

**Deloitte.**

# Taxation and Investment in Malta 2014

Reach, relevance and reliability



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# 1.0 Investment climate

## 1.1 Business environment

Malta is a fully independent republic with a parliamentary democracy and an elected president as the head of state. The president is elected every five years by the House of Representatives, which consists of 65 members of parliament. The role of the president as head of state is largely ceremonial. Executive power rests with the prime minister and his cabinet. Malta has two main political parties, the Nationalist Party and the Labor Party.

Malta's economy is dominated by the manufacturing, financial services, tourism and ICT (information and communication technology) sectors.

Malta relies on foreign trade, as it produces only about 20% of its food needs, has limited freshwater supplies and no domestic energy source. France and Italy are the leading sources of imports. Malta's main exports are machinery and transport equipment. Trade is oriented towards the EU, Asia and the US. In principle, Malta has no restrictions on trade with any country, except for countries with regard to which UN restrictions are imposed.

Malta is a member of the EU and the World Trade Organization (WTO). Malta joined the EU in 2004. As an EU member state, Malta is required to comply with all EU directives and regulations, which it follows with regard to trade treaties, import regulations, customs duties, agricultural agreements, import quotas, rules of origin and other trade regulations. The EU has a single external tariff and a single market within its external borders. Restrictions on imports and exports apply in areas such as dual-use technology, protected species and some sensitive products from emerging economies. Trade also is governed by the rules of the WTO.

### Price controls

Malta has a free market economy in which the principle of market forces is applied to price formation. Direct or indirect fixed purchase and selling prices are prohibited.

### Intellectual property

According to the Enforcement of Intellectual Property Rights (Regulation) Act, intellectual property rights are rights accorded under the Copyright Act, the Trademarks Act and the Patents and Designs Act. Malta is a member of the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention (UCC), the WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty and the World Trade Organization (WTO) Agreement. The necessary action is being taken to secure Malta's accession to the Protocol to the Madrid Agreement concerning the International Registration of Marks and the Hague Agreement concerning the International Registration of Industrial Designs.

### Patents

The Patents and Designs Act provides that, under certain conditions, inventions are patentable if they are new, involve an inventive step and are susceptible to industrial applications. An application for a patent must be made to the Office of the Comptroller of Industrial Property, which maintains a register of patents. The term of a patent is 20 years from the filing date of the application. Malta is a signatory to the European Patent Convention (EPC) and the Patent Co-operation Treaty (PCT), which simplify the filing of patent applications and conducting innovation searches in participating states. Applications for patents under these agreements may also be filed at the Malta Office of the Comptroller of Industrial Property and the countries for which the patent is sought must be designated in the application. The comptroller publishes a notification in the government gazette or other official publication that the Comptroller may prescribe as soon as possible after the decision is made to grant a patent. Infringement proceedings must be brought before the Civil Court, First Hall, within five years from the date the injured party obtains knowledge of an infringement and of the identity of the alleged infringer.

## Copyrights

The Copyright Act protects artistic works, audiovisual works, databases, literary works and musical works. Malta has transposed the Berne Convention (Paris Act) into Maltese law and implemented the pertinent provisions of the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. A person that infringes a copyright may be subject to damages and/or a fine. A copyright expires 70 years after the death of the author, or 70 years from the year in which the copyright was made or lawfully made available to the public. There is no requirement to register a copyright, but a copyright board exists to protect the interests of copyright holders in the different fields.

## Trademarks

A registered trademark is a property right obtained by registration under the Trademarks Act; the proprietor of a registered trademark has the rights and remedies provided by the Act. A trademark means any sign capable of being represented graphically that is capable of distinguishing goods or services. An application for registration of a trademark must be made to the Comptroller of Industrial Property, who maintains a register of trademarks. The act sets out several grounds for refusal of registration. Once an application has been accepted for registration, the certificate of registration must be issued and registration published in the official gazette or other official publication prescribed by the comptroller. European trademark and design registration may be obtained from the EU's Office for Harmonization in the Internal Market (OHIM). Applications are made to the Malta Comptroller of Industrial Property and a selection can be made for any or all EU member states. Infringement of a registered trademark is actionable by the proprietor of the trademark by sworn application filed in the First Hall of the Civil Court.

## 1.2 Currency

The currency in Malta is the Euro (EUR).

Countries participating in the Economic and Monetary Union		
Austria	Germany	Malta
Belgium	Greece	Netherlands
Cyprus	Ireland	Portugal
Estonia	Italy	Slovakia
Finland	Latvia	Slovenia
France	Luxembourg	Spain

## 1.3 Banking and financing

Banking and finance regulation is based on EU rules, in particular, the directives on banking, insurance and capital adequacy. The Banking Act regulates credit institutions and electronic money institutions. The Financial Institutions Act regulates institutions that do not take deposits or other repayable funds from the public.

All banking and financing services are available on the same terms to Malta-owned and foreign-owned companies. Malta is a growing financial center particularly for funds, securitization and (captive) insurance and re-insurance.

## 1.4 Foreign investment

Malta welcomes foreign direct investment. Malta Enterprise is the agency responsible for the promotion of foreign investment and industrial development and for granting tax and nontax incentives to enterprises that carry out specific activities in Malta. There are no requirements for state or public participation in businesses established by foreigners (save for very few industries).

## **1.5 Tax incentives**

Incentives fall under the following headings: Investment Aid, R&D and Innovation, Access to Finance, SME Development, Employment and Training, and Enterprise Support.

Investment Aid and R&D and Innovation incentives are effected through investment tax credits. The tax credit depends on the size of the enterprise and is offset against the company's tax liability for the relevant year of assessment, with any unabsorbed credits carried forward.

The incentives generally are targeted at enterprises that have a high value-added or high employment potential. Enterprises engaged in ICT development activities, manufacturing, audio visual and filming, healthcare, free port activities, eco-innovation and waste treatment, among others, may benefit from the incentives.

Other incentives are available to persons operating in the shipping industry. Income derived from the operation of qualifying vessels registered under the Maltese flag is exempt from income tax in Malta. The ship owner of a qualifying Malta-flagged vessel instead pays a pre-established annual "tonnage tax" computed on the basis of criteria such as the tonnage of the vessel. Furthermore, the profits of a nonresident ship owner are exempt from tax in Malta, provided the country in which the nonresident ship owner is resident would extend a similar exemption to Malta resident ship owners.

The Freeport is a custom-free port located in the southeastern part of Malta, and is the third largest transshipment and logistics center in the Mediterranean region.

## **1.6 Exchange controls**

Malta abolished all exchange controls when it joined the EU, although it negotiated to retain certain restrictions concerning the acquisition by nonresidents of 25% or more of the shares in a Maltese company that owns directly or indirectly (or wishes to acquire) immovable property situated in Malta. In such cases, authorization must be requested from the local authorities.

## 2.0 Setting up a business

### 2.1 Principal forms of business entity

The principal forms of business entity in Malta are the following:

- Limited liability company (public or private);
- General partnership;
- Limited partnership;
- Sole proprietorship; and
- Branch of a foreign company.

The *Societas Europaea* or SE company form is available. The SE is designed to enable companies to operate across the EU with a single legal structure, to facilitate mergers and create flexibility for companies wanting to move their head office from one EU state to another. Companies from two or more EU member states are permitted to merge to form an SE or create an SE holding company or branch. A company may convert an existing firm to SE status without liquidating. One advantage of an SE is that it is possible to move headquarters to another EU member state with minimal formalities.

