

CAMILLERI PREZIOSI

ADVOCATES



tax factsheet

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FULL IMPUTATION TAX SYSTEM

Malta has, since the introduction of income tax in 1948, adopted a full imputation system of taxation. In terms of the Income Tax Act (Cap. 123 of the laws of Malta) company tax is imputed to the shareholder and applies both to resident and non-resident shareholders, as a tax credit and may, in certain cases, result in tax refunds payable to shareholders should the tax due by them be less than the tax borne by the company.

RESIDENCE AND DOMICILE - COMPANIES

Companies registered in Malta are deemed to be resident and domiciled in Malta for tax purposes by virtue of their registration in Malta and as such are taxed on their worldwide profits. Subject to the definition of "residence" in tax treaties, a company is resident in Malta if it is either incorporated in Malta or managed and controlled in Malta. Companies which are incorporated outside Malta but resident in Malta (on the basis of management and control) and have registered with the Registrar of Companies are taxed on a remittance basis.

The standard rate of tax charged on the profits of Maltese companies is 35%.

PARTICIPATION EXEMPTION

The participation exemption applies to income and gains derived by a company from participating holdings held in foreign entities as long as the ultimate individual shareholders of any multi-tier structure are not resident in Malta. The foreign entities will also be required to satisfy certain basic conditions. A shareholding qualifies as a participating holding where it consists of an equity shareholding in a non-resident company (or partnership with a nature similar to a partnership en commandite or collective investment vehicle) and meets any one of the following conditions:

- the holding constitutes a direct holding of 10% or more of the equity shares or partnership capital;
- the amount invested is that of at least €1.164m and is held for a continuous period of at least 183 days;
- the shareholder is entitled to be represented on the overseas company's board of directors; or
- the equity shares are held for the furtherance of the business and the holding is not held as trading stock for the purpose of a trade.

A company may opt to benefit directly from the participating exemption so that income derived from the participating holding would be exempt from any tax in Malta. Alternatively, a company may choose not to avail itself of such an exemption but rather be charged to Malta tax, in which case upon a distribution thereof, the recipient will be entitled to a full refund of the Malta tax paid by the company.

ANTI-ABUSE

There are a number of anti-abuse provisions which limit the availability of the participation exemption and which can limit refunds claimed on dividends derived from a participating holding. Nevertheless, the anti-abuse provisions do not apply where the equity shareholding is in a company or partnership that:

- is resident in the EU;
- is subject to a tax rate of more than 15%; or
- does not have more than 50% of its income derived from passive interest or royalties.

In the event that at least one of the above conditions is not satisfied, then there are two additional conditions for the participating holding classification to be obtained:

- the holding by the Maltese company must not be a portfolio investment; and
- the non-resident company or partnership, or its passive income, must have been subject to foreign tax at a rate of 5% or more.

There are certain exceptions on the availability of the participation exemption in the case of property companies, that is a company that owns directly or indirectly immoveable property situated in Malta or any rights over such property.

REFUNDS

Recipients of dividends from a Maltese company may become entitled to refunds of company tax paid, depending upon the business activity from which the profit has been generated. The quantum of the refund varies according to: the tax account out of which the profits are distributed; 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 so distributed. In certain circumstances, these refunds reduce the effective tax burden on distributed profits to between 0% and 11.7%.

In order to claim a refund, a distribution of profits must take place.

A 100% tax refund is available in the case of certain distributions from the Foreign Income Account of a company derived from a participating holding. The Foreign Income Account comprises categories of foreign-source income such as dividends, interest, capital gains, royalties and other similar income, and also includes dividends paid out of the Foreign Income Account of another company registered in Malta.

Where the 100% tax refund (or participation exemption) is not available, a shareholder may, subject to the satisfaction of certain conditions, have the possibility of claiming other refunds (6/7ths, 5/7ths or 2/3rds of the Malta tax paid).

In all cases the quantum of the refund is capped at the amount of the Maltese tax paid.

