

International Tax Malta Highlights 2017



Investment basics:

Currency – Euro (EUR)

Foreign exchange control – No

Accounting principles/financial statements – IAS/IFRS/General Accounting Principles for Small and Medium-Sized Entities (GAPSME). Financial statements must be prepared annually.

Principal business entities – These are the public and private limited liability company, partnership *en nom collectif* and the partnership *en commandite* (the capital of which may or may not be divided into shares). Trusts and foundations also are available under Maltese law. A Collective Investment Scheme (CIS) and a securitization vehicle may be set up under various forms.

Corporate taxation:

Residence – A company incorporated in Malta is considered both domiciled and resident in Malta. A company not incorporated in Malta is considered resident in Malta if the management and control of its business is exercised in Malta.

Basis – Companies resident and domiciled in Malta are subject to income tax on their worldwide income and chargeable gains. Companies that are ordinarily resident but not domiciled in Malta are taxable in Malta on a source and remittance basis, i.e. on income and chargeable gains arising in Malta and on income arising outside Malta that is received in Malta (such companies are not taxable on income arising outside Malta that is not received in Malta or on capital gains arising outside Malta, regardless of whether received in Malta). Companies that are neither incorporated nor resident in Malta are chargeable to tax in Malta only in respect of

Malta-source income and chargeable gains, such as the income of a Malta permanent establishment (PE).

Taxable income – Taxable income includes, *inter alia*, gains or profits derived from a trade or business; dividends, premiums, interest or discounts; rents, royalties and other profits arising from property; any charge, annuity or annual payment; and certain chargeable capital gains. Some categories of income are, subject to certain exceptions, exempt from tax (such as interest, royalties and gains on the transfer of shares derived by nonresidents), as is income accruing to certain categories of persons (such as income of a CIS that has at least 15% of the value of its assets situated outside Malta, other than income from immovable property situated in Malta). Due to specific deductions available to securitization vehicles, any taxable income effectively may be eliminated at the level of such vehicles.

Taxation of dividends – A company in receipt of dividend income is subject to tax on such income, with the possibility of relief for any underlying tax. The participation exemption may apply in respect of dividend income derived from a participating holding (see “Participation exemption,” below).

Capital gains – Gains on the transfer of capital assets are aggregated with a company's other income, and the total income and capital gains is charged to income tax. Capital gains arise, *inter alia*, upon a transfer of (i) immovable property; (ii) securities, business, goodwill, business permits, copyrights, patents, trademarks, trade names and any other intellectual property; (iii) interest in a partnership; and (iv) beneficial interests in trusts that hold property referred to above. However, where a company transfers immovable property situated in Malta,

final tax is payable at a rate of 8% on the transfer value; other rates, mainly 2%, 5%, 10% and 12%, may apply in specific cases.

A participation exemption may apply in respect of gains derived from the disposal of a participating holding (see "Participation exemption," below).

Nonresident companies are not subject to tax on gains or profits realized on a disposal of units in a CIS, units relating to long-term insurance policies, interests in a partnership and shares or securities in a company, unless the partnership's or company's assets consist wholly or principally of immovable property situated in Malta.

Losses – Trade losses may be set off against income of the relevant year and carried forward indefinitely for setoff against income of subsequent years. Losses arising as a result of depreciation may be carried forward indefinitely and set off against the profits of the same and continuing activities. The carryback of losses is not permitted. Capital losses may be set off against capital gains of the current and subsequent years.

Rate – Companies are taxed at a flat rate of 35%. Relief for economic double taxation upon the distribution of taxed profits by companies is ensured by the application of the full imputation and refund system. This system grants a shareholder the right to claim a refund of all or a part of the Malta tax paid on the qualifying profits out of which the dividend was distributed and, as a result, may reduce the effective tax rate in Malta to 0%-10%. Certain categories of investment income are taxed at 15% or 10%; certain categories of rental income are taxed at 15%. Transfers of immovable property situated in Malta are chargeable to an 8% final tax on the transfer value; other rates, mainly 2%, 5%, 10% and 12%, may apply in specific cases. The transfer value is the higher of the consideration received or the market value of the property transferred.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – An ordinary tax credit with per-country and per-source limitations may apply, or a (notional) flat rate foreign tax credit of 25% may apply to companies that receive, and are specifically empowered to receive, foreign-source income.