Businesses also can establish as a European Economic Interest Grouping (EEIG). Companies (even non-EU companies if the vehicle is a subsidiary in an EU country) that want to start working with a Maltese company but do not want to commit to a formal joint venture, may set up an EEIG. The grouping functions much like a partnership in that the income is taxed in the hands of the member companies. At least two of the companies involved must be from different EU member states.

#### Other company forms

Other forms of company that may be of interest to investors are the Investment Company with Fixed Share Capital (INVCO) and the Investment Company with Variable Share Capital (SICAV). The INVCO may take the form of a public company whose business typically consists of investing in funds (mainly securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds). The SICAV can be a public or private company whose memorandum limits the object of the company typically to the collective investment of its funds in securities and in other movable and/or immovable property in order to spread investment risk and give members of the company the benefit of the results of the management of its funds.

Associations *en participation* and cooperative societies, although not strictly companies, also may be formed under Maltese law. An association *en participation* is formed by means of an instrument in writing (a contract), whereby a person ("associate") assigns to another person ("associating party"), for valuable consideration contributed by the latter, a portion of the profits and losses of a business or of one or more commercial transactions. Such an association does not have a legal personality distinct from that of its members. A cooperative society is defined in the Cooperative Societies Act (CSA) as an autonomous society of persons united voluntarily to meet their economic, social and cultural needs and aspirations, including employment, through a jointly owned and democratically controlled enterprise, in accordance with cooperative principles. The members of a cooperative society enjoy limited liability with regard to the obligations of the cooperative society.

A securitization vehicle may be set up under various forms.

#### Formalities for setting up a company

Both companies and partnerships must be registered with the Malta Registrar of Companies. A company or partnership will be validly constituted when a memorandum of association or a deed of partnership is entered into, and a certificate of registration is issued by the registrar. This certificate sets out the date of registration, which is the date the company or partnership comes into

existence and is authorized to commence business. The Companies Act sets out the specifics that need to be included in the memorandum of association and the deed of partnership.

The Continuation of Companies Regulations allow a body corporate, similar in nature to a Maltese limited liability company, which is formed and incorporated or registered under the laws of an approved country or jurisdiction, to request the Registrar of Companies in Malta to be registered as being continued or re-domiciled in Malta under the Companies Act if it is authorized to do so by its constitutive documents and if the laws of its place of registration sanction such a continuation. Limited liability companies registered and incorporated in Malta also may continue in, or re-domicile to, an approved jurisdiction outside Malta if the necessary authorization is obtained from the Malta Registrar of Companies. No tax implications arise in Malta upon corporate migration.

All businesses must register with the Inland Revenue Department (IRD) and, if applicable, with the VAT authorities. A business with employees must also register with the social security authorities and the Employment Training Corporation. Commercial partnerships, including limited liability companies and branches of foreign companies, must register with the Registrar of Companies.

## Forms of entity

### Requirements for public/private limited liability company

**Capital:** *Public:* The issued share capital may not be less than the authorized minimum, currently EUR 46,587.47, and not less than 25% of the nominal value of each share taken up must be fully paid up at the time of incorporation. Also by allotment, shares must be paid up to at least 25% of their nominal value. *Private:* The issued share capital may not be less than the authorized minimum, currently EUR 1,164.69, and not less than 20% of the nominal value of each share taken up must be fully paid up at the time of incorporation. Also by allotment, shares must be paid up to at least 20% of their nominal value.

**Founders, shareholders:** *Public and private:* To constitute a company, a memorandum of association and voluntary articles of association must be subscribed by at least two persons and a certificate of registration must be issued by the Registrar of Companies. At least two shareholders are required and a private company must limit the number of its shareholders to 50. Nominee shareholders are permitted, in principle. There are no requirements on nationality or residence. A private company also may be set up as an exempt private company, provided the memorandum or articles of association restrict the number of persons holding debentures of the company to 50, prohibit any body corporate from holding shares (unless the body corporate is itself an exempt private limited liability company) or debentures of the company, prohibit bodies corporate from acting as directors of the company and prohibit any of the directors from being a party to an arrangement whereby the policy of the company can be determined by persons other than the directors, members or debenture holders of the company. An exempt private company may, in turn, be set up as a single member company.

**Management:** *Public and private:* The management of the company's business is entrusted to the board of directors, although if authorized by the articles of association, the board may delegate certain aspects of its functions and responsibilities to a person(s) appointed as agent(s) or attorney(s) of the company. A public company must have at least two directors and a company secretary; a private company must have at least one director and a company secretary. Corporate entities are permitted to act as directors for public companies and nonexempt private companies. The board of directors has full authority to manage the company's business and exercise powers as specified in the memorandum of association. Directors are liable for proper execution of the duties to the company and for compliance with all legal obligations imposed on them. There are no requirements on nationality or residence.

**Disclosure:** *Public and private:* Upon incorporation, a company must submit its memorandum and articles of association, if any, to the Registrar of Companies. The memorandum must include whether the company is public or private, the name and residence of each of the subscribers, the name and purpose(s) of the company, the address of the registered office in Malta, the name and residence of the first directors and company secretary, the manner in which the representation of the company is to be exercised and the name of the first person(s) vested with such representation, and the amount of share capital, including further information on the shares.

**Taxes and fees:** *Public and private:* The fee for registration depends on the amount of authorized share capital, with the minimum being EUR 210 and the maximum EUR 2,250. The fee for the



registration of an annual return also depends on the amount of the authorized share capital and ranges from EUR 85 to EUR 1,400.

No taxes are charged upon the incorporation of a company, the initial contribution of capital (unless the contribution consists of a chargeable capital asset under the Income Tax Act) or on an increase in the share capital.

Stamp duty is chargeable at a rate of 5% or 2% on the amount of consideration, or the real value (whichever is the higher), received from a transfer of marketable securities.

**Types of shares:** *Public and private:* Different share classes may be issued with preferred, deferred or other special rights or restrictions, whether in regard to dividends, voting, return of capital, etc. The ordinary shares of a company may not be redeemable and every company must have ordinary shares at all times. Only preference shares that are to be redeemed or are liable to be redeemed by the terms of their issue will be redeemable; other shares in a company may not be converted into redeemable shares. The company can reduce or increase its issued share capital and is required to keep a register of its shareholders. A company is not entitled to acquire its own shares, unless specific requirements or circumstances set out in the Companies Act are met.

The share capital of a company may be denominated in any currency that is a convertible currency within the meaning assigned to it by the Central Bank of Malta Act. A public company may, with respect to fully paid-up shares and if authorized by its memorandum or articles of association, issue warrants entitling the bearer to the shares specified in the warrant but cannot issue bearer shares as such. Public companies may not restrict the free transferability and may invite the public to subscribe for its shares to obtain a listing on the stock exchange. Private companies must restrict the right to transfer their shares and prohibit any invitation to the public to subscribe for any shares or debentures of the company.

