

MALTA'S LAWS OF ATTRACTION

Dr Donald Vella, Partner at Camilleri Preziosi, on how Malta's fiscal system is spearheading the country's appeal as a holding company jurisdiction

Malta's fiscal jurisdiction is proving to be an attractive source for inward investment.

The heart of Malta's competitive advantage is a rigorous yet flexible and constantly updated fiscal regime which enables the tax leakage being suffered at Malta level by the company and its shareholders to be relatively low, both for incoming and outgoing income flows.

Companies incorporated in Malta are considered to be both resident and domiciled in Malta, resulting in such companies being taxable on a worldwide basis at a corporate rate of 35%.

However, companies which are resident (by virtue of management and control being effectively exercised in Malta) but not domiciled in Malta, or vice-versa, are only taxable on income arising in Malta and on any other foreign source income (excluding capital gains) which is remitted (or received) to Malta, a position which may allow for structuring possibilities.

The following are some of the salient benefits to investors and businesses:

- **Participation exemption:** Under the Participation Exemption (P.E.), any income derived by a Maltese Company from a Participating Holding is exempt from tax in Malta. The Maltese PE may be described as a regime which is flexible and relatively straightforward to satisfy, for instance, a Maltese company holding an investment of at least 10 percent of the equity shares of a company will qualify for the PE.

In the event that the company does not satisfy this condition, the PE may still be claimed if the company satisfies other conditions. The exemption also applies for gains derived from the transfer of the Participating Holding.

- **No withholding tax on dividends, the benefits of the full-imputation system and credit for underlying tax:** Malta does not impose a withholding tax on dividend distributions.

Furthermore, the full-imputation system ensures that no dividend received by any shareholder is taxed twice. This system operates by allowing the shareholder to deduct the amount of tax paid by the Maltese company from the tax paid by the shareholder on the gross dividend received. Credit is also provided to Maltese companies for tax paid at underlying levels in a chain of companies.

- **Refund Mechanism:** Subject to certain conditions, shareholders may also claim refunds of 2/3, 5/7 or 6/7 of the corporate tax paid by Maltese companies when certain profits are distributed to individual shareholders. Generally, the availability and quantum of such refunds depends on the nature of the business activity giving rise to such income being distributed and whether any double taxation relief was claimed. The refunds may in fact lower the tax leakage in Malta to as low as between 5% and 10%.

- **Flexible and wide ranging system of Double Taxation Relief:** Malta boasts a wide treaty network (with over 55 treaties in force as at 31 December 2012), with its treaties being largely based on the OECD Model Tax Convention on Income and on Capital.

Moreover, Maltese law also provides for unilateral relief if treaty relief is unavailable. Both Treaty Relief and Unilateral Relief operate by virtue of the credit method, applied on a source-by-source basis.

Additionally, the Flat-Rate Foreign Tax Rate Credit, (FRFTC), is also available, subject to a number of administrative conditions being satisfied. FRFTC is an alternative system of double tax relief based on a flat-rate 'notional' credit of 25 percent in all cases, irrespective of the amount of foreign tax suffered.

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- **Exemptions** on interest, royalties accruing to or derived by a person not resident in Malta (subject to anti-abuse conditions).
- **No exit taxes** are charged for companies which are re-domiciled (both inwards and outwards).
- **Other fiscal incentives** are continuously increasing Malta's competitiveness as an attractive financial services centre, most notably the reduced tax rate of 15% for qualifying High Net Worth Individuals.

Besides the main elements of Malta's competitive fiscal regime outlined above, other factors continue to strengthen Malta's position as an exciting and attractive jurisdiction.

In fact, Malta boasts a network of skilled and experienced professionals who are also highly qualified and multilingual, with English being one of Malta's official languages.

Malta's fiscal law is constantly updated and innovative yet the legislation fully adheres to the rigors of EU law. Finally, Malta also possesses a highly developed communications and transport infrastructure, and also enjoys a high quality of life.

Malta was in fact ranked third best from 192 countries worldwide by International Living in the 2011 index.

CONTACT DETAILS: CAMILLERI PREZIOSI, LEVEL 3, VALLETTA BUILDINGS, SOUTH STREET, VALLETTA, VLT 1103, MALTA. TEL: +35621238989. FAX: +35621223048. EMAIL: INFO@CAMILLERIPREZIOSI.COM