

TAX 360

Your complete Malta tax handbook
for conducting business in Malta.

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The purpose of this handbook is to provide the reader with a snapshot of the Maltese tax framework for investors seeking to conduct business in Malta. This handbook is not intended as a legal opinion to the reader. Hence should you require tax advice on a situation-specific issue, please contact ARQ Accounting Limited directly.

The contents of this handbook were compiled by ARQ Group based on the information

available and is accurate as of 30th June 2024 .

The reader should note that the information contained herein may change at short notice. The ARQ Group disclaims any responsibility for the completeness and accuracy of the content of this handbook and for any subsequent changes.

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Chapter 1 Perspective



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Malta has positioned itself as one of the most respected regulatory bodies worldwide. From asset registration to fintech, iGaming, blockchain-based platforms, and artificial intelligence.

Jurisdictional innovation has always been a cornerstone of the Maltese economy, and this has allowed the country to specialise in niches that the majority continue to lag on. Meanwhile, as an island nation, Malta has developed a strong shipping, legal and regulatory framework that enabled the Maltese shipping flag to become an established reputable international ship register which is now one of the largest in the world.

These milestones have not been developed in isolation and in fact Malta has developed a competitive tax system with unique

features. In this regard, this handbook seeks to shed light on these interesting features.

Accessing tax optimised solutions through Maltese structures requires substance to be established in Malta. This is in line with the international developments which in recent years took stringent measures against artificial structures which are not in lockstep with the economic reality.

In this regard, Malta introduced transfer pricing legislation for cross-border arrangements which have entered into on or after 1st January 2024 in line with its commitments to secure disbursements from the Recovery and Resilience Facility (RRF). However, this grandfathering clause for cross-border arrangements entered before 1st January 2024 will come to an end as of 1st January 2027.

Meanwhile, the European Commission has tabled its proposal in line with the special legislative procedure to enact an EU directive to tackle the misuse of shell entities. In fact, these developments are being made in the backdrop of a wide array of measures against aggressive tax planning and considering a re-energised focus on combatting tax-related money laundering.

Moreover, Council Directive (EU) 2022/2523 which implemented the OECD / G20 agreement to ensure a global minimum of taxation. This came into effect in 2023, with the Undertaxed Payments Rule entering into force in 2024. With the recent fluctuating cost-push inflation and price stickiness phenomena being experienced in Malta, it will need to be seen what impact these complex rules will have on the economy of Malta.

In terms of economic forecasting, Standard & Poor's credit rating for Malta stands at A- with stable outlook. Moody's credit rating for Malta was last set at A2 with stable outlook.

Fitch's credit rating for Malta was last reported at A+ with stable outlook. DBRS's credit rating for Malta is A (high) with stable outlook. This comes following Malta's delisting by the FATF from enhanced monitoring (grey list) after recognising significant progress on 17th June 2022. Furthermore, on 28th July 2022, Malta was ranked first out of 35 European jurisdictions by the European Commission in the eGovernment Benchmark 2022.

Moving forward, Malta continues to provide strong incentives to promote industry diversification, foreign direct investment, and research & innovation primarily through

Malta Enterprise, the national corporation charged with promoting investment. This includes both the possibility of cash-grants and tax-credits which are in addition to those contemplated in the law. The Invest scheme launched in May 2022 in respect of eligible investment projects is one such scheme. It is expected to run at least till 31st December 2026.

During the year 2023 a one-stop shop for start-ups was launched. The “Start in Malta” programme currently run by Malta Enterprise. This mechanism will ensure that start-ups receive all the technical aid from inception to application for assistance from the relevant governmental entities.

Furthermore, to incentivise Smart and Sustainable investment, the Malta Government will be covering 50% of

eligible investments, up to a maximum of €100,000. Meanwhile the tax credit for such investments is doubled to €40,000.

Malta continues to offer a strong patent box regime which is in line with the OECD modified nexus approach and the EU code of conduct on business taxation. An individual resident in Malta who prefers to seed invest as an angel investor, can also be entitled to tax credits through the certification of the Malta Investment Management Company. Therefore, having a good understanding of domestic incentive schemes and those offered by the European Union through MEUSAC is the first step in guaranteeing success to any investment in Malta.

Meanwhile in 2024, Accelerate 2024 was launched which supports undertakings in their initial seven years for specified ventures with potential for growth.

Chapter 2

Legal Vehicles



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There are different modes of conducting business in Malta and Maltese legislation has in this regard drawn from different legal traditions. Business is generally conducted through limited liability companies and commercial partnerships. However, there are other interesting entities in Malta such as trusts, foundations, associations, and cooperatives. As an EU member State, Malta incorporates other vehicles such as the Societas Europaea, The European Economic Interest Grouping and the European Cooperative Society.

This section gives a brief description of the salient legal vehicles. The undertaking of an activity through a legal organisation has its own advantages and disadvantages for tax purposes and therefore it is recommended

that you reach out to the ARQ Group for further information.

Limited liability companies

The limited liability company remains the prevalent form of conducting trade in Malta. The Companies Act (Chapter 386 of the Laws of Malta) distinguishes between a public limited company and a private limited company.

A private company is a company which restricts the rights to transfer shares, limits the number of its members to subscribe for any shares of the company. A private company may also be an exempt company if no body corporate acts as its director and if it is established with one main trading activity. An exempt status

entitles it to certain compliance simplifications. A private exempt company may also be a single member company. This in contrast to a normal private company which must have a minimum of two shareholders. In any case, the name of a private limited liability company must end with the word 'limited' or with the abbreviation 'Ltd.'

A public limited company is defined as a company that is not a private company. A public limited company may offer or allot to the public any shares or debentures of the company, whether for cash or otherwise. The name of a public limited company must end with the words 'public limited company' or the abbreviation 'plc.'

In general, a limited liability company is formed by means of capital divided into shares. The liability of the shareholders is limited to the amount, if any, unpaid on the shares held. However, Maltese law makes specific provision for investment companies with variable share capital i.e., open ended funds (SICAVs) and investment companies with fixed share capital i.e., closed ended funds (INVCOs.).

Malta has interesting cell company legislation which allows a company to segregate its assets and liabilities into separate cells. Originally, protected cell companies were legislated to enable insurers to carry on the business of insurance.

However, in recent years, this was expanded also to other areas outside financial services. In fact, this was also expanded to the shipping and aviation sector in June 2020. Furthermore, in certain instances our law also allows that the cell itself obtains a separate juridical personality.

Partnerships

The Companies Act (Chapter 386 of the Laws of Malta) distinguishes between a commercial partnership ‘en nom collectif’ and a partnership ‘en commandite’.

- A Partnership ‘en nom collectif’ has its obligations guaranteed by the unlimited, joint and several liability of all its partners.
- A Partnership ‘en commandite’ has its obligations guaranteed by the

unlimited, joint and several liability of its general partners, and by the liability, limited to the amount of their contribution, of one or more limited partners. Partnerships ‘en commandite’ may have their capital divided into shares.

Contributions by the partners to a partnership may be made in cash or other assets. However, a limited partner in a partnership ‘en commandite’ cannot include personal services. A commercial partnership has a legal personality that is distinct from that of its members.

The Civil Code (Chapter 16 of the Laws of Malta) also regulates civil partnerships whereby the partners are not jointly and severally liable for the partnership debts.

Nevertheless, they are unlimitedly liable for the debts of the partnership subject to each partners’ proportion of interest in the partnership.

Trusts

The principal Maltese law on trusts is the Trusts and Trustees Act, Chapter 331 of the Laws of Malta. Maltese legislation allows for the setting up of various types of trusts: Constructive Trusts, Discretionary Trusts, Fixed Interest Trusts and Purpose Trusts.