**Meetings and votes:** *Public and private:* A general meeting takes decisions by passing resolutions, which may be ordinary or extraordinary. A majority (more than 50%) is required for an ordinary resolution, unless the memorandum and articles prescribe otherwise. In the case of public companies, extraordinary resolutions must be passed by a member or members having the right to attend and vote at the meeting who hold in the aggregate: (i) not less than 75% in nominal value of the shares represented and entitled to vote at the meeting of the company; and (ii) at least 51% in nominal value of all the shares entitled to vote at the meeting. For private companies, extraordinary resolutions must be passed by a member or members having the right to attend and vote at the meeting holding in the aggregate not less than 51% in nominal value of the shares represented and entitled to vote at the meeting of the company.

### Branch of a foreign corporation

A foreign company may set up a branch or place of business within Malta in the same manner as a company incorporated in Malta. Except for some restrictions regarding ownership of immovable property in Malta, there are no restrictions on a company formed outside Malta carrying on business through a branch established and situated in Malta.

Within one month of establishing a branch, the foreign company must deliver various documents to the Registrar of Companies, such as: (i) an authentic copy of the statutes of the foreign company; (ii) a list of the directors and company secretary of the head office and (iii) the name, legal form, address, activities and names and addresses of one or more representatives resident in Malta of the branch in Malta.

Once registered as an overseas company, the overseas company must, within 42 days from the end of the accounting period, file copies of its balance sheet, a profit and loss account and the notes to the accounts.

A branch of a foreign company is subject to tax in Malta on Malta-source income and capital gains, computed on the same basis as for Maltese resident companies. A branch, therefore, is entitled to claim all deductions provided to resident companies and generally enjoys the same rights. The income of a branch is taxed at the same rate as that of a Maltese company. There is no branch tax.



## 2.2 Regulation of business

### Mergers and acquisitions

A merger of two or more companies may be effected by a merger by acquisition or by a merger by formation of a new company. A merger by acquisition occurs when the acquiring company acquires all the assets and liabilities of the acquired company (or companies), with the acquired company's/companies' shareholders receiving in exchange shares in the acquiring company and a cash payment, if any, not exceeding 10% of the nominal value of the shares so issued. A merger by the formation of a new company takes place when merging companies contribute all of their assets and liabilities to a new company (Newco) that they establish, with shareholders of the merging companies receiving in exchange Newco shares and a cash payment, if any, not exceeding 10% of the nominal value of the shares so issued.

The Malta Companies Act governs mergers and includes simplified rules for mergers between a parent company and a wholly owned subsidiary and, to a lesser extent, mergers between a parent company and a subsidiary in which the parent company holds at least 90%, but less than 100%, of the subsidiary's issued shares.

Merger activity in Malta also is regulated by the Office for Fair Competition in terms of the Control of Concentrations Regulations, under which (unless otherwise provided in the regulations), an acquisition of two or more undertakings must be notified to the Director of the Office for Fair Competition for approval before being implemented if there is a change of control on a lasting basis and: (a) two or more previously independent undertakings merge; or (b) one or more undertakings acquire, whether by purchase of securities or assets, by contract or by any other means, control of one or more undertakings; and (i) the combined aggregate turnover in Malta of the preceding financial year of the undertakings concerned exceeds EUR 2,329,373.40; and (ii) each of the undertakings concerned has a turnover in Malta equivalent to at least 10% of the combined aggregate turnover of the undertakings concerned.

Merger activity in Malta also is subject to the provisions of Council Regulation 139/2004/EC on the control of concentrations between undertakings and to the provisions of Directive 2005/56/EC on cross-border mergers of limited liability companies. A concentration (*inter alia*, a merger) has an EU (Community) dimension where the combined aggregate global turnover of the undertakings concerned exceeds:

- EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state; and
- EUR 2.5 billion, aggregate global turnover in each of at least three member states is more than EUR 100 million, aggregate turnover in each of these three member states of at least two undertakings is more than EUR 25 million and aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million, unless each achieves more than two-thirds of its aggregate EU-wide turnover within one and the same state.

A concentration that has a Community dimension must be notified to the commission. In the case of a merger or acquisition, the notification must be completed jointly by all parties involved.

If a concentration does not have a Community dimension, the affected companies may inform the commission as to whether such a concentration is capable of being reviewed under the national competition laws of at least three member states. If none of the member states concerned objects to the review by the commission, a concentration will be deemed to have a Community dimension.

### Monopolies and restraint of trade

The Office for Fair Competition regulates monopolies and restraints of trade in Malta. The Competition Act deals with monopolies and market dominance by prohibiting abuse or extension of a dominant position by one or more undertakings within Malta or any part of Malta. In the absence of evidence to the contrary, an undertaking, which alone or in conjunction with others, has a share of at least 40% of the relevant market, will be deemed to be in a dominant position. The act prohibits fixed purchase or selling prices or other trading conditions, limits or controls on production, markets, technical development and investment, sharing markets or sources of supply

and dissimilar conditions to equivalent transactions thereby placing one at a competitive disadvantage.

The Treaty on the Functioning of the European Union (TFEU) also applies where any abuse by an undertaking may affect trade between Malta and one or more EU member states and where any agreement between (associations of) undertakings or any concerted practice may appreciably affect trade between Malta and any one or more member states.

## **2.3 Accounting, filing and auditing requirements**

The financial statements must comply with the requirements of the Companies Act and the International Accounting Standards (IAS).

The directors of every company are required to prepare for each accounting period a directors' report and annual accounts comprising the balance sheet as at the last day of the accounting period, the profit and loss account, the notes to the accounts and any other financial statements that may be required by generally accepted accounting principles and practice. The annual accounts must give a true and fair view of the company's assets, liabilities, financial position and profit or loss.

An auditor must be appointed at the annual general meeting and must make a report on all annual accounts of the company. The report is prepared in accordance with IAS and must state whether a true and fair view is given of the state of affairs and the profit and loss statements. A copy of the annual accounts, together with a copy of the auditor's report and the directors' report, must be submitted to the Registrar.

Small companies are permitted to produce abridged balance sheets, layouts of profit and loss accounts and notes to the accounts. Small companies are those not exceeding two of the three following criteria: (1) balance sheet total of EUR 2,562,310.74; (2) turnover of EUR 5,124,621.48; and (3) an average number of 50 employees during the accounting period. A parent company may not be treated as a small company unless the group qualifies as a small group, i.e. a group not exceeding two of the three following criteria: (1) aggregate balance sheet total of EUR 2,562,310.74 net or EUR 3,074,772.89 gross; (2) aggregate turnover of EUR 5,124,621.48 net or EUR 6,149,545.77 gross; and (3) 50 employees in the aggregate.

Private companies not exceeding two of the three following criteria: (1) balance sheet total of EUR 46,587.47; (2) turnover of EUR 93,174.94; and (3) an average number of two employees during the accounting period, need not be audited and may produce abridged balance sheets, layouts of profit and loss accounts and notes to the accounts. Audited accounts are still, however, required for ongoing local tax reporting and compliance purposes

Banks and financial institutions must comply with the directives issued by the relevant competent authority under the Banking Act and the Financial Institutions Act, and insurance companies must comply with regulations made under the Insurance Business Act.

Malta has adopted International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS), as well as General Accounting Principles for Smaller Entities (GAPSE).

## 3.0 Business taxation

### 3.1 Overview

Malta does not apply a separate system of corporation tax, making a company chargeable to income tax in Malta (under the Income Tax Act) in much the same way as an individual, albeit at a flat rate of 35% (the top marginal rate applicable in respect of individuals).