PERMANENT ESTABLISHMENT PROFITS

Income derived by a Maltese company which is attributable to a permanent establishment of such company, including a branch, situated outside Malta, is exempt from income tax in Malta. The exemption equally applies to a gain derived upon the transfer of a permanent establishment and even if such permanent establishment is not exclusively owned by a Maltese company.

In conjunction with this exemption, the possibility for the Maltese company to elect to be taxed on such income and/or gains is retained. If this election is made, the permanent establishment would be entitled to the various types of relief which could be claimed in Malta or in accordance with the applicable tax treaty. The refunds to the shareholders in this case will be limited to the tax paid on the profits attributable to the permanent establishment in Malta.

STEP UP IN BASE COST

There exists an option for a step-up of tax base cost of assets when a company resulting from a merger holds assets outside Malta and such assets were acquired prior to the occurrence of persons transferring their residence and/or domicile to Malta or in the case of companies resulting from a merger in terms of the Cross Borders Merger Directive 2005/56/EC. Pursuant to this mechanism, such assets are deemed to have been acquired on the date of the merger at their market value as at such date. Apart from the higher base cost for Maltese tax purposes, a significant benefit also lies in the fact that any increase in the value of the asset prior to the merger is not subject to tax in Malta upon any eventual disposal of the asset.

GLOBAL RESIDENCE PROGRAMME

This programme established by virtue of Legal Notice 167 of 2013 allows for the acquisition of a special tax status by non-EU nationals. Its applicability does not extend to EEA nationals or Swiss nationals.

Hereunder outlined are the salient features of Malta's Global Residence Programme:

- In order to qualify for residency, an applicant must purchase immovable property in Malta, the value of which must be of at least €275,000. However, if the property is in the South of Malta or in Gozo, the minimum value can be of €220,000.
- An applicant will also be eligible by renting immovable property in Malta on an annual basis for at least €9,600 per annum, or €8,750 per annum if the property is in the South of Malta or in Gozo.
- Flat rate of tax at a rate of 15% chargeable only on a remittance basis.
- The minimum amount of tax to be paid in Malta is of €15,000 per annum.

- A standard application processing fee of €6,000 is applicable, or of €5,500 if property is purchased in the South of Malta or in Gozo.
- There are no minimum stay requirements. However, in order to be eligible an applicant may not spend more than 183 days in any other jurisdiction.

HIGHLY QUALIFIED INDIVIDUALS

Expatriates in receipt of income payable in terms of a qualifying contract of employment in respect of activities carried out in Malta, may opt to be subject to tax on such income at a flat rate of 15%.

Legal Notice 106 of 2011 entitled Highly Qualified Persons Rules, as subsequently amended, requires that, for an individual to benefit from these rules, the following conditions must be met:

- a) the individual must be employed in a senior position (or to perform equivalent activities) and is in possession of professional qualifications or acceptable professional experience;
- b) the individual must have a qualifying contract of employment with a minimum wage of €75,000;
- c) the individual must not be domiciled in Malta; and
- d) the employer or any related person must not benefit under alternative business incentive laws or any related arrangement.

No further tax will be payable in Malta in respect of qualifying employment income exceeding €5,000,000. An individual eligible to be pay tax in terms of these rules is required to apply to the Lotteries and Gaming Authority or the Malta Financial Services Authority for a formal determination confirming eligibility.

QUALIFYING EMPLOYMENT IN INNOVATION AND CREATIVITY

A scheme has been introduced as part of the Maltese fiscal regime applicable to expatriates working in Malta, who may benefit from a reduced rate of tax of 15%. This scheme is applicable to individuals who fulfil a role directly in the development of innovative and creative digital products.

Legal Notice 106 of 2013 entitled Qualifying Employment in Innovation and Creativity (Personal Tax) Rules, 2013 requires a number of conditions to be met for an individual to benefit from these rules, which include the following:

- a) the individual must have a qualifying contract of employment with a minimum wage of €45,000;
- b) the contract of employment must be subject to tax in Malta for work carried out in Malta and subject to Maltese law;

- c) the individual must not be a shareholder of the company he is employed with; and
- d) the individual must not be domiciled in Malta.