A Trust is deemed to exist whenever a person, referred to as ‘the trustee’, holds, as owner, or has vested in him property under an obligation to deal with that property for the benefit of other persons

called the beneficiaries (whether or not yet ascertained or in existence), or for a charitable purpose which is not for the benefit only of the trustee, or for both such aforesaid benefit and purpose.

Associations

Associations which are not regulated by a special law are specifically supplemented by the Civil Code, Chapter 16 of the Laws of Malta. An association is set up through a statute and may be registered with the Malta Business Registry. The agreement between the associating members establishing an association must be in writing and must clearly specify a purpose. The purposes can span from fulfilment of private interests; for the promotion of

trade or a profession; for the obtainment of a social purpose as well as carrying on any lawful activity.

The Companies Act also prescribes a regime for an association en participation (joint ventures) which is a written instrument whereby a person (associate) assigns to another person (associating party), for a valuable consideration contributed by the latter, a portion of the profits and losses of the business or of one or more commercial transactions.

Foundations

The setting up of foundations is regulated by the Civil Code, Chapter 16 of the Laws of Malta. A foundation is an organisation generally set up by donated funds, whereby

the assets are entrusted to an administrator for the fulfilment of a specified purpose or for the benefit of a named person/s (beneficiaries).

A foundation is endowed with legal personality and the assets of a foundation are kept distinct from the assets of its founders, administrators, or beneficiaries. A foundation may only be constituted through a public deed or by a will.

Cooperatives

A cooperative society is defined in the Co-operative Societies Act, Chapter 442 of the Laws of Malta, as an autonomous association of persons united voluntarily to meet their economic, social, and cultural needs and aspirations, to meet their

economic, social, and cultural needs and aspirations, including employment, through a jointly owned and democratically controlled enterprise, in accordance with the cooperative principles, and which may be registered by the Co-Operatives Board as a cooperative society.

The members of a cooperative society also enjoy limited liability from the obligations of the cooperative society.

Foreign Organisations

The Civil Code, Chapter 16 of the Laws of Malta also provides for the recognition and registration of legal organisations. Foreign organisations having legal personality shall be recognised as legal persons for

all purposes of Maltese law, with the characteristics of the legal form they may take under the applicable law.

However, a company incorporated outside Malta that establishes a branch / place of business in Malta must register with the Malta Business Registry as an oversea company. Furthermore, our law allows for foreign companies to change their statutory seat to Malta if the jurisdiction from which it is exiting is an approved jurisdiction that permits such a continuation. The continued company would retain all its assets and liabilities. This mechanism has been strengthened as from 2023 through the entry into force of the Mobility Directive (Directive (EU) 2019/2121).

Chapter 3

Overview



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Malta levies both direct and indirect taxes on individuals and legal vehicles.

The Commissioner for Tax and Customs created in terms of the Commissioner for Tax and Customs Act, Chapter 517 of the Laws of Malta, is responsible for the collection of the following levies:

1. Income tax which is levied on income in general as well as on certain specified capital gains in terms of the Maltese Income Tax Acts, Chapters 123 and 372 of the Laws of Malta.
2. Social security contributions collected on behalf of the Social Security Department in terms of the Social Security Act, Chapter 318 of the Laws of Malta.
3. Value added tax on goods and services as legislated for in terms of the Value Added Tax Act, Chapter 406 of the Laws of Malta.
4. Stamp duty which is levied on transfers or transmissions of insurance products, immovable property and marketable securities in terms of the Duty on Documents and Transfers Act, Chapter 364 of the Laws of Malta.
5. Import duties in line with the EU Common Custom Tariffs and in conformity with the Import Duties Act, Chapter 337 of the Laws of Malta and EU Regulations.
6. Excise duties on the sale and use of specific goods in terms of the Excise Duty Act, Chapter 382 of the Laws of

Malta and EU Regulations.

7. Eco-Contribution on Accommodation which is levied on behalf of the Ministry responsible for waste management in terms of the Eco-Contribution Act, Chapter 473 of the Laws of Malta.

There are other ad hoc levies such as tonnage tax, bunkering tax, motor vehicle registration tax and gaming taxes which are administered separately by other authorities and therefore it is recommended that you reach out to the ARQ Accounting Limited for further information

Chapter 4

Income Tax



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Income

Income tax is levied on income in general as well as on certain specified capital gains as touched on in the next sub-section. The default provisions are applicable both to individuals and also to legal vehicles. Income is categorised under the following headings:

- gains or profits from a trade, business, profession or vocation;
- gains or profits from an employment or office;
- dividends, premiums, interest or discounts;
- pension, charge, annuity or annual payment;

- rents, royalties, premiums and any other profits arising from property;
- gains or profits not falling under the above categories.

A distinction is generally drawn between active and passive income and between income of a circulating nature and income of a capital nature. The law does not provide a comprehensive definition of what constitutes income. As a method of addressing the issue of what constitutes income, the term is contrasted with the term capital which is also equally not defined.

The difference between capital and income has been tackled in various local and foreign court judgements.

An archetypical analogy which is sometimes used is the analogy of the tree and the fruit which it produces. The tree would be “capital” which is retained and taken care of in order to produce “income” in the form of fruit.

Capital Gains

Malta does not have separate capital gains tax; hence taxable capital gains are aggregated with other chargeable income. The list of capital gains which are brought to tax is exhaustive in the law and they must relate to transfers (including any alienation under any title) of:

- immovable property;
- securities (defined as shares and stock and such like instruments that participate in any way in the profits of the company and whose return is not limited to a fixed rate of return);
- business, goodwill, business permits, copyright, patents, trademarks, trade-names and any other intellectual property;
- interest in a partnership;
- beneficial interest in a trust which holds any of the above capital assets;

Jurisdiction to Tax

Malta asserts jurisdiction to tax (basis of taxation) on a worldwide basis, territorial basis and source basis depending on the two connecting factors of ordinary residence and domicile.

- Persons who are ordinary residents and domiciled in Malta; a spouse of person who is ordinary resident and domiciled in Malta; a permanent resident in Malta and a long-term resident in Malta are liable to tax on their world-wide chargeable income and capital gains, i.e., on all sources of income and capital gains irrespective

of their source. (Worldwide basis of tax)

- A person who is ordinarily resident but not domiciled in Malta is subject to tax on: 1. income and capital gains arising in Malta; and 2. income arising outside Malta and received in Malta. Foreign capital gains derived by persons who are resident but not ordinarily resident and domiciled in Malta are not subject to tax in Malta. (Source and remittance basis of taxation)
- A person who is not resident in Malta or only a temporary resident is subject to tax on chargeable income and capital gains arising in Malta. (Source taxation)

Although the law does not incorporate a definition of the term 'ordinary resident,' it does define the term 'resident of Malta' in terms of being an individual who resides in Malta except for temporary absences which seem reasonable and not inconsistent to the Commissioner for Tax and Customs. Therefore, a person can be resident in Malta without being an ordinary resident in Malta. Ordinary residence requires more than just residence; it requires residence in a place with some sort of continuity.

Ordinary residence means residence which is part of a person's everyday life. To determine if a person is ordinary resident the following elements are

usually considered: the duration of an individual's presence in the country, the frequency and nature of the individual's visits to the country as well as the nature of any personal or business ties that the individual has with the country.

The domicile of a person has been defined as being the country which is considered by law to be his permanent home. At birth, every person receives a domicile of origin. The presumption of law is against a change of domicile, and it is an established rule that anyone who tries to change their domicile must prove it. A domicile of origin can only be abandoned by obtaining a domicile of

choice, but a domicile of choice can be abandoned by simply ceasing to reside in the country permanently. As soon as the domicile of choice is abandoned, the domicile of origin is revived.

A company which is incorporated in Malta is deemed to be an ordinary resident and domiciled in Malta. In any case, the basis of taxation needs to be seen in conjunction with the allocation of taxing rights in terms of the double tax treaties contracted by Malta which alleviate double tax, eliminates double non-taxation and fights tax evasion and fraud.