Malta applies a full imputation system to relieve the economic double taxation otherwise arising on the taxation of dividends received by shareholders from distributions made from the taxed retained earnings of companies. This full imputation system is augmented by a participation exemption regime and a refundable tax credit mechanism that would, depending on the non-Malta residence and/or domicile of the taxpayer, result in a significantly reduced combined overall Malta effective tax rate on chargeable income or gains, even zero in certain circumstances.

Special tax regimes may be available in respect of, *inter alia*, petroleum profits, profits derived from the business of insurance, shipping and aircraft and profits derived from certain target industries in accordance with the Enterprise Act.

Malta does not have transfer pricing, controlled foreign company or thin capitalization rules, but there is a general anti-avoidance rule.

Malta has implemented the EU directives, including the parent-subsidiary, interest and royalties, and merger directive, as well as the savings directive, which requires the exchange of information between tax administrations when interest payments are made in one EU member state to an individual resident in another member state.

The IRD administers the tax laws passed by the government.

Malta Quick Tax Facts for Companies	
Corporate income tax rate	35%
Branch tax rate	35%
Capital gains tax rate	0%/35%
Basis	Worldwide
Participation exemption	Yes
<b>Loss relief</b>	
- Carryforward	Indefinite
- Carryback	No
Double taxation relief	Yes
Tax consolidation	No, but group relief is available in certain cases
Transfer pricing rules	No
Thin capitalization rules	No
Controlled foreign company rules	No
Tax year	Calendar year
Advance payment of tax	Yes
Return due date	31 March
<b>Withholding tax</b>	
- Dividends	0%
- Interest	0%

- Royalties	0%
- Branch remittance tax	0%
Capital tax	No
Real estate transfer tax	No
Stamp duty	2%/5%
VAT	18%

### 3.2 Residence

A company is resident in Malta if it is incorporated in Malta or if management and control of the business of the company is carried out in Malta.

### 3.3 Taxable income and rates

For income tax purposes, a company is defined as one of the following:

- A limited liability company or limited partnership with capital divided into shares;
- Any body of persons constituted, incorporated or registered outside Malta that is similar to the Maltese limited liability company or limited partnership with capital divided into shares; or
- Any cooperative society registered under the cooperative societies act.

A Malta resident and domiciled company is subject to tax in Malta on its worldwide profits, with credit granted for most overseas taxes. A company incorporated in Malta is considered both ordinarily resident and domiciled in Malta. A company that is resident or domiciled, but not both ordinarily resident and domiciled in Malta, is subject to tax in Malta in respect of Malta-source chargeable profits or gains and in respect of foreign-source chargeable income (not gains) to the extent such income is received in/remitted to Malta. A company that is neither resident nor domiciled in Malta is only chargeable to tax in Malta on Malta-source chargeable income and gains.

Companies are chargeable to tax in Malta at a rate of 35% (no tax is levied at the provincial or municipal levels). However, the application of the participation exemption, full imputation system and refund system typically result in an effective Malta tax rate of approximately 0% to 5%. A reduced tax rate of 12% generally is chargeable on income derived from the transfer of immovable property situated in Malta. The reduced rate, however, is chargeable on the higher of the consideration received or the market value of the property transferred. A withholding tax at reduced rate of 15% may be applicable for certain categories of investment income, but the recipient of the income may elect to receive the investment income without such a deduction.

Certain types of income are exempt from tax under the Income Tax Act (e.g. qualifying dividends, capital gains and royalties), as is income accruing to certain categories of persons. In this respect, income, other than income from immovable property situated in Malta, of a collective investment scheme that has at least 15% of the value of its assets situated outside Malta, is exempt from tax in Malta. The income of a cooperative society also is exempt from Malta tax but a certain percentage of the cooperative's surplus resulting from its activities must be contributed to a reserve fund and to a Central Cooperative Fund.

#### Taxable income defined

A company's total chargeable income derived in a given fiscal year is equivalent to the aggregate amount of income remaining after allowing exemptions and deductions available under the Income Tax Act. In practice, the profit shown in the company's financial statements drawn up for that year (in accordance with IFRS) would form the basis on which chargeable income is computed and, accordingly, the basis on which tax is levied, subject to specific adjustments as required and imposed by the relevant tax rules.

Items of chargeable income are listed in the Income Tax Act and include, in particular, business and trading profits, dividends, premiums, interest, discounts, rents, royalties and gains realized on the disposal of chargeable assets.

A Malta resident company or a registered branch of a nonresident company is required to keep and allocate distributable profits to five alternative tax accounts, namely:

- The final tax account to which certain items of income that would have been subject to final tax would be allocated;
- The immovable property account to which profits that are derived directly or indirectly from immovable property situated in Malta would be allocated;
- The foreign income account to which foreign-source passive income and gains and/or arm's length income attributable to a permanent establishment or branch situated outside Malta would be allocated;
- The Maltese taxed account to which profits that are not included in the final tax account, the immovable property account or the foreign income account would be allocated; and
- The untaxed account to which profits that are not allocated to other taxed accounts would be allocated. The untaxed account is a "balancing account," containing the difference between the total of the other four tax accounts and the balance of the company's profit and loss account.

By virtue of Malta's full imputation system, tax paid by a company on the profits out of which dividends are distributed is imputed, as a refundable tax credit, against the tax due by the recipient shareholder on the dividends received. Furthermore, a shareholder in receipt of dividends distributed by a company out of profits allocated to its Maltese taxed account or its foreign income account would, by application of Malta's refundable tax credit system, be entitled to claim a refund of Malta tax suffered or paid at the level of the company. The refund is 6/7 of the Malta tax suffered by the company on the profits from which the relevant dividend was distributed. However, the refund is reduced to 5/7 of such Malta tax suffered if the relevant dividend was paid out of profits consisting of passive interest or royalties. The refund is further reduced to 2/3 of the Malta tax paid on the profits from which the relevant dividend was distributed if such profits were allocated to the distributing company's foreign income account and the company claimed double taxation relief in respect thereof.

The combined overall Malta effective tax rate applicable to income or gains derived by a company that are subsequently distributed to nonresident shareholders that avail themselves of Malta's imputation and refundable tax credit system ranges from 0% to 10%.

Dividends and gains derived by a Malta resident company or a registered branch of a nonresident company from a participation or from the disposal of such participation are exempt from Malta tax under Malta's participation exemption regime. As a result, the combined overall Malta effective tax rate applicable in respect of such income and gains is nil. A participating holding exists, *inter alia*, when a Malta company holds directly at least 10% of the equity shares of a nonresident company. The exemption may be inapplicable in respect of income received from a participating holding if the relevant nonresident company is resident in a non-EU member state and if the income of the foreign company is subject to foreign tax at a rate lower than 15%, or if 50% or more of the income is derived from passive interest or royalties.

In addition, a full exemption from Malta tax applies to royalties and similar income (including any amounts paid for the grant of a license to exercise rights) derived from registered patents in respect of qualifying inventions, whether registered in Malta or elsewhere, and regardless of where the underlying R&D was carried out, and from qualifying copyrights.