The special 15% tax rate applies to income up to a maximum of €5,000,000. Any income in excess of such amount which is derived from a qualifying contract is exempt from tax. This scheme applies for a consecutive period of up to three years irrespective of whether the beneficiary is an EEA/ Swiss national or a third country national.

In order to benefit from this scheme, applicants are to request a formal determination from the Malta Enterprise Corporation.

REPATRIATION OF PERSONS ESTABLISHED IN A FIELD OF EXCELLENCE

An incentive scheme has also been recently introduced for Maltese professionals returning to work in Malta in specific industry sectors. In terms of this scheme, an eligible individual who is established in a field of excellence and returns as an ordinary resident in Malta may, for a consecutive period of up to 5 years, opt to have his income from employment exercised in Malta charged to tax at a flat rate of 15%, as opposed to the normal progressive personal income tax rates of up to 35%.

The term 'field of excellence' refers to an area of professional competence in which the person has excelled in the manufacturing and research and development sectors.

Legal Notice 111 of 2013 entitled Repatriation of Persons established in a Field of Excellence Rules, 2013 requires that, for an individual to benefit from these rules, the following conditions must be met:

- a) the individual must have a qualifying contract of employment with a minimum wage of €75,000;
- b) the contract of employment must be subject to tax in Malta for work carried out in Malta and subject to Maltese law;
- c) the contract must be approved by the Malta Enterprise Corporation; and
- d) the individual must not be a shareholder in the company he is employed with.

ROYALTIES EXEMPTION

The Maltese fiscal regime provides for a full income tax exemption applicable in respect of royalties derived from qualifying patents.

The conditions to be satisfied for in exemption to apply are as follows:

- a) a person needs to own the rights to the patent and receive income in the form of royalties or other similar income from granting, through a licensing agreement or similar agreement, the exploitation of knowledge protected under a qualifying patent;
- b) the license is granted to an enterprise for using the patent in a productive economic activity, such as manufacturing, software development and data processing; and
- c) in the case where the owner of the patent is an individual, such individual must have been engaged in carrying out, solely or together with other persons, the research, planning, processing, experimenting, testing, developing or other similar activity leading to the invention which is the subject of the qualifying patent.

Recent amendments extended the exemption to royalties derived from registered copyrights and qualifying trademarks.

CAPITAL GAINS

The gain on the transfer of any rights on securities (and on any deemed transfer of any rights on securities), business goodwill, immovable property, copyrights, trademarks and patents derived by a company resident in Malta are all typically charged to tax at the rate of 35% in terms of the Maltese Income tax Act.

Exemptions from tax on capital gains are available, inter alios, upon an intra-group transfer of chargeable assets, a transfer of chargeable assets upon a restructuring of holdings (e.g. merger, demergers, amalgamations and reorganisations) within a group of companies, a transfer of securities listed on the Malta stock exchange or a transfer by a non-resident person. Persons not ordinarily resident and not domiciled in Malta are exempt from Malta tax on capital gains having a foreign source.

Amendments in the law were introduced in recent years so that the transfer of immovable property and of any right in such immovable property, is no longer charged to tax at the rate of 35% on the gain but instead charged at a flat rate of 12% on the transfer value.

Although the 12% flat rate is now the default tax regime governing the transfer of immovable property, in certain circumstances the person transferring such property may elect to opt out from this regime and hence choose to be subject to the 35% charge on the gain made.

CFC – THIN-CAP – TRANSFER PRICING

Malta's fiscal laws do not include restrictive provisions such as CFC legislation, thin capitalisation rules and sophisticated transfer pricing rules however includes generic, anti-abusive measures which empower the fiscal authorities to scrutinise each transaction on its own merit.