Deductions

General Principles

Calculating the chargeable income for

tax purposes must be conducted on a source-by-source basis. Therefore, this is not equivalent to calculating a net profit in other circumstances (for example the rules for determining accounting profit and loss under an accounting framework such as International Financial Reporting Standards [IFRSs]).

The law white-lists a number of deductions. In principle, a deduction for all expenses incurred to the extent that they were wholly and exclusively incurred in the production of the income is allowable. Therefore, for any expense to be treated as deductible, a direct link must exist between the item of expenditure and the income against which it is to be deducted.

Pre-Trading Expenses

Certain pre-trading expenses can also be deductible, and these relate to expenses:

- incurred not earlier than eighteen months prior to the commencement of the business;
- which would have been deductible if the business was producing income; and
- relating to staff training, salaries and wages and advertising.

Capital Expenditure

There are few instances where the law specifically allows for deductions which are intrinsically of a capital nature. Foremost

among these, are deductions in respect of wear and tear which function similarly to the accounting concept of depreciation but which are computed in line with the income tax rules. However, the disposal of an asset on which capital allowances is claimed can give rise to a balancing adjustment which can result in further tax.

Blacklisted Expenses

The law also provides a blacklist of items which are not deductible including payments of a voluntary nature, rent paid in relation to a premises not used in the production of income and the cost of any improvements.

Inflated Expenses

Certain qualifying expenses incurred

trigger a larger tax deduction than at cost to incentivise such expenses. For example, expenses incurred by a qualifying person in terms of a qualifying embellishment project may be allowed a 120% deduction with respect to such expenses.

Notional Interest Deduction

Despite the introduction by the European Commission of a proposal for a directive to tackle debt bias (DEBRA) on 11th May 2022, Malta has already introduced the concept of a Notional Interest Deduction (NID). The NID aims to approximate the tax treatment of equity and debt by enabling entities to take a deduction of interest

which they are deemed to have incurred on their equity. Such deduction is at the discretion of the company or partnership.

This NID is a product of two variables:

- the reference rate – this is the risk-free rate which, in terms of the NID rules, is determined by reference to the current yield to maturity on Malta Government Stocks plus a premium of 5%; and
- the risk capital on which the reference rate is applied – this includes share capital, share premium, positive retained earnings, interest free loans and any other reserves as at the end of the year.

Permanent establishments are also entitled to claim the NID, in which case the risk capital will be the capital of the permanent establishment.

The NID is claimed against the chargeable income for the year and must be approved by all shareholders.

Such deduction must be capped at 90% of the chargeable income for any given year – should there be any excess deduction, this may be carried forward to subsequent years and used as a deduction against chargeable income in those years.

Trading Losses

The law states that a loss incurred in any

trade, business, profession, or vocation may be offset against any other chargeable income that has been derived during the year. The loss can only be used if, had there been a profit, it would have been subject to income tax. Similarly, a loss arising on an activity that, if profitable would have yielded exempt income, may not be taken as a trading loss.

The loss is calculated in the same manner as profits. Therefore, a loss exists for income tax purposes if a negative figure remains after adjusting for all the allowable deductions (apart from capital allowances). Furthermore, if there is insufficient income against which to set off these expenses,

then the unabsorbed balance may be carried forward indefinitely and absorbed against future income sources until the whole amount is utilised. This unabsorbed balance shall be recorded in the respective tax return until it has been fully absorbed. Alternatively, rather than carrying the loss forward to future periods, the law allows a company to surrender a trading loss to another domestic company if that other company forms part of the same “group.”

In line with the judgements of the Court of Justice of the European Union, there is a right to deduct foreign losses which would have qualified for the group loss relief if they were a Maltese entity. This is as long as such foreign losses are final losses. A final loss is one where it

can be shown that there is no possibility of utilising these losses elsewhere.

Exemptions

The Maltese tax base carves out a wide variety of income to meet the the Maltese public policy-objectives whilst respecting EU state aid obligations. This includes those in the public interest such as the income of any institution, trust, bequest or foundation, of a public character, and of any other similar organisation or body of persons, also of a public character, which is engaged in philanthropic work. In other examples, it exempts income to ensure tax neutrality for certain structures such as collective investment schemes and authorised retirement funds.

Malta’s incentives extend to holding equity vehicles mainly on the basis of the participation exemption. A company that is registered in Malta may be entitled to an exemption on any income or gains from a participating holding or from the transfer thereof. The exemption has also been extended to income or gains derived by a company registered in Malta which are attributable to a permanent establishment situated outside Malta or to the transfer of such permanent establishment.

It should also be noted that Malta has adopted defensive measures in line with its EU Code of Conduct commitments to limit the exemption with respect to those holdings which

are in a Non-Cooperative Jurisdiction.

Mergers and Acquisitions

The reorganisation of a corporate vehicles is driven by different reasons and can be motivated by strategic, legal, business or tax reasons. Maltese tax law considers reorganisations without a change in beneficial ownership to be a tax neutral event and thus a specific ruling may be obtained from the Malta Tax and Customs Administration aimed at neutralizing the tax consequences. In the wider context, common business asset and share purchases have different tax consequences for the seller and purchaser and therefore it is important

that an experienced tax consultant is engaged during such negotiations.

Withholding Tax Regimes

Systems of Tax Collection

Malta operates two main tax collection systems whereby the tax due for a particular year is collected during the same period in which income is earned.

- The Provisional Tax system is one of the two and it applies mostly to a person whose sources of income include trade, business, profession or vocation. The provisional tax (PT) payable is based on a PT Benchmark which is based on the tax payable from previous years of assessments. In certain situations, the PT payable can be increased or decreased. In the case

of individuals within scope, the PT payable is coupled with the payment of Class 2 social security contributions. Self-employed person or self-occupied individuals accrue Class 2 social security contributions on a weekly basis. For every contribution payable by a self-employed or self-occupied person, another contribution is payable out of the Consolidated Fund. The settlement of the Class 2 social security contributions coincides with that of the PT namely by 30th April, 31st August and 21st December.

- The other system is the Final Settlement System (FSS) which concerns employees and pensioners. Unlike PT, the FSS uses a methodology to ensure that an accurate deduction

of emoluments is performed both for income tax and social security contributions. There are different methodologies which ensure that different sources of emoluments are taxed correctly. For example, emoluments from certain fringe benefits, overtime and part-time work have in certain instances different tax rates. Every individual resident in Malta who is employed in insurable employment, must contribute Class 1 Social Security Contributions. One is contributed by the employed individual, one by the employer and a third one by the Consolidated Fund. For Class 1 Social Security Contributions, a person who is employed in more

than one insurable employment shall be deemed to be employed in that insurable employment which carries the higher or highest basic wage or salary. To avoid discrimination against employing women, a maternity leave trust fund was set-up back in 2015. In this regard, every employer must also pay a maternity fund contribution for every employee irrespective of the sex through the FSS. This fund is also used to compensate for adoption leave.

It should be noted that the EU has concluded directly applicable regulations to coordinate the EU social security systems. This is important if a person pursues an activity in two of more EU Member States.

Therefore, in these situations it is important to ensure that the correct legislative dispositions are being applied and concurrently the correct forms are being filed.

Other Withholding Taxes

Malta levies both provisional and final withholding taxes to minimise tax leakage. Provisional withholding taxes refer to levies withheld by a payor or an intermediary at a taxable point on behalf of a payee, but which may serve as a tax-credit in the self-assessment of the payee under the default regime. Final withholding taxes regimes refer to levies withheld by a payor or an intermediary at a taxable point on behalf of a payee, but which are not reported in the

self-assessment of the payee under the default regime. Some withholding taxes are elective, whereas others are mandatory.