Participation exemption – Dividend income or capital gains derived from a participating holding or from the disposal of such a holding (usually a 10% equity shareholding, although a number of alternative tests may apply) are exempt from tax in Malta (or alternatively may be taxed at 35% and the shareholder may, upon a subsequent distribution of the corresponding profits, claim a full refund of the Malta tax paid by the company).

In the case of dividends derived from a participating holding, the entity also must be incorporated or resident in the EU or must derive less than 50% of its income from passive interest and royalties or must be subject to tax at a rate of at least 15%. If none of these conditions are satisfied, the participation exemption may apply if the holding does not qualify as a portfolio investment and the entity is taxed at a rate of at least 5%.

The participation exemption regime also is applicable to profits and gains derived by a Maltese company that are attributable to a PE situated outside Malta, or to the transfer thereof. The profits and gains are to be calculated as if the PE is an independent enterprise operating under similar conditions and at arm's length.

With effect from 1 January 2016, distributed profits received by a company resident in Malta (or the permanent establishment in Malta of a company resident in another EU member state) from a participating holding in a company resident in another EU member state, to which the EU parent-subsidiary directive applies, shall only benefit from the participation exemption in Malta to the extent that such distributed profits are not deductible by the subsidiary situated in the other EU member state.

Holding company regime – No specific holding company regime is available; however, the participation exemption may be applicable, as outlined above.

Incentives – Tax and other incentives are granted to, among others, the following activities: manufacturing, information and communication technology development, call centers, healthcare, pharmaceuticals, biotechnology, aviation and maritime services, education and training and logistics. Incentives fall under the following support measures: i) investment aid, which comprises business development and continuity assistance, investment aid tax credits, soft loans, interest rate subsidies, loan guarantees and rent subsidies; ii) aid for small enterprises, which comprises micro investment tax credits, micro guarantee schemes and trade promotion; iii) aid for SME start-ups, which comprises seed funding for start-ups and trade promotion; iv) aid for research and innovation, which includes research and development tax credits and personal tax incentives; and v) enterprise support measures, which include business development and continuity grants, investment aid for high-efficiency co-generation, knowledge transfer grants, business advisory services, business associations grants, gozo transport grant schemes, network support schemes, rent subsidies and trade promotion.

Withholding tax:

Dividends – Malta does not levy withholding tax on

outbound dividends (except for certain untaxed dividends where a nonresident person is owned and controlled by, or acts on behalf of, an individual ordinarily resident and domiciled in Malta).

Interest – The rate is 0%, provided the recipient is not owned and controlled by, and does not act on behalf of, persons ordinarily resident and domiciled in Malta, and does not carry on a trade/business in Malta through a PE with which the interest income is effectively connected.

Royalties – The rate is 0%, provided the recipient is not owned and controlled by, and does not act on behalf of, persons ordinarily resident and domiciled in Malta, and does not carry on a trade/business in Malta through a PE with which the royalty income is effectively connected.

Technical service fees – The rate is 0%, provided that such fees are not sourced to Malta (e.g. are not attributable to a PE of a nonresident in Malta).

Branch remittance tax – No

Other – Non final withholding tax may be imposed on certain taxable income paid to nonresident companies.

Other taxes on corporations:

Capital duty – No

Payroll tax – No additional taxes are levied in relation to payroll. Income tax is withheld from salaries under the Final Settlement System.

Real property tax – There is no real property tax; however, stamp duty and income tax may apply to gains derived from the transfer of immovable property (see “Capital gains,” above).

Social security – The employer must pay social security contributions for each employee, in an amount generally equal to 10% of the employee's basic weekly wage, subject to a minimum and a maximum contribution updated annually on the basis of the government-awarded cost-of-living increase. The employer also must deduct 10% from the basic weekly wages of the employee and pay the entire amount to the government on a monthly basis. The employer's share of the social security contribution is deductible for income tax purposes.

Stamp duty – Stamp duty generally is levied on documents evidencing transfers of immovable property at a rate of 5% of the higher of the consideration or the real value. It also applies upon a transfer of marketable securities and/or an interest in a partnership, at a rate of 2% of the higher of the consideration or the real value; however, a 5% rate applies to transfers of marketable securities in a company and/or an interest in a partnership where 75% or more of the company's and/or the partnership's assets consist of immovable property.