### **Deductions**

Expenses may be deducted for tax purposes to the extent they are wholly and exclusively incurred in the production of taxable income. The Income Tax Act contains a nonexhaustive list of allowable deductions, including interest on capital employed in acquiring income, rent, repairs, bad debts, wear and tear allowances, trading losses, expenditure on intellectual property rights, scientific research, promotion, market research, obtaining market information, advertising and participating in fairs and exhibitions. Such expenses generally are deductible in the hands of persons engaged in a trade, business, profession or vocation. Specific deductions are available to securitization vehicles.

The Income Tax Act contains a list of nondeductible expenses, including private expenses, capital expenditure (without prejudice to the wear and tear allowances provided under the act), losses that are recoverable under any insurance or contract of indemnity and payments of a voluntary nature.

### Depreciation

Depreciation is allowed in the form of wear and tear allowances in respect of two classes of asset (industrial buildings or structures, and plant and machinery), provided the assets are used or employed in the production of taxable income. For industrial buildings or structures, an initial allowance amounting to 10% of the cost of the asset is deducted in the year the asset is first brought into use and a 2% deduction on cost is allowed as an annual allowance. For plant and machinery, an annual straight-line allowance is available for a minimum period ranging from four to 20 years, depending on the category of asset. There are 18 categories of plant and machinery on which tax depreciation is allowed, including computers, furniture, ships, lifts, medical equipment, etc.

On the disposal of an asset in respect of which wear and tear allowances would have been claimed, the transferring taxpayer is required to submit a balancing statement setting out the original cost of the asset, the extent of wear and tear allowances claimed and the amount received on disposal. Any excess of the amount received on disposal over the original cost of the transferred asset less wear and tear allowances claimed is charged to tax. On the other hand, any shortfall is available as a further deduction in the year of transfer.

### Losses

Relief for trading losses is available by way of deduction. Trading losses may be set off against taxable income derived in the same accounting period and also may be carried forward indefinitely to be set off against taxable income accruing in subsequent accounting periods.

Trading losses may be surrendered to group companies resident in Malta provided there is more than 50% (direct or indirect) ownership of the Malta resident subsidiary by the Malta resident parent or both are more than 50% owned (directly or indirectly) by a third company also resident in Malta. The following must take place for the trading loss transfer to be valid:

- The companies must form part of a group for the entire year preceding the year of assessment for which relief is claimed (except for companies incorporated or liquidated during the year);
- The companies must have the same year end; and
- The claim must be made to the IRD within 12 months of the companies' year end.

Unabsorbed surrendered losses may be carried forward by the claimant company as if the relevant losses were incurred in its own trade.

Unabsorbed wear and tear allowances may be carried forward indefinitely to be set off against trading profits accruing in subsequent accounting periods but may not be surrendered to group companies.

Capital losses may be set off against capital gains realized in the current and/or subsequent accounting periods but may not be surrendered to group companies.

The carryback of losses is not allowed.

## 3.4 Capital gains taxation

Capital gains realized by a person from the transfer or deemed transfer of a chargeable asset are taxable under the Income Tax Act. Chargeable assets are listed in the act as comprising immovable property, securities, business goodwill, business permits, copyrights, patents, trademarks, trade names, the beneficial interest in a trust that holds one of the foregoing chargeable assets and an interest in a partnership. Chargeable capital gains are essentially computed by deducting the cost of acquisition of the transferred asset from the consideration received or deemed to have been received upon the transfer. A capital loss is computed in the same manner as a capital gain.



Chargeable capital gains are aggregated with a taxpayer's other income and charged to tax at a flat rate of 35%. However, tax is payable at a reduced rate of 12% on the higher of the consideration received or the market value of transferred immovable property situated in Malta.

A participation exemption is available for capital gains derived from the disposal of a participation. Additionally, an exemption from tax on capital gains is available, *inter alia*, upon an intragroup transfer of chargeable assets, the transfer of chargeable assets upon a restructuring of holdings within a group of companies (e.g. mergers, demergers, amalgamations and reorganizations), a transfer of securities listed on the Malta stock exchange or a transfer by a nonresident person (i.e. a person that is not directly or indirectly owned and controlled by, or acting on behalf of, an individual(s) who is ordinarily resident and domiciled in Malta) of securities in a Malta company or an interest in a partnership, the assets of which do not consist directly or indirectly, of immovable property situated in Malta or any real rights thereon. Persons not ordinarily resident and domiciled in Malta are not liable to Malta tax on foreign-source capital gains.

### 3.5 Double taxation relief

#### Types of relief

Tax payable in Malta may be reduced by a claim for relief for foreign tax paid or deemed to have been paid, as the case may be. Unilateral or tax treaty relief from double taxation is granted in the form of an ordinary credit against the Malta tax liability of a person deriving foreign-source income that was subject to a tax similar to Malta's income tax with per-country and per-income limitations. Additionally, relief on a multi-tier basis may be available in case of unilateral relief for any underlying (foreign or Maltese) taxes suffered on income distributed as a dividend.

Malta also grants a foreign tax credit equal to 25% of the net income allocated to the foreign income account of a company. The flat rate foreign tax credit is available when no other form of double taxation relief provided for under the Income Tax Act is available (e.g. no actual foreign taxes were suffered or paid on the income stream in question) and provided the income is to be allocated to the foreign income account.

#### Tax treaties

Malta has a broad tax treaty network, with most treaties following the OECD model treaty. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other and protect companies resident in one country from discriminatory taxation in the other. Malta's treaties generally contain OECD-compliant exchange of information provisions.

Malta Tax Treaty Network			
Albania	Georgia	Lebanon	Serbia
Australia	Germany	Libya	Singapore
Austria	Greece	Lithuania	Slovakia
Bahrain	Guernsey	Luxembourg	Slovenia
Barbados	Hong Kong	Malaysia	South Africa
Belgium	Hungary	Montenegro	Spain
Bulgaria	Iceland	Morocco	Sweden
Canada	India	Netherlands	Switzerland
China	Ireland	Norway	Syria
Croatia	Isle of Man	Pakistan	Tunisia
Cyprus	Israel	Poland	Turkey
Czech Republic	Italy	Portugal	United Arab Emirates
Denmark	Jersey	Qatar	United Kingdom



Egypt	Jordan	Romania	United States
Estonia	Korea	Russia	Uruguay
Finland	Kuwait	San Marino	
France	Latvia	Saudi Arabia	

### 3.6 Anti-avoidance

#### Transfer pricing

Malta does not have specific transfer pricing legislation.

#### Thin capitalization

Malta does not have thin capitalization legislation.

#### Controlled foreign companies

Malta does not have CFC legislation.

#### General anti-avoidance rule

Under general anti-avoidance rules in the Income Tax Act, the Director General (Inland Revenue) may, for tax purposes, disregard any artificial, fictitious or abandoned scheme that reduces the amount of tax payable by a taxpayer. Additionally, where a taxpayer obtains an advantage as a result of a scheme, the sole or main purpose of which is to obtain an advantage that has the effect of avoiding, reducing or postponing liability to tax, or of obtaining any refund or set off of tax, the Director General may determine the liability to tax or the entitlement to a refund or setoff of tax of such person in such manner and in such amount as may be necessary to nullify or modify the scheme and the consequent advantage.

### 3.7 Administration

#### Tax year

The default tax year end for a company is 31 December, i.e. the calendar year. A company may apply to the Director General (Inland Revenue) to adopt a financial year end other than 31 December.