The Full Imputation System

Malta adopts a full imputation system, whereby the tax paid by the company is fully available as a credit in the hands of the shareholder on the dividend income received. This effectively eliminates any economic double taxation on the dividend, since the same flow of income is taxed only once, in the hands of the company.

Given that individuals are taxed at progressive rates, reaching a 35% rate on annual income of above €60,000, whilst companies are taxed at a flat 35%, the credit on the taxation of dividends could be higher than the Maltese

tax chargeable on the shareholder. This could result in a tax refund due to the shareholder, subject to certain restrictions and exemptions.

Double Tax Relief

Apart from ensuring elimination of economic double taxation through the Full Imputation System, Malta also ensures elimination of juridical double taxation by virtue of its vast treaty network spanning over eighty treaties and also by virtue of its unilateral relief mechanisms. Malta has various forms of mechanisms for the elimination of double taxation:

1. Treaty Relief;
2. Unilateral Relief;
3. Flat Rate Foreign Tax Credit (FRFTC);
4. Commonwealth Relief.

Although it is mentioned in income tax legislation, Commonwealth relief is not widely used and will not be covered in this handbook.

1. Treaty Relief

Treaty relief is relief from double taxation in terms of a double tax treaty which Malta has agreed to with another jurisdiction as modified in line with the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

Typically, for a person to benefit from provisions of a tax treaty, the person must be resident in one of the Contracting States which are a party to the treaty. Therefore, one of the eligibility conditions for this particular relief is

that such a person is resident in Malta.

As opposed to the exemption method, Malta applies the credit method for elimination of double taxation, specifically the ordinary credit method. Through this method, the amount of any foreign tax paid which is available as a credit against any Malta tax due may not exceed the tax payable in Malta, that is, the person may never end up in a refund position as a result of applying this type of relief.

Other conditions apply, such as having evidence of the foreign tax that was suffered. Claims must also be made within the two years following the end of the year of assessment referred to in the claim.

2. Unilateral Relief

Apart from relieving double taxation in

situations where a double tax agreement is in place, that is bilaterally, Malta also relieves double taxation on a unilateral basis, even in situations when a double tax agreement would not have been signed.

Most of the conditions and procedures of unilateral relief are similar, if not, identical to Treaty Relief, the main difference being that under this type of relief no double tax agreement needs to be in place with the jurisdiction where the tax has been suffered.

3. Flat Rate Foreign Tax Credit (FRFTC)

Another form of unilateral relief, which is applied in specific circumstances to companies registered in Malta is the Flat Rate Foreign Tax Credit, more commonly

referred to as FRFTC. The FRFTC is a credit for a deemed foreign tax of 25% of the amount of income received in Malta, applicable also in situations when no foreign tax was suffered. Apart from the fact that it is only applicable to companies registered in Malta, the FRFTC may only be applied on income which is allocated to the Foreign Income Account and a certificate is to be presented confirming that the income in respect of which the FRFTC has been claimed has been derived from foreign sources and falls to be allocated to the company's FIA.

Income Tax Refunds

Whilst the standard corporate tax rate in Malta is 35%, the effective tax rate could be reduced considerably through the Maltese Tax Refund System. This system allows

shareholders to claim a refund of the tax paid on the dividend being distributed from profits allocated to the MTA and FIA. There are four different refunds which would depend on the source of the income being distributed, and whether any double tax relief has been claimed. The refunds are:

6/7ths refund – applies to the distribution of chargeable income from trading activities, not mentioned below. The effective tax rate following the application of this refund is of 5%;

5/7ths refund – applies to the distribution of chargeable income derived from passive interest or royalties or from a participating holding which does not satisfy the conditions referred to in article 12(1)(u) (1) ITA. The effective tax rate following the application of this refund is of 10%;

2/3rds refund – applies to the distribution of chargeable income allocated to the Foreign Income Account and in respect of which the company has claimed relief of double taxation;

100% refund – applies to the distribution of chargeable income allocated to the Foreign Income Account which satisfies the Participation Exemption conditions.

This system allows shareholders to claim a refund of the tax paid on the dividend being distributed.

Administrative Obligation relating to the Tax Refund System

In order for the shareholder to be able to claim one of the above refunds, the shareholder must be registered as

such with the Malta Tax and Customs Administration. This is done by submitting a specific form known as the 'shareholders registration form.'

Since the above refunds are due on the amount of tax on the dividend being distributed, for the shareholder to be able to claim the refund the company must declare a dividend, submit the tax return for the year relating to the distribution and pay the tax related to that distribution. The shareholder may then claim the refund by submitting the Refund Claim Form, which typically includes:

The details of the company distributing the dividend and of the shareholder entitled to the:

1. refund;

2. The amount of profits being distributed and the allocation of such profits to the various tax accounts;
3. The type and amount of refund which the shareholder is entitled to;
4. The bank account into which the refund should be paid;
5. Other details such as copies of the dividend warrant, copy of the tax return of distributing company and the shareholding structure.

Fiscal Consolidation

Malta has introduced consolidated groups which allows multiple taxpayers to be deemed as a single taxpayer in so far as all the requirements of the law are satisfied.

It allows for qualifying group structures to bring to charge their consolidated income at the effective tax rate directly without cash-flow difficulties as explained in the previous sub-section.

The law allows the formation of fiscal units where a parent company elects to form such a unit with its subsidiaries. However, a parent company in terms of these rules is only one which meets two of the following conditions: a. 95% of the voting rights of the subsidiary, b. 95% entitlement of the profits of the company for distribution, or. c. 95% of the assets of the subsidiary are up for distribution to ordinary shareholders. Thus, if a group structure is held by two or more shareholders whereby a single shareholder does not meet the above requirements, an interposing holding

company would need to be incorporated to be within scope of these rules.

In line with the EU fundamental freedoms, non-tax resident companies may be consolidated into the fiscal unit including as the principal taxpayer. This is provided such entities register as a company registered in Malta for tax purposes. However, in so far that Malta is not allocated the taxing rights to tax such entities, the profits of such entities are carved from the chargeable income of the consolidated group.

Furthermore, subject to minor exceptions, logically for consolidated results to be computed, the members of the fiscal unit must essentially all have the same accounting periods. This is matter of utmost importance since consolidated

financial statements need to be prepared for the completion of the consolidated income tax return. This is irrespective from any exemptions from a company law perspective. However, guidelines do allow for the exclusion of certain financial statement notes from the consolidated audited accounts to alleviate expenses which are seen as a drawback. Furthermore, whilst computing and completing the consolidated income tax return it is the currency of the share capital of the principal taxpayer which should be used.

Anti-Tax Avoidance

The ATAD Implementation Regulations apply to all companies as well as other entities, trusts and similar arrangements

that are subject to tax in Malta in the same manner as companies. They also apply to entities that are not resident in Malta but that have a permanent establishment in Malta provided that they are subject to tax in Malta as companies. In the case of the reverse hybrid rules, these rules also apply to transparent entities. The following five anti-avoidance measures have been introduced into Maltese domestic law:

Interest Limitation Rule

The aim of this rule is to discourage companies from creating artificial debt arrangements designed to minimise taxes. The rule introduces a capping on the amount of borrowing costs that a taxpayer may deduct against chargeable income. Exceeding borrowing costs shall be deductible only up to 30% of the

taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). "Exceeding borrowing costs" are defined as the amount by which the borrowing costs exceed interest income and other equivalent taxable revenues from financial assets that the taxpayer receives. Any borrowing costs which cannot be deducted may be carried forward to subsequent years for a maximum of 5 years.