Certain transactions may be exempt from duty. Stamp duty also is levied on certain specified documents when no transfer of property takes place, such as policies of insurance.

Transfer tax – No, but see “Stamp duty,” above.

Anti-avoidance rules:

Transfer pricing – No

Thin capitalization – No

Controlled foreign companies – No

Disclosure requirements – Malta has adopted country-by-country (CbC) reporting. A Malta resident parent company of a multinational enterprise must file an annual CbC report with the Commissioner for Revenue if the consolidated turnover of the group exceeds EUR 750 million. The report, which covers each jurisdiction in which the multinational group conducts business activities, must include, among others, information on revenue, profit or loss before tax, income tax paid, the number of employees, stated capital and accumulated earnings.

Other – Under a general anti-abuse provision, the Commissioner for Revenue is entitled to disregard, for tax purposes, any artificial or fictitious scheme that reduces the amount of Malta tax payable by a taxpayer, and to assess the taxpayer for tax to effectively nullify or modify the scheme and the consequent advantage. There also are a number of anti-abuse provisions targeting specific activities.

Compliance for corporations:

Tax year – Companies are assessed to tax on income derived during the financial year. Company profits are assessable in the year (year of assessment) on the basis of the financial year immediately preceding the year of assessment (basis year). A company may use an accounting reference date other than 31 December if consent is granted by, and subject to conditions imposed by, the Inland Revenue Department.

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return. However, group loss relief is available in certain circumstances.

Filing requirements – Companies are required to make advance payments of tax during the accounting period (although certain exceptions from paying provisional tax may apply), and typically must file a tax return together with financial statements within nine months from the end of the accounting period. A final tax payment is due by the date the tax return is submitted. Certain exceptions to the above may apply.

Penalties – Penalties may be imposed, *inter alia*, for filing an incorrect return.

Rulings – An application to the Inland Revenue may be made for an advance ruling on the tax treatment of certain transactions. A ruling is binding for five years and may be subsequently renewed; however, if relevant changes are made to the law in question subsequent to the ruling, the ruling will remain binding for two years from such time.

Personal taxation:

Basis – Persons ordinarily resident and domiciled in Malta are subject to income tax in Malta on their worldwide income and chargeable gains. Persons who are ordinarily resident and not domiciled in Malta are taxable in Malta on a source and remittance basis, that is, on income and chargeable gains arising in Malta and on income arising outside Malta that is received in Malta (i.e. such persons are not taxable in Malta on income arising outside Malta and not received in Malta and on capital gains arising outside Malta, regardless of whether they are received in Malta). It should be noted that persons who are resident or domiciled in Malta and who are married to an individual who is ordinarily resident and domiciled in Malta are subject to tax in Malta on a worldwide basis (and not on a source and remittance basis).

Residence – The extent of a person's tax liability will depend on his/her domicile and his/her tax residence status in Malta, and a factual determination must be made to determine whether the person is ordinarily resident and domiciled in Malta, resident but not domiciled in Malta, not ordinarily resident but domiciled in Malta, etc.

An individual is resident in Malta if he/she resides in Malta, except for such temporary absences as may seem to the Commissioner for Revenue to be reasonable and not inconsistent with the claim of residence. An individual is typically considered to be resident in Malta if he/she is present in Malta for a period equal to six months in a given calendar year, with the intention to establish his/her residence in Malta.

Filing status – Spouses are jointly responsible for filing tax returns, whereby one spouse is registered as the taxpayer (responsible spouse), although that spouse may opt to have tax on the other spouse's income computed separately. Any income of the nonresponsible spouse is assessable in the hands of the responsible spouse, jointly. Where spouses are assessed separately, they are assessed at the rates for single or parent taxpayers.

Taxable income – Taxable income includes gains or profits derived, *inter alia*, from a trade or business; profession or vocation; employment or office; dividends,

interest or discounts; pensions, annuities or annual payments; rents, royalties, premiums and any other profits arising from property; and certain chargeable capital gains.

