred is held as a capital asset by the company, and has been so held for a period exceeding five years immediately preceding the date of the transfer of the property.

Tax implications for the creditors

There are no particular tax implications for the creditors on procedures relating to the winding-up of a company.

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Share buybacks

Taxes potentially payable

29. What taxes are potentially payable on a share buyback? (List them and cross-refer to *Questions 3* to *6* as appropriate.)

There are no special provisions applicable to share buybacks in Malta. The provisions and effects relating to value shifting must be considered in a share buyback transaction (*see* *Question 3*). The taxes potentially payable are:

- Income tax.
- Duty on documents and transfers.

Exemptions and reliefs

30. Are any exemptions or reliefs available to the liable party?

The value shifting provisions will not apply where there is a proportionate reduction in the shareholding of all the shareholders and when the company:

- Does not own immovable property in Malta.
- Has no rights upon immovable property in Malta.
- Does not own interests in companies which own immovable property in Malta.

The following is a list of applicable exemptions or reliefs (*see* *Question 10*):

- Exemption for non-resident persons.
- Intra-group company provisions.
- Exemption upon an exchange of shares.
- Stamp duty exemption for foreign owned companies or companies with business interests outside Malta.

Transaction structures to minimise the tax burden

31. What transaction structures (if any) are commonly used to minimise the tax burden?

See *Question 13*.

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Private equity financed transactions: MBOs

There are no specific provisions relevant to private equity financed transactions (MBOs).

Taxes potentially payable

32. What taxes are potentially payable on a management buyout (MBO)?

Not applicable.

Exemptions and reliefs

33. Are any exemptions or reliefs available to the liable party?

Not applicable.

Transaction structures to minimise the tax burden

34. What transaction structures (if any) are commonly used to minimise the tax burden?

Not applicable.

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Reform

35. Please summarise any proposals for reform that will impact on the taxation of corporate transactions.

There are no current proposals for reform that will impact on the taxation of corporate transactions.

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Online resources

Ministry for Justice, Dialogue and the Family

W *www.justiceservices.gov.mt*

Description. This website brings together a collection of all the Laws of Malta. The service is free of charge, and primarily offers the following services:

* All the chapters of the Laws of Malta, including the Constitution of Malta and the Statute Law Revision Act, 1980.
* Subsidiary legislation made under the chapters of the Laws of Malta, including subsidiary legislation made under the Constitution of Malta.
* Chronological and analytical indexes for all the legislation.

This service includes all the principal legislation currently in force, regularly updated with amendments and new legislation approved by the House of Representatives. It is considered to be the official authorised version of the Laws of Malta (subject to the provisions of Article 11A(4) of the Statute Law Revision Act, 1980).

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