Malta excluded from the scope of the interest limitation rule:

- Exceeding borrowing costs falling below €3 million;
- Entities that are not part of a consolidated group for financial accounting purposes and have no associated enterprises or Permanent Establishments;

- Financial undertakings; and
- Exceeding borrowing costs incurred on loans used to finance long-term public infrastructure EU projects and loans which were concluded before 17 June 2016.
- Transfers of assets from a PE in a Member State to a Head Office or PE in another Member State or Third Country in so far as Malta no longer has the right to tax capital gains from the transfer of such assets due to the transfer;

Exit Tax

An exit tax will be charged on the difference between the market value of the transferred taxable capital assets and their value for tax purposes in the following situations:

- Transfers of assets from Head Office to a Permanent Establishment (PE) in another Member State or Third Country in so far as Malta no longer has the right to tax capital gains from the transfer of such assets due to the transfer;
 - Transfers of Tax Residence to another Member State or to a Third Country, except for those assets effectively connected with a PE in Malta;
 - Transfers of a PE to another Member State or to a Third Country in so far as Malta no longer has the right to tax capital gains from the transfer of such assets due to the transfer.
- In situations where the transfer is between Member States or to a third country that

is party to the EEA Agreement there is the possibility of paying the exit tax in instalments over 5 years.

General Anti-Abuse Rule (GAAR)

Malta's Income Tax Act (ITA) already contained a general anti-abuse rule as per Article 51 of the ITA. The new regulation which came into force on 1 January 2019 adds to this rule by applying the definition of tax avoidance schemes as per the EU Directive. The regulation targets non-genuine arrangements put in place for the essential purposes of obtaining some form of tax advantage, whether in the form of a tax reduction or deferral. 'Non-genuine arrangements' would be arrangements which are not put into place for valid commercial reasons reflecting the

economic reality.

Controlled Foreign Company Legislation (CFC)

As a result of the introduction of a CFC rule, income derived by subsidiaries or attributed to Permanent Establishments may in certain circumstances be taxed in the jurisdiction of the parent and/ or Head Office. The main conditions for the CFC rule to apply are the following:

- The parent company, that is resident in Malta, together with associated enterprises, holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly, more than 50% of the capital, or is entitled to receive more than 50% of the profits of a foreign entity; and

- The actual corporate tax paid by the foreign entity is less than half the tax that would have been paid had the income been subject to tax in Malta.

Once the CFC rule kicks in, the non-distributed income of the CFC will be included in the tax base of the Maltese parent, or Maltese Head Office, if the income arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. The CFC rule will not apply to entities or PEs with accounting profits of:

- No more than €750,000 and non-trading income of no more than €75,000; or
- No more than 10% of its operating costs.

Anti-Hybrid Mismatch Rules

The anti-hybrid mismatch rules neutralize

hybrid mismatches arising from cross-border differences in characterisation of certain arrangements which result in either a deduction / non-inclusion or double deduction outcomes. These rules are applicable both between associated parties and also in relation to structured arrangements. This neutralization is attained through linkage rules which ensures either the denial of a deduction or the inclusion of the income in the tax base.

Only those hybrid mismatches which are identified in the law are to be neutralized, namely hybrid financial instruments, hybrid entities, branch mismatches, imported mismatches, reverse hybrids and tax residency mismatches. Hence, other hybrid mismatches such as those created by the NID are not within the purview of the rules.

Transfer Pricing

Malta applies transfer pricing adjustments in line with the OECD Transfer Pricing Guidelines for cross-border arrangements which have entered into on or after 1st January 2024 by entities which are taxed as companies. However, this grandfathering clause for cross-border arrangements entered into before 1st January 2024 will come to an end as at 1st January 2027. This includes those cross-border arrangements which have been materially altered after 1st January 2024. Micro, small or medium-sized enterprises are excluded from the scope of these rules. This refers to enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million and / or annual balance sheet total

not exceeding EUR 43 million.

Furthermore, the rules exclude subject persons in so far their aggregate arm's length value of all items of income and expenditure forming part of cross-border arrangements are below a certain threshold. For income streams of a revenue nature this is fixed at EUR 6 million, whereas for income streams of a capital nature, this is fixed at EUR 20 million.

These adjustments only apply to cross-border arrangements between associated enterprises. The associated enterprises threshold is set to 75% in terms of direct or indirect control. However, with respect to those entities which are subject to Country-by-Country Reporting, the percentage interest in voting rights or the ordinary capital is lowered to 50%.

Rates of tax

Corporate Rate

The standard corporate tax rate in Malta is 35%. The current government has promised to lower the corporate tax rate from the current 35% to 25%, on the first €250,000 profits earned during the tax period. There are other special rates applicable to other entities.

Individuals

There are three sets of progressive rates which apply to individual's resident in Malta which are applicable to individuals in line with their personal circumstances. These are available on the Office of the Malta Tax and Customs Administration's website.

Resident individuals who are neither

married and do not have any children are generally required to pay tax on their income at the rates referred to as the "single rates," resident individuals who have children may pay tax on their income at the rates referred to as the "parent rates," whilst in the case of resident individuals who are married and living together the law gives such individuals a choice to either (i) be taxed separately by applying the "single rates" (i.e. elect for a "separate computation") or (ii) aggregate all their income into one pot and pay tax at the rates referred to as the "married rates" (i.e. elect for a "joint computation"). The married rates may also be applied by EU/EEA nationals whose spouse is not resident in Malta if they meet the required conditions to apply such rates and the couple derives at least 90% of

their total worldwide income from Malta. Parent rates may only be availed of if the individual maintains the child under his or her custody or pays for the maintenance of such child; in both cases the child must be under the age of 18 (or 23 if receiving full time instruction at any university, college or other educational establishment). It is also necessary that the child does not derive income of more than €3,400 from any gainful occupation. By way of exception to the above, a single parent may also avail himself of married rates where such parent satisfies the following conditions:

- the parent maintains under custody a child who is not over the age of 18 or, if over that age, is in full-time education, in a full-time apprenticeship or is incapacitated; and the child does not

derive income of more than €3,400 annually in his or her own right.

- the parent is the beneficiary of the child's government children allowance (if such allowance is payable);
- the parent did not receive any financial assistance in respect of the maintenance of the said child from the other parent; and
- the parent was not living or residing at the same house with the other parent of the child.

There are also non-resident rates for individuals who are not resident in Malta and other special rates applicable to other special situations such as returned migrants or individuals undertaking certain activities.

Tax Compliance

Every taxpayer is classified as either a filer or a non-filer. Filers would need to remit an income tax return, whereas unless an objection is made to a non-filer statement; non-filers are typically dispensed from this requirement as they are taxed at source or not subject-to-tax. The ultimate decision for such a classification remains with the Malta Tax and Customs Administration.

Married couples, including civil partners, by default submit one income tax return covering the declarations of both individuals. Furthermore, married couples, including civil partners, are able to opt for a separate computation. This can be advantageous in situations where the individuals are earning employment, trade, or pension income.

Other income is automatically taxable under the higher income earning spouse. Moreover, any tax credits received are allocated to the responsible spouse's name by default, even if they would have pertained to the other spouse. Furthermore, married couples, including civil partners who are living together have the option to receive a separate income tax return under their name provided they are employed (excluding director's fees) deriving trading income, or pension income; or have agreed to a separation of assets or CORSA upon marriage.

Minimum Tax and the Global Anti-Base Erosion Rules (GloBE)

Non-Domiciled Individuals

Non-domiciled persons are subject

to a minimum annual tax of €5,000 in Malta. This minimum tax is payable if the non-domiciled person:

- is not taxable in Malta in accordance with a scheme establishing a minimum amount of tax in Malta, including the Residence Programme, the Global Residence Programme, the Malta Retirement Programme, and the Residents Scheme Regulations; and
- derives income arising outside Malta amounting to not less than €35,000 or its equivalent in another currency – in the case of a married couple, one would have to look at the income derived by both spouses.