DUTY ON DOCUMENTS

In terms of the Duty on Documents and Transfers Act (Cap. 364 of the laws of Malta), duty is chargeable on documents evidencing transfers of immovable property, marketable securities or an interest in a partnership. A document is subject to duty if it is executed in Malta or, in certain circumstances, if it is executed outside Malta and used in Malta. Duty is chargeable at the rate of 5% of the higher of the consideration and the real value upon a transfer of immovable property. Duty is chargeable at a rate of 2% of the higher of the consideration and the real value upon a transfer of marketable securities or an interest in a partnership, although a 5% rate applies to transfers of marketable securities in a company or of an interest in a partnership where 75% or more of its assets consist of immovable property. Duty is also chargeable on certain specified documents, such as policies of insurance.

Exemption may apply in respect of certain transfers, including the transfer of securities listed on the Malta stock exchange, intragroup transfers and transfers of securities in or by a company that has, or intends to have, business interests to the extent of more than 90% outside Malta.

ELIMINATION OF DOUBLE TAXATION

In Malta, relief from double taxation is granted under the credit method on a source-by-source basis and on country-by-country basis. The tax regime in Malta which governs double taxation relief does not only include treaty relief but also includes unilateral relief. This ensures that income which arises overseas is not subject to double taxation, even if there is no double taxation agreement in place.

Double tax relief is available for foreign tax suffered on income taxable in Malta. Relief is provided under Malta's extensive double tax treaty network or unilaterally as provided for under domestic law.

Under unilateral relief the overseas tax may be allowed as a credit against the tax chargeable in Malta on the gross amount received. Unilateral relief for underlying tax is also available where the taxpayer is a Maltese company that holds more than 10% of the voting power of the overseas company paying the dividend.

The flat rate foreign tax credit (FRFTC) is available to a Maltese company which receives income from overseas where no other form of double taxation relief is available. Through the operation of the FRFTC, subject to certain conditions imposed by the Income Tax Act, the company is deemed to have suffered foreign tax at 25% calculated on the amount of the overseas income or gain received by the company, before allowable expenses. The income plus the credit net of the allowable expenses will be subject to Maltese income tax for the deemed credit up to a maximum of 85% of the Malta tax payable. This method of relief reduces tax suffered to between 7.5%-18.75% depending on the amount of deductible expenses.

Maltese companies can avail themselves of the numerous double tax treaties which Malta has concluded with various foreign countries. The provisions of these double taxation agreements and the Maltese tax system provide attractive opportunities for the setting up of tax efficient structures in Malta. Below is a list of the countries with which Malta has entered into or is in the process of entering into double taxation treaties:

| | | |
|----------------|----------------|---------------------------------|
| Albania | India | Qatar |
| Australia | Ireland | Romania |
| Austria | Isle of Man | Russia * |
| Bahrain | Israel | San Marino |
| Barbados | Italy | Saudi Arabia |
| Belgium | Jersey | Serbia |
| Bulgaria | Jordan | Singapore |
| Canada | Korea | Slovakia |
| China | Kuwait | Slovenia |
| Croatia | Latvia | South Africa |
| Curaçao * | Lebanon | Spain |
| Cyprus | Libya | Sweden |
| Czech Republic | Liechtenstein* | Switzerland |
| Denmark | Lithuania | Syria |
| Egypt | Luxembourg | Tunisia |
| Estonia | Macau * | Turkey |
| Finland | Malaysia | United Arab Emirates |
| France | Mexico * | Ukraine * |
| Georgia | Montenegro | United Kingdom |
| Germany | Morocco | Uruguay |
| Greece | Netherlands | USA (General Double Tax Treaty) |
| Guernsey | Norway | USA (Ships and Aircraft) |
| Hong Kong | Pakistan | |
| Hungary | Poland | |
| Iceland | Portugal | |

Treaties marked with an asterisk () are either not yet in force or are in the process of being negotiated or ratified.



MALTA

- Robust legal system, based on UK and EU law and in tune with the business world
- Member of the EU: easy access to 28 member states through the EU marketing passport
- Reputable regulator while being easily accessible and sensitive to the particular requirements of applicants
- Tax efficiency: favourable tax regime and extensive double tax treaty network
- Skilled and highly qualified workforce and service providers
- English is an official language
- Currency is the Euro

For more information, please contact :



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