#### Filing and payment

Companies are required to pay provisional tax computed by reference to the amount of tax chargeable in the previous year. The provisional tax is payable in three installments (20% by 30 April, 30% by 31 August and 50% by 21 December). Provisional tax payments are on account of the final tax liability of the paying company for the relevant tax year.

A tax return must be filed within nine months from the end of the financial year or 31 March of the following year, whichever is later. Any balance of tax due (following the set off of provisional tax paid) must be paid by the date the tax return is due. A refund must be issued within six months from the return due date or within one year from the date the tax return is submitted if the tax return is not submitted by the due date. Interest is payable at a rate of 1% per month or part thereof on any unpaid balances and outstanding refunds.

Penalties are imposed for failure to submit a tax return, for submitting an incorrect return or for making an omission in a return.

#### Consolidated returns

Malta's Income Tax Act does not allow a group of companies to file a consolidated tax return. However, tax losses incurred in a trade or business may be surrendered between group companies and intragroup transfers of chargeable assets are not taxed, resulting in an effective deferral of tax (see above under 3.3).

## Statute of limitations

The Director General (Inland Revenue) can make an assessment no later than five years from the end of the year in which the tax return for the relevant year of assessment was furnished or for the year in which an election not to submit a return has been made under Maltese law. There is no statute of limitations where a taxpayer submits a return that does not include all material facts relevant to the determination of its income and allowable deductions, or if tax avoidance/evasion or gross negligence is present. Action for the payment of tax or additional tax may be taken by the Director General (Inland Revenue) for a period of eight years from which the tax or additional tax becomes due. In cases where an assessment has been made, the eight-year period starts from the date on which the assessment became final and conclusive.

## Tax authorities

The Inland Revenue is responsible for the administration of the Income Tax and Duty on Documents and Transfers Acts and the enforcement of social security contributions under the direction of the Ministry of Finance.

## Rulings

An application to the Director General (Inland Revenue) may be made for an advance ruling on the tax treatment of certain transactions, *inter alia*, the tax treatment of any transaction that involves international business.

A ruling application must be made in writing and contain all material particulars of the proposed transaction. The Director General will issue a written request to the applicant to furnish further particulars necessary for the purposes of enabling a decision on an application.

A ruling will be notified within 30 days of receiving the application or further particulars as requested by the Director General. A ruling is binding for five years; however where, subsequent to the issue of the ruling, relevant changes are made to statutory provisions in the relevant law, the ruling will remain binding for only two years. Subject to certain conditions, an applicant can renew a ruling for an additional five years.

## **4.0 Withholding taxes**

### **4.1 Dividends**

In general, no taxes are withheld in Malta on dividends paid to a nonresident, although there are some exceptions to this rule. Malta has implemented the EU parent-subsiidiary directive, under which domestic withholding tax will be reduced to zero if dividends are distributed to a qualifying EU shareholder that holds at least 10% of the subsidiary at the date of payment of the dividend.

### **4.2 Interest**

Typically, there is no withholding tax on interest paid to nonresidents. Tax is withheld, at a rate of 35%, only on interest paid to: (1) nonresidents that are directly or indirectly owned and controlled by, or acting on behalf of, an individual or individuals who are ordinarily resident and domiciled in Malta; and (2) nonresidents engaged in a trade or business in Malta through a permanent establishment in Malta to which the debt claim is effectively connected.

Malta has implemented the requirements of the EU interest and royalties directive, which exempts from withholding taxes payments of interest between qualifying companies in different EU member states in prescribed circumstances.

### **4.3 Royalties**

Typically, there is no withholding tax on royalties paid to nonresidents. Tax is withheld, at a rate of 35%, only on royalties paid to: (1) nonresidents that are directly or indirectly owned and controlled by, or acting on behalf of, an individual or individuals who are ordinarily resident and domiciled in Malta; and (2) nonresidents engaged in a trade or business in Malta through a permanent establishment in Malta to which the royalties are effectively connected.

Malta has implemented the requirements of the EU interest and royalties directive, which exempts from withholding taxes payments of royalties between qualifying companies in different EU member states in prescribed circumstances.

### **4.4 Branch remittance tax**

Malta does not levy a branch remittance tax.

### **4.5 Wage tax/social security contributions**

Income tax is withheld from salaries under the final settlement system, that is, employers are required to deduct income tax from wages and salaries paid to their employees, whether resident or nonresident, and to remit the tax to the tax authorities.

The employer also is liable for the payment of social security contributions on its own behalf and on behalf of the employee. The social security contribution rate is 10%, subject to a minimum and maximum tax payment. The maximum social security payable in 2014 is EUR 41.21 per week. The amount of social security contribution paid by the employer on behalf of the employee is deductible from the employee's wages or other remuneration.

## 5.0 Indirect taxes

### 5.1 Value added tax

VAT is levied, with certain exceptions, on the supply of goods and services in Malta, the intra-Community acquisition of goods in Malta by VAT-registered persons and the import of goods into Malta from outside the EU.

The standard VAT rate is 18%, with reduced rates of 7% applying to the supply of hotel accommodation and 5% on certain supplies, including electricity, confectionery, medical accessories and printed matter, items for the exclusive use of the disabled and works of art, collectors' items and antiques. A 0% rate (an exemption with the right to deduct input VAT) is levied on specified supplies, including the export of goods, the supply of qualifying sea vessels and aircraft and related transactions, gold, food (except in the course of catering), pharmaceutical goods, international transport services and supplies related to international goods traffic. Certain transactions are exempt (without the right to deduct input VAT), including the transfer of immovable property and (subject to certain exemptions) the letting of immovable property, insurance and certain banking transactions, cultural and religious services, services by nonprofit organizations to their members, lotteries and gambling, postal services, certain health and education services, public radio and television broadcasting, and the supply of water by a public authority.

A person who, in the course of a trade or profession, makes taxable and/or exempt-with-credit supplies of goods and services in Malta is required to register for VAT in Malta (standard registration) and to charge Malta VAT, where applicable, at the relevant rates, subject to the entitlement to recover input VAT incurred for the purpose of the supplies. An exception to the registration requirement applies to persons making taxable or zero-rated supplies if their turnover does not exceed EUR 7,000 per calendar year. Input VAT is deductible to the extent it relates to goods and services used/intended to be used by a taxable person for the purpose of carrying out: taxable (including zero-rated) transactions; transactions carried out outside Malta which, if carried out in Malta, would be taxable; or exempt insurance and banking services supplied to a customer established outside the EU. A qualifying taxable person (based on the level of turnover) may opt to register as a "small undertaking," in which case no VAT is chargeable on supplies made in Malta and input VAT incurred cannot be recovered.

VAT-registered persons (standard registration) are typically allocated a three-calendar month tax period and must file a VAT return for each tax period. Shorter or longer tax periods may be granted.

Penalties are imposed for late registration, late filing, incorrect VAT returns and late payment of any Malta VAT due. In the latter case, the administrative penalty will be payable in addition to interest on the amount of VAT due.

VAT grouping is not allowed in Malta.

### 5.2 Capital tax

Malta does not levy capital tax (but see below under 5.5 Stamp duty).

### 5.3 Real estate tax

There is no real property tax, but tax generally is due on gains derived from the transfer of immovable property.