In computing the minimum tax, account shall be taken of any Maltese income tax paid, whether by withholding or otherwise,

excluding tax paid on capital gains.

Should the income, excluding capital gains, chargeable to tax in the hands of the non-domiciled person result in a Maltese tax liability amounting to less than the minimum tax, the person shall be deemed to have received additional income arising outside Malta such that the total tax liability on the total income would amount to the minimum tax of €5,000. By way of example, if a non-domiciled person would be liable to €2,000 of tax in Malta on income arising or received in Malta, he would have to top up that amount by another €3,000.

Minimum Taxation for Constituent Entities

In line with Council Directive (EU) 2022/2523, members of a multinational entities (MNE) group or of a large-scale

group which has annual revenue of EUR 750 million or more, including revenue of certain excluded entities, in its ultimate parent's entity consolidated financial statements in at least two of the four fiscal years immediately preceding the tested fiscal year may be subject to a top-up tax.

The framework creates a system of two interlocked rules, namely the income inclusion rule and the backstop undertaxed profit rule. Through these rules, an addition amount of top-up tax may be triggered each time that the effective tax rate of an MNE in a given jurisdiction is below 15%.

In terms of these rules, the ultimate parent entity, which is not an excluded entity, an intermediate parent entity or a partially owned parent entity, is obliged to apply the income inclusion rule to its share of

the top-up tax relating to any entity of the group that is low-taxed, whether that entity is located within or outside the European Union. Conversely the undertaxed profit rule acts as a backstop to the income inclusion rule through the reallocation of any residual amount to top-up tax in cases where the entire amount of top-up tax relating to low-taxed entities could not be collected through the income inclusion rule.

Malta has notified the EU Commission of the delayed application of this regime in September 2023. To this end, Malta has elected delay the application of the IIR and the UTPR, for a maximum period of six consecutive fiscal years beginning from 31 December 2023. For avoidance of any doubt, during this period, a qualified domestic top-up-tax will not be applied during this period.

Chapter 5

Special Tax Programmes



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There are several programmes designed to incentivise High Net Worth Individuals wanting to obtain tax residence in Malta. The State has started to reviewed to reflect international changes taking place in the field of tax residency.

In terms of the current programmes, beneficiaries of Malta Tax Schemes administered by the Malta Tax and Customs Administration such as the Global Residence Programme opens a route for non-EU nationals for the Economic Self-Sufficiency Programme with Identity Malta.

Global Residence Programme

The Global Residence Programme (GRP) was introduced in 2013 following a high demand from non-EU individuals wishing to relocate Malta while at the same time benefitting from a tax incentive. GRP is a specific residence tax programme which results in a 15% flat rate for any foreign income received in Malta, subject to a minimum annual tax of €15,000. ARQ entities are registered as an Authorised Registered Mandatory for this programme.

Qualifying criteria:

The Applicant must show that he/she:

- is fluent in one of the official languages in Malta (Maltese and/or English);
- owns qualifying property in Malta (owned or leased) for the value of

€275,000 (reduced to €220,000 if situated in the south of Malta or Gozo), or alternatively leases property of not less than €9,600 per annum (reduced to €8,750 if the property is situated in the south of Malta or Gozo);

- has sufficient resources to support himself/herself and any dependents;
- possesses health insurance covering himself/herself and any dependents.

Government fees: €6,000 administrative fees for each application.

The Residence Programme

The Residence Programme (TRP) was introduced in 2013 following a high demand from EU individuals of high repute wishing to relocate Malta while at the same time benefitting from a tax incentive. TRP is a specific tax residence programme which results in a 15% flat rate for any foreign income received in Malta, subject to a minimum annual tax of €15,000. ARQ is registered as an Authorised Registered Mandatory for this programme.

Qualifying criteria:

The Applicant must show that he/she:

- is fluent in one of the official languages in Malta (Maltese and/or English);
- owns qualifying property in Malta (owned or leased) for the value of

€275,000 (reduced to €220,000 if situated in the south of Malta or Gozo), or alternatively leases property of not less than €9,600 per annum (reduced to €8,750 if the property is situated in the south of Malta or Gozo).

- has sufficient resources to support himself/herself and any dependents.
- is in possession of health insurance covering himself/herself and any dependents.

Government fees: €6,000 administrative fees for each application.

Malta Retirement Programme

The Maltese government introduced the Malta Retirement Programme (MRP) in 2012, with the objective of attracting EU/EEA and Swiss nationals of high repute who receive a pension as their primary and regular source of income. Applicants under this programme benefit from a tax incentive of 15% flat rate on the remitted pension to Malta subject to a minimum annual tax of €7,500. ARQ is registered as an Authorised Registered Mandatory for this programme.

Qualifying criteria:

The Applicant must show that he/she:

- is fluent in one of the official languages in Malta (Maltese and/or English);
- owns qualifying property in Malta

(owned or leased) for the value of €275,000 (reduced to €220,000 if situated in the south of Malta or Gozo), or alternatively pays rent which is not less than €9,600 per annum (reduced to €8,750 if the property is situated in the south of Malta or Gozo);

- has sufficient resources to support himself/herself and any dependents;
- is in possession of health insurance covering himself/herself and any dependents;
- is in receipt of pension income that constitutes at least 75% of the total receivable income.

Government fees: €2,500 administrative fees for each application

United Nations Pensions Programme

The Maltese government launched the United Nations Pensions Programme (UNPP) in 2015 to attract non-Maltese individuals in receipt of a UN pension or a Widow's / Widower's Benefit, of which at least 40% is received in Malta. Applicants under this programme will have their UN pension income or Widow's / Widower's Benefit exempt from income tax. Any other income which arises outside of Malta and received in Malta will be benefit from a tax incentive of 15% flat rate. ARQ is registered as an Authorised Registered Mandatory for this programme.

Qualifying criteria:

The Applicant must show that he/she:

- is fluent in one of the official languages in Malta (Maltese and/or English);

- owns qualifying property in Malta (owned or leased) for the value of €275,000 (reduced to €220,000 if situated in the south of Malta or Gozo), or alternatively pays rent which is not less than €9,600 per annum (reduced to €8,750 if the property is situated in the south of Malta or Gozo);
- has sufficient resources to support himself/herself and any dependents;
- is in possession of health insurance covering himself/herself and any dependents;
- Is in receipt of a UN pension or a Widow's / Widower's Benefit, of which at least 40% is received in Malta.

Government fees: €4,000 administrative fees for each application or €3,500 if the qualifying property in the South of Malta.

Highly Qualified Persons

The Maltese government launched the Highly Qualified Persons Rules (HQP) in 2011 to attract experts from EU and Non-EU countries to fill specific roles within the aviation, gaming and financial services sectors. The HQP Rules have then been extended to certain roles within the Assisted Reproductive Technology field. Through the HQP rules, the applicant is entitled to benefit from a tax incentive of 15% flat rate on the employment income generated in Malta for the specific role. The special tax rate applies for a consecutive period of five years for an EU/EEA national and for a period of four years for a non-EU national.

Qualifying criteria:

The Applicant must show that he/she:

- holds recognised professional

qualification in the relevant qualifying field;

- is employed within a company recognised by the relevant authority;
- receives a minimum income of €88,242 (this figure is continually adjusted annually in line with the Retail Price Index) from a qualifying contract of employment;
- possesses health insurance covering himself/herself and any dependents;
- is not domiciled in Malta.

Any income in excess of €5,000,000 is exempt from income tax.

No government fees are applicable.

The scheme's termination date is 31/12/2030. No determination will be issued by the respective Competent Authority after 31/12/2025.

Qualifying Employment in Innovation and Creativity (Personal Tax) Rules

The objective of the Qualifying Employment in Innovation and Creativity (Personal Rules) is to attract individuals engaged in carrying out or management of research, development, design, analytical or innovation activities. It allows employees engaged in this industry to benefit from a flat rate of 15% tax on employment income derived in respect of works or duties carried out in Malta.