Capital gains – Gains on the transfer of capital assets are aggregated with a person's other income, and the total of income and capital gains is charged to income tax. Capital gains arise, *inter alia*, upon a transfer of (i) immovable property; (ii) securities, business, goodwill, business permits, copyrights, patents, trademarks, trade names and any other intellectual property; (iii) interest in a partnership; and (iv) beneficial interests in trusts that hold property referred to above. However, when a person transfers immovable property situated in Malta, final tax is payable at a rate 8% on the transfer value; other rates, mainly 2%, 5%, 10% and 12%, may apply in specific cases. Nonresidents are not subject to tax on gains or profits realized on a disposal of units in a CIS, units relating to long-term insurance policies, interests in a partnership and shares or securities in a company, unless the partnership's or company's assets consist wholly or principally of immovable property situated in Malta and/or the nonresident person does not act on behalf of an individual or individuals who are ordinarily resident and domiciled in Malta.

Deductions and allowances – Various deductions are allowed, e.g. certain fees in connection with schools, childcare, sports for children, and homes for the elderly. Interest paid on money borrowed is deductible from income generated by assets acquired through the application of the loaned funds. Alimony payments are deductible up to the amount of taxable income. No personal allowances are granted under Maltese law.

Rates – Rates are progressive, ranging from 0% to 35%. A flat tax rate of 15% applies to emoluments derived by highly qualified persons employed in a qualifying industry such as financial services, gaming or aviation, under a qualifying contract of employment. Additionally, subject to certain conditions, a flat tax rate of 15% applies to foreign-source income remitted to Malta by persons benefiting under certain residence schemes.

Other taxes on individuals:

Capital duty – No

Stamp duty – Certain transfer agreements concluded in Malta are subject to stamp duty. Stamp duty is generally levied on documents evidencing transfers of immovable property, at a rate of 5% on the higher of the consideration or the real value of the property being transferred (with reduced rates applicable to dwelling houses and transfers *causa mortis*). No duty is levied in the case of transfers *causa mortis* of a dwelling house to

a surviving spouse and in case of a transfer of property *causa mortis* by a parent or legal guardian to a disabled individual. Stamp duty also applies to a transfer of marketable securities and/or an interest in a partnership at a rate of 2% chargeable on the higher of the consideration or the real value; however, the rate is increased to 5% on transfers of marketable securities in a company and/or an interest in a partnership where 75% or more of the company's or the partnership's assets, excluding all current assets other than immoveable property, consist of immovable property. Stamp duty is also levied on certain specified documents when no transfer of property takes place, notably on policies of insurance.

Capital acquisitions tax – No

Real property tax – There is no real property tax; however, stamp duty and income tax is levied on the transfer of immovable property (see “Capital gains,” above).

Inheritance/estate tax – No, but see “Stamp duty,” above.

Net wealth/net worth tax – No

Social security – Social security is compulsory for all persons gainfully occupied in Malta between the ages of 16 and 65, including nonresident persons working in Malta, under certain conditions. A full-time employee must generally contribute 10% of his/her basic weekly wages (the employer contributes an equal amount), subject to a minimum and a maximum contribution that are updated annually on the basis of the cost-of-living increase awarded by the government.

Compliance for individuals:

Tax year – Individuals are subject to tax on income arising in a calendar year (i.e. the basis year), which is assessed to tax in the year following the year in which it arises (i.e. the year of assessment).

Filing and payment – Individuals must make provisional tax payments, which must be effected before 30 April, 31 August and 21 December, respectively, of each basis year (except for income on which tax was withheld at source,

e.g. employment income). The balance must be paid by 30 June of the year of assessment.

Penalties – Penalties may be imposed, *inter alia*, for filing late or incorrect returns.

Value added tax:

Taxable transactions – VAT is levied on the supply of goods and services in Malta, the intra-Community acquisition of goods in Malta and the import of goods into Malta from outside the EU.

Rates – The standard rate is 18%; reduced rates of 7%, 5% and 0% apply in certain cases; and some transactions are exempt (e.g. banking and insurance services and the sale and leasing of immovable property).

Registration – For VAT purposes, every 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 and to charge VAT that may be applicable, and is entitled to recover input VAT incurred for the purpose of its supplies. Small undertakings may opt to register under a simplified registration category, and these undertakings will not charge or reclaim VAT. Additional registration requirements apply to businesses supplying and receiving services in a cross-border context.

Filing and payment – Input VAT is set off against output VAT, and the balance is accounted for every three months (quarterly).

Source of tax law: Income Tax Act, Income Tax Management Act, Duty on Documents and Transfers Act, Malta Enterprise Act, Value Added Tax Act

Tax treaties: Malta has concluded 73 tax treaties.

Tax authorities: Inland Revenue Department, VAT Department

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