### 5.4 Transfer tax

There is no transfer tax (but see below under 5.5 Stamp duty).

## 5.5 Stamp duty

Duty is chargeable in accordance with the provisions of the Duty on Documents and Transfers Act and generally is levied 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 is used in Malta. Duty is chargeable at a 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 the company's or partnership's assets consist of immovable property. Duty also is chargeable on certain specified documents, such as insurance policies.

Exemptions may apply to 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, more than 90% of its business interests outside Malta.

## 5.6 Customs and excise duties

Goods brought into Malta from outside the EU and released into free circulation in Malta are subject to customs duty at the relevant rates in accordance with the EC Common Customs Tariff and based on an international harmonized classification system.

The EU has preferential trade agreements with certain countries that result in the rates being reduced or eliminated.

Various procedures (customs duty suspension regimes) are available to relieve importers from the payment of duty, e.g. inward processing relief from customs duties is available when goods are imported for processing and re-exported, while outward processing relief may be available upon application in respect of goods that are exported for repair/processing and re-imported into the EU. No customs duty is due in connection with the movement of goods between EU member states.

Excise duties are imposed on particular classes of good, namely, alcohol, tobacco, energy products, mobile telephones and cement. In certain cases, excise duty may be relieved or refunded (e.g. when goods are exported).

## 5.7 Environmental taxes

An environment tax (eco-contribution) is payable on certain products that are placed on the market such as plastic, metal and glass containers, batteries and household appliances, as well as on accommodation provided in premises that are required to be licensed under the Malta Travel and Tourism Services Act.

## 5.8 Other taxes

A registration tax is payable on the registration of motor vehicles, at rates that vary according to the prescribed category of motor vehicle.

## 6.0 Taxes on individuals

Malta does not operate a separate system of taxation for individuals and corporate entities. As such, individuals, in a similar manner to corporate entities, are taxed under the Income Tax Act and the Income Management Tax Act.

Employed individuals (as well as the self-employed) must make social security contributions.

There is no net wealth tax, real estate tax or inheritance and gift taxes, but individuals are subject to capital gains tax and stamp duty.

Malta Quick Tax Facts for Individuals	
Income tax rates	Progressive to 35%
Capital gains tax rates	Progressive to 35%
Basis	Worldwide income
Double taxation relief	Yes
Tax year	Calendar year
Return due date	30 June
<b>Withholding tax</b>	
- Dividends	15% (if paid out of untaxed income)
- Interest	15% (bank interest)
- Royalties	0%
Net wealth tax	No
Social security	10% of remuneration
Inheritance tax	No
Real estate tax	No
VAT	18%

### 6.1 Residence

The Malta tax treatment of an individual depends on his/her tax residence status in Malta and more specifically, whether the individual is resident, ordinarily resident and/or domiciled in Malta.

An individual is considered to acquire a domicile of origin at birth, by reference to the domicile of his/her father at that time. A person's domicile of origin is retained unless he/she has acquired a domicile of choice. There is a legal presumption against a change of domicile and whoever alleges a change of domicile must prove it.

An individual is resident in Malta if he/she resides in Malta, except for such temporary absences as may seem to the Director General (Inland Revenue) to be reasonable and not inconsistent with the claim of residence. An individual who temporarily resides in Malta and who is not of Maltese origin is not domiciled in Malta for tax purposes. To be regarded as ordinarily resident, the individual must show that he/she is resident in the normal course of his/her life.

### 6.2 Taxable income and rates

#### Taxable income

An individual who is ordinarily resident and domiciled in Malta is subject to income tax in Malta on worldwide income and chargeable gains. An individual resident in Malta who is either not ordinarily resident or not domiciled in Malta, is taxable on income and chargeable gains arising in Malta and on foreign income (but not foreign capital gains) received in/remitted to Malta.

Taxable income for individuals is defined in the same way as for businesses. The total taxable income is the aggregate amount of income of a person after allowing for exemptions and allowable deductions. The following are some of the major items included in an individual's taxable income:

- Salaries, wages and other benefits from employment;
- Profits or gains from a business;
- Dividends, interest, royalties, rents and other investment income; and
- Pensions and annuities.

Employment income includes fringe benefits, such as the provision of assets (e.g. accommodation) and benefits of using a car. Directors' income is taxed as employment income. Payments relating to the termination of employment are not taxable as they do not constitute compensation for services rendered. Gifts of a personal nature and capital sums received in respect of commutation of pension, retirement or death gratuity are not taxable.

Gains on the transfer of capital assets (capital assets being: (i) immovable property; (ii) securities, business, goodwill, business permits, copyrights, patents, trademarks and trade names; (iii) beneficial interests in trusts that hold property referred to in (i) or (ii); or (iv) interest in a partnership), are aggregated with a person's other income and the total of income and capital gains is charged to income tax. A nonresident is not subject to tax on gains or profits realized on a disposal of shares or securities in a company or an interest in a partnership, unless the company's assets consist wholly or principally of immovable property situated in Malta or any real rights thereon.

Exempt income for individuals includes certain capital gains, certain pensions, scholarships and child maintenance.

As noted above, Malta operates a full imputation system for residents and nonresidents, under which tax paid by a company in Malta can be credited at the level of the shareholder on distribution of dividends. The tax credit is equivalent to the tax paid by the company on the profits from which the dividends are distributed. Excess imputation tax credits are refundable where the individual shareholder is liable to tax in Malta at a rate that is lower than the company rate of tax.

Treaty relief and unilateral relief are available to avoid the double taxation of foreign-source income.

### **Deductions and reliefs**

Individuals carrying on a business in Malta can deduct from business income expenses incurred wholly and exclusively in the production of the income, including payments of interest, rents, repairs and renewals, bad debts, sales promotion expenditure, patent expenditure spread over the life of the patent, capital expenditure on intellectual property rights spread equally over three years and certain pre-trading expenditure. In general, individuals may not deduct expenses related to income from capital (except certain expenses from rental income on immovable property that does not constitute a business) or employment.

With respect to employment income, individuals may deduct expenses incurred wholly, exclusively and necessarily in the performance of the duties of the employment or office, and the necessity for the expense must be dictated by the employment itself. There are no personal allowances or credits, and no deductions for medical costs and gifts. However, subject to conditions, deductions may be permitted for alimony payments, school fees, childcare fees, elderly home fees and sports fees.

Interest paid on borrowed funds is generally deductible from income generated by the application of those funds.

### **Rates**

Malta has a progressive income tax rate schedule for individuals:

- 0% on taxable income up to EUR 8,500;
- 15% on EUR 8,501 to EUR 14,500;
- 25% on EUR 14,501 to EUR 19,500;



- 29% on EUR 19,501 to EUR 60,000; and
- 35% on the excess over EUR 60,000.

Nonresident individuals are subject to Maltese income tax on income and capital gains arising in Malta at the following rates:

- 0% on taxable income up to EUR 700;
- 20% on EUR 701 to EUR 3,100;
- 30% on EUR 3,101 to EUR 7,800; and
- 35% on income exceeding EUR 7,800.

A 15% withholding tax is imposed on certain types of investment income (e.g. bank interest paid to Maltese residents) and on profits distributed to a resident individual shareholder out of untaxed income. The recipient of the investment income has the option to receive the income without deduction of tax and to declare the investment income in the tax return. The shareholder can opt to declare the dividends in the tax return, so that the dividends are taxed at the ordinary rates and a credit granted for the withholding tax.