Qualifying criteria:

The Applicant must show that he/she:

- receives a minimum income of €52,000 from a qualifying contract of employment;

- holds recognised professional qualification in the relevant qualifying field;
- is employed within a company recognised by the relevant authority;
- possesses health insurance covering himself/herself and any dependents;
- is not domiciled in Malta.

The scheme's termination date is 31/12/2030. No determination will be issued by the respective Competent Authority after 31/12/2025.

Qualifying Employment in Aviation (Personal Tax) Rules

The objective of the Qualifying Employment in Aviation (Personal Tax) Rules is to give long-term vision to the aviation sector in order to adequately equip the necessary operations with the skills required and control the limitations encountered due to a limited availability of human resources. It allows senior employees engaged within the aviation industry to benefit from a flat rate of 15% tax on employment income derived in respect of work or duties carried out in Malta.

Qualifying criteria:

The Applicant must show that he/she:

- receives a minimum income of €45,000 from a qualifying contract of employment;

- holds recognised professional qualification in the relevant qualifying field;
- is employed within a company recognised by the relevant authority;
- possesses health insurance covering himself/herself and any dependents;
- is not domiciled in Malta.

The scheme's termination date is 31/12/2030. No determination will be issued by the respective Competent Authority after 31/12/2025.

Qualifying Employment in Maritime Activities and the Servicing of Offshore Oil and Gas Industry Activities (Personal Tax) Rules

The objective of the Qualifying Employment in Maritime Activities and the Servicing of Offshore Oil and Gas Industry Activities (Personal Tax) Rules is to give a long-term vision to the sector in order to adequately equip the necessary operations with the skills required and control the limitations encountered due to a limited availability of human resources

Qualifying criteria:

The Applicant must show that he/she:

- receives a minimum income of €65,000 from a qualifying contract of

employment;

- holds recognised professional qualification in the relevant qualifying field;
- is employed within a company recognised by the relevant authority;
- possesses health insurance covering himself/herself and any dependents;
- is not domiciled in Malta.

Chapter 5

Indirect Taxation

Value Added Taxation

In recent years, a gradual and partial shift from direct tax to more indirect taxation has been observed especially with direct taxes offering schemes for high-income earners. Value-added taxation legislation has been largely harmonised within the EU in a push towards a definitive system in the EU VAT area. This being stated, Malta continues to maintain one of the lowest standard rates at 18% for taxable supplies. This being stated, most VAT planning is centred on ensuring that there is no VAT leakage in the recoverability of input VAT. This problem has been alleviated to a certain extent through the introduction of VAT grouping for select industries in Malta.

Any individual or legal vehicle undertaking an economic activity has the right to be registered in Malta for VAT purposes. An individual or legal vehicle will only qualify

for the small undertaking scheme in so far as the entry threshold is not exceed. The entry threshold for economic activities consisting principally in the supply of goods has been raised to €35,000 and for other economic activities it has been raised to €30,000. A small undertaking does not charge VAT, but likewise cannot recover VAT on its expenses. This scheme will be extended in 2025 with recent EU developments to ensure the operation of such a scheme continues in operation even in Member States other than the Member State of establishment.

Important Developments

An important development in 2021 was the coming into force of the one-stop-shop extension through the e-commerce package to cover three schemes. This follows the 2020 quick fixes in respect of call-off stock arrangements, chain transactions and the exemption for intra-

community supplies of goods. The first scheme implemented is the special scheme for distance sale of goods that are imported from third territories (Import Scheme). The second scheme which has also been introduced is the special scheme for services supplied by taxable persons not established in the EU (Non-Union Scheme). The third scheme which was introduced is the special scheme for intra-community distance sales of goods and for services supplied by taxable persons that are established within the EU but not in the Member State of consumption (Union Scheme). Together with the 8th and 13th Directive refund procedures, these special schemes have reduced the need for costly VAT registrations in other Member States.

The European Commission on 8th December 2022 proposed a package of measures to bring the EU VAT system in line with the digital age (ViDA). The

package is built on three pillars namely avoiding multiple VAT registrations, digital reporting requirements and the Platform economy. These changes are expected to come into effect in a staggered fashion namely on 2024, 2025, 2028 and some as late as 2030. However, it is expected to reshape VAT compliance especially through e-invoicing mandates, a further extension of the one-stop-shop and real-time reporting of certain intra-community transactions.

Other proposals have also been proposed to reform the financial services exemptions, the tour operator margin scheme VAT reforms, virtual events VAT rule changes and ultimately the EU definitive VAT system proposal which is currently on hold. Therefore, this decade will be defined by changes to the foundations of the EU VAT system with ultimate aim to reduce the VAT Gap.

Compliance

Ensuring the correct VAT treatment including the accounting for adjustments in respect to the deductibility of capital goods requires the need for thorough record-keeping. In this regard, there is a six-year retention period for such information. This record-keeping is not limited to VAT compliance but also in regards to the collection of supplementary information (Intrastat Declarations). Only taxable persons and non-taxable legal persons who acquired or / and supplied goods from and / or to another EU Member State with a value below the annual threshold of €700 are exempt from providing this supplementary information for statistical purposes.

Stamp Duty

Malta has been levying stamp duty since 1918 even prior the legislation of income taxation in 1948. Today, stamp duty is levied only on documents purporting to transfer policies of insurance, immovable properties (or real rights thereon) and securities in line with Council Directive 2008/7/EC. Such documents would not be enforceable in a court of law, unless stamped or authorised in line with the law.

Stamp duty is normally a charge to the acquirer in terms of the above-mentioned documents. The remittance of the stamp duty to the Malta Tax and Customs Administration for policies of insurance falls on any person issuing or signing any policy of insurance. With respect to the transfers inter vivos or transmissions causa mortis

of immovable property or real rights, the obligation to remit the provisional duty and the final duty due is in normal circumstances the obligation of the Notary Public. Finally, with regards to stamp duty on transfers inter vivos or transmissions causa mortis of securities, this is normally collected by the front office at the Malta Business Registry which is manned by officials from the Malta Tax and Customs Administration. Exemptions would need to be pre-authorised and are not self-assessed.

In the case of causa mortis transmissions of immovable property and securities, the law also obliges heirs (either by universal or singular title); their tutors or curators, curators of vacant inheritances and testamentary executors and trustees to prepare a causa mortis declaration within six months of the relative transfer causa mortis and it is on this declaration that

stamp duty is levied. Meanwhile, the law provides many special schemes for rebates on inter vivos transfers of immovable property. Currently the available schemes pertain to the first-time buyer's scheme, second-time buyers' scheme, Gozo property scheme and the Urban Conservation Area Property scheme.

Barring key exceptions, many of the carve-outs mirror those found in the provisions of capital gains. For instance, an incentive was enacted for both levies to exempt the first €750,000 on the transfer of immovable property located in an urban conservation area. This is provided that such properties remained vacant for a period of 7 continuous years immediately preceding the transfer date.

In certain instances, obtaining a stamp duty exemption for those businesses which have 90% or more of their business interest outside of Malta has the effect of prolonging the remittance of income tax payments. This affords more cash-flow opportunities to such beneficiaries, whilst being exempt from provisional tax as mentioned in section 4.7. This exemption known as the DDT10, has become quite popular in recent years, but attention to detail is quite important to avoid any artificial structures in Malta.

Import Duties

Malta is positioned at the periphery of the EU southern border and is a transshipment hub in the heart of the Mediterranean Sea. As a full EU Member

State, Malta imposes customs tariffs on imports from non-EU countries or goods which are brought in free circulation.

Importers should declare their imports to customs according to their classification in the Combined Nomenclature (CN) through the Single Administrative Document (SAD). By way of background, the CN is a tool for classifying goods, which has been set up in order to meet the requirements of the Common Customs Tariff and the EU's trade statistics. The CN subheading declared determines the rate of the import duty payable. In addition, there may be anti-dumping and countervailing duties as extra import duties on top to the normal duties applied.

The Binding Tariff Information Unit within Customs provides legal certainty in regards to the correct tariff classification.

Customs authorities will require business importers to produce a VAT registration number. Where the importer is not liable to registration for VAT in Malta, it is expected that the importer produces clearance from the Malta Tax and Customs Administration.

There are different Customs procedures which can be availed of including temporary storage, inward and outward processing, warehousing and bonding to differ import duties. Goods imported in the freeport are not subject to the import duties in so far, they are not brought out in free circulation, used or consumed.

Excise Duties

Excise duties are levied on the sale or use of specific excisable goods. The duty payable on excise shall be at the rate specified in the schedules to the Excise Duty Act. The following are excisable goods:

- Certain alcohol and alcoholic beverages;
- Certain manufactured tobacco;
- Certain energy products;
- Mobile telephony services (Leasing of lines and top-up vouchers);
- All cements;
- Certain pneumatic tyres;
- Waters falling under CN heading 2201;
- Certain chewing gum, whether sugar coated or not;
- Certain non-alcoholic beverages;
- Certain plastic sacks and bags;
- Certain toiletries and washing preparations;
- Certain construction components and other fixtures.

Excisable goods can be put under a duty suspension procedure, whereby the excise duty is suspended to allow for inter alia the holding or movement of the excise goods. In this regard, the Excise Movement and Control System (EMCS) is used to monitor these movements.

Import Eco-Contribution on Accommodation

An environmental contribution is due on

stays in licensable accommodation which is set at a rate of €0.50 per person over 18 years old, per night. Eco-contribution is due irrespective of whether actual use thereof is made by the guest. In this regard, a licensable accommodation must register for the purposes of collecting and paying the eco-contribution. The levy must be disclosed separately in the fiscal receipt provided to the guest.

Chapter 7

Tax Transparency



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Direct Tax

Tax transparency has become a cornerstone of tax compliance in recent years. In this regard, Malta has acceded to multiple cooperative instruments through its double treaties, EU directives and multilaterally through the Joint Council of Europe / OECD Amended Convention on Mutual Administrative Assistance in Tax Matters. Malta is a jurisdiction of relevance which participates on an equal footing in the Global Forum on Transparency and Exchange of Information.

In terms of exchange of information on request, Malta as the requested jurisdiction has a wide legal basis to collect information from information-holders in order to onward exchange information with foreign jurisdictions. This brings with

it an obligation for information-holders to maintain certain documentation in readily available format. This is a matter which has been enforced lately through compliance monitoring orders in line with the recommendations of the latest peer review (second round) by the Global Forum on Transparency and Exchange of Information.

In recent years, taxpayers of all sizes have also experienced additional obligations in the realm of automatic exchange of information. Automatic exchange of information through FATCA/CRS/DAC II has seen Malta Reporting Financial Institutions exchanging financial account information on a periodical basis with the Competent Authority for onward exchange. Country-by-Country reporting for MNE's which exceed €750m group revenues, has cast a smaller net in Malta.

However, with the introduction of transfer pricing, subject persons would be expected to prepare Master and Local Files in line with the OECD Transfer Guidelines.

In recent years, Mandatory Disclosure Rules have become important since it requires prospective reporting of reportable cross-border arrangements with certain hallmarks. Whilst, this obligation is normally handled by an intermediary, there are certain instances where the taxpayer itself would be required to report. As from 2023 through DAC VII, digital platforms will be required to report information on income derived by certain sellers. Finally, the European Commission on 8th December 2022 has issued a press release stating that the new transparency rules which require inter alia service providers to report crypto-asset transactions (DAC VIII) are foreseen to

enter into force on 1st January 2026.

Mutual Agreement Procedure

This extensive exchange of information in direct tax, will only result in more cross-border investigations, especially with a clear framework coming into force for joint audits through DAC VII. This will also increase the propensity for mutual agreement procedures (MAPs) through which a taxpayer can engage with the Malta Tax and Customs Administration in terms of a cross-border arrangement.

Indirect Taxation

Tax transparency in VAT is regulated in terms of Council Regulation (EU) No. 904/2010, double tax treaties and the Joint Council of Europe / OECD Amended Convention on Mutual Administrative Assistance in Tax Matters as mentioned in the previous section.

Tax transparency obligations will increase in 2024 through the imposition of reporting by Payment Service Providers for their sellers activities. This will feed into a new EU-wide Central Electronic System of Payment Information (CESOP). This

database together with other sources like the customs surveillance system is expected to feed into the new Central VIES which the European Commission is proposing to build by 2028.

Chapter 8

Tax Controversy



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Tax controversy remains an important cornerstone of the development of both Maltese tax law and EU tax law. There are as of date no specialised tax courts in Malta and all judicial reviews are carried out for the most part by the Administrative Review Tribunal which is presided over by a Magistrate and assisted by a fiscal panel of assistants. A right of appeal on points of law to the Court of Appeal is accorded to the litigants.

The Administrative Review Tribunal is competent to deal with disputes in terms of the revenue acts. Hence judicial reviews outside its competence remain within the general competence of the Civil Courts.

For the most part, the domain of the Civil Courts in its general jurisdiction deals with endangered tax recovery

procedures. This also extends to foreign tax recovery procedures coordinated by the International & Corporate Tax Unit in terms of the relevant international agreements and Council Directive 2010/24/EU.


In its constitutional jurisdiction, the First Hall of the Civil Court also acts as a Court of First Instance for Human Rights cases. Most human rights litigation in the tax field have circled on the right of a fair hearing / fair trial and the right to the peaceful enjoyment of property in terms of the Constitution and the European Convention of Human Rights. However, with more domestic tax law being transposed EU tax law, the Charter of Fundamental Rights of the European Union is foreseen to become an important instrument in this litigious front.

Thus, apart from appeals to the Constitutional Court, the jurisprudence of the European Court of Human Rights and more widely the Court of Justice of the European Union are largely influencing the development of Maltese tax law.

In the criminal sphere, prosecutions require the complaint of the Commissioner for Tax and Customs which cannot be unreasonably withheld. These hearings are regularly heard by the Court of Magistrates in its criminal jurisdiction. However, with tax evasion being a predicate crime for money laundering, such financial crime cases may also fall within the purview of the superior courts namely the Criminal Court. Notwithstanding this, in recent

years, there has been an increase in compromise arrangements in lieu of criminal prosecutions. Such arrangements once entered into extinguish the ongoing criminal procedures and are meant to promote ongoing tax compliance.

Domestic court litigation is expected to increase especially with the references from transfer pricing unilateral rulings and additional tax collection obligations of the Malta Tax and Customs Administration in terms of the proposed expanded one-stop-shop in the VAT ViDA legislative initiative. However, one also may observe that there is also a movement towards alternative dispute resolution methods especially in direct taxation.

The background is a solid dark blue. Overlaid on this are several abstract geometric shapes in lighter shades of blue. On the left, there is a large, light blue arc that curves from the top left towards the center. To its right, there is a light blue line that forms a sharp, angular shape, resembling a stylized 'V' or a corner. Further to the right, there is a light blue arc that curves from the top right towards the center. In the bottom right corner, there are several overlapping, semi-transparent light blue curved shapes that create a sense of depth and movement.

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As a Group, we are committed to attracting and developing a diverse workforce of professionals that share the common value of collaboration. As an advisory entity, we believe that by teaming together, with each other, and our clients, we can see beyond the surface of changes and problems organisations face in this fast changing and disruptive world to discover opportunities others might miss and face the future with greater confidence.