A 25% tax must be deducted at source if taxable income, other than dividends, interest and royalties, that is not subject to withholding tax in Malta, is paid to a nonresident individual. Nonresidents are exempt from tax in Malta on interest and royalties only if they are not connected to a PE of the nonresident in Malta.

A special reduced flat tax rate of 15% applies to expatriates holding an employment under a qualifying contract of employment in an eligible office in Malta. The regime focuses on a narrow range of industries comprising the banking, financial, investment and insurance sectors.

### **6.3 Inheritance and gift tax**

There is no inheritance or gift tax in Malta, but a stamp duty may apply and capital gains tax may apply on the transfer of inherited real property.

### **6.4 Net wealth tax**

There is no net wealth tax in Malta.

### **6.5 Real property tax**

There is no real property tax in Malta, but capital gains tax must be paid on the transfer of real property.

### **6.6 Social security**

Social security is compulsory for all persons gainfully occupied in Malta between the ages of 16 to 65, including nonresident persons working in Malta. The social security contribution generally amounts to 10% of the amount of the remuneration and is payable by both the employer and the employee. This is subject to minimum and maximum tax payments. The maximum social security payable for 2014 is EUR 41.21 per week. Social security contributions paid by the employer on behalf of an employee are deductible from the employee's remuneration.

### **6.7 Other taxes**

Stamp duty generally is levied on documents evidencing transfers of immovable property at a rate of 5% of the higher of the consideration and the real value (with reduced rates applicable to dwelling houses and transfers *causa mortis*), and upon a transfer of marketable securities or an interest in a partnership at a rate of 2% of the higher of the consideration and the real value. A 5% rate applies to transfers of marketable securities in a company or an interest in a partnership where 75% or more of the company's or partnership's assets consist of immovable property or any real rights thereon. Exemptions are available.

## **6.8 Compliance**

The tax year is the calendar year.

Spouses must file a joint tax return and are jointly liable for taxes due.

Individuals are taxed on a preceding year basis. Tax on employment income is withheld at source by the employer. Three provisional tax payments must be made before 30 April, 31 August and 21 December, respectively, of each basis year (except for income on which tax was withheld at source), with the balance paid by 30 June of the year of assessment.

The 25% tax withheld on certain payments to nonresidents must be paid to the IRD within 30 days and is fully credited to the nonresident taxpayer.

# 7.0 Labor environment

## 7.1 Employee rights and remuneration

The Constitution of Malta contains the basic principles of employee rights, including the right of all citizens to work, the establishment of maximum daily working hours, a weekly rest day, a minimum working age, gender equality and contributions to national insurance. Employment may be for a fixed term or an indefinite term and on a “whole-time” basis (40 hours), full-time on reduced hours (between 20 and 40 hours) or part-time basis (less than 20 hours).

### Working hours

Malta has 14 paid public holidays a year. The work week is 40 hours with a maximum weekly work time for all sectors of 48 hours, although actual work hours may vary by sector and are governed by collective agreements and by the Government Wages Council, specific to each industry. An employee is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period, a rest break where the work day is longer than six hours and a minimum uninterrupted weekly rest period of 24 hours for each seven-day period.

## 7.2 Wages and benefits

The minimum wage in Malta depends on the category of work and may change according to cost of living increases determined by the annual budget. The National Minimum Wage National Standard Order lists the minimum wage applicable to certain age groups. The minimum weekly wage for 2014 for individuals aged over 18 years is EUR 165.68.

### Pensions

A person is entitled to a retirement pension at one of the rates specified in the Social Security Act. A person who is not entitled to a service pension payable by or on behalf of his/her employer in respect of past services is entitled to a National Minimum Pension, at a maximum rate equivalent to 4/5 of the national minimum wage in the case of a married person who is supporting his/her spouse and 2/3 of the national minimum wage in all other cases.

### Social insurance

The Social Security Act establishes rules for the national social security system. All employers are required to contribute to a compulsory national social security system. Contributions are generally equivalent to one-tenth of an employee's gross salary up to a maximum of EUR 41.21 (in 2014) per week. The employer must pay the full contribution on behalf of the employed person. The amount of any contribution paid by the employer on behalf of the employed person is deductible from the wages of that person.

### Other benefits

Fringe benefits provided by an employer, such as transport allowances and canteen facilities, vary and normally depend on agreements reached with unions.

A full-time employee is entitled to paid annual leave of at least 192 hours. An employee may apply for maternity leave for an uninterrupted period of 14 weeks with full wages. This period may be increased to 18 weeks but the employer is not obliged to pay any wages for any weeks of maternity leave in excess of 14 weeks.

## 7.3 Termination of employment

According to the Employment and Industrial Relations Act, the first six months of an employment under a contract of service are probationary unless otherwise agreed by both parties. During the probationary period, the employment may be terminated at will by either party without giving a reason. A contract of service for an indefinite time may be terminated by the employee by giving notice without any reason and by the employer only on grounds of redundancy or, in case of sufficient cause for such dismissal or abandonment of service, without giving notice. The time period for the notice of termination of employment by the employer or by the employee under a contract of service for an indefinite time is regulated by the Act. An employee under a contract of

service for an indefinite time that fails to give notice is liable to pay the employer a sum equal to half the wages that would be payable in respect of the period of notice. An employer who fails to give notice is liable to pay the employee a sum equal to the full amount of wages that would be payable in respect of the notice period.

## **7.4 Labor-management relations**

All employees may be represented at work by a workers' or trade union. The responsibilities, privileges and obligations of the union are regulated under the Employment and Industrial Relations Act.

Labor disputes can be settled voluntarily by mediation and conciliation, or by a tribunal determined by the Industrial Tribunal. A conciliation panel must consist of at least five persons. The Industrial Tribunal is a judicial organization, whose rulings are binding and not subject to appeal for a minimum stipulated period of 12 months.

The Employment Relations Board makes recommendations and advises the government on a wide range of issues concerning labor legislation and the national minimum conditions of employment. An Employment Commission is established under the Constitution to ensure that, in respect of employment, no distinction, exclusion or preference that is not justifiable in a democratic society is made or given in favor or against any person by reason of his political opinion.

Strikes and lockouts are permissible when they concern labor relations and when there are no impeding obligations such as to maintain peaceful labor relations. Strikes can be prohibited by law for specific sectors. Employers are not obliged to pay wages for the duration of strikes.

## **7.5 Employment of foreigners**

A work permit issued by the Director of Labor is required for all non-EU foreign nationals wishing to work in Malta. The following requirements must be met to obtain a permit:

- An offer of employment from an employer in Malta;
- The applicant must possess a specialist skill or qualification of which there is a shortage in Malta;
- There must be a significant demand in the relevant field; and
- The applicant must submit a valid passport, a certificate of good conduct and a letter of employment including a full job description by the prospective employer.

Work permits are issued for one year, although there are cases in which a foreign investor in manufacturing or financial sectors, holding a substantial shareholding (40%), may be granted a work permit on an indefinite basis.

## 8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach.

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## 9.0 Office locations

To find out how our professionals can help you in your part of the world, please contact us at the offices listed below or through the “contact us” button on <http://www.deloitte.com/tax>

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