

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background of the page.

# Malta

## Taxation

FUNDS AND FUND MANAGEMENT 2010

### 3.1 Taxation of Funds

Funds are generally set up in Malta as investment companies, usually limited liability companies with a variable share capital (SICAV), or less frequently without such variable share capital (INVCO). Such corporations have a separate juridical personality from its shareholders or unitholders.

It is also possible to set up a fund as a commercial limited partnership (en commandite) which depending on whether its share capital is divided into shares or otherwise may not or may be tax transparent, or as tax transparent unit trusts, or contractual schemes (mutual funds).

#### Direct tax

Funds incorporated in Malta are subject to tax, but non-prescribed funds will not be subject to tax, except on income from Maltese real estate.

#### Classification of funds

For tax purposes, a collective investment scheme (CIS), or in the case of a CIS divided into sub-funds, a sub-fund of that scheme must be categorized either as a prescribed fund or a non-prescribed fund. CIS includes an undertaking for collective investment in transferable securities authorized in accordance with Council Directive 85/611/EEC (UCITS).

A fund will be treated as a prescribed fund if:

- it is a fund of a CIS that is incorporated in Malta;
- the value of the assets situated in Malta allocated to that fund for the purpose of its operations is, or is expected to be at least 85 percent of the value of the total assets; and
- it has been so classified by the Commissioner of Inland Revenue by means of a notice in writing.

If a fund does not satisfy the aforementioned conditions it will be classified as a non-prescribed fund.

### Prescribed funds

In the case of a prescribed fund, any interest, discounts or premiums earned on Maltese government stocks or bonds, and bonds issued by listed companies as well as investment income payable by corporate entities are subject to a final withholding tax at 10 percent. Bank interest income is subject to a 15 percent final withholding tax. Income from immovable property situated in Malta is subject to tax at the standard rate of 35 percent.

It is the CIS's responsibility to inform the payer of local investment income of its status as a prescribed or non-prescribed fund.

Income from foreign sources is not taxed at fund level. Dividends received from other CISs or from Maltese companies are not subject to any further tax. Capital gains derived from the disposal of securities or units in other schemes are not subject to tax.

### Non-prescribed funds

Non-prescribed funds fall outside the scope of the withholding tax provisions described under the above section regarding prescribed funds and, other than for income from immovable property situated in Malta which is subject to 35 percent tax, any income payable thereto including local investment income is exempt from tax.

Any dividends received from Maltese and foreign companies are not subject to further tax in the hands of non-prescribed funds.

Capital gains derived from the disposal by the CIS of securities or units in other schemes are not subject to tax.

### Taxation of private schemes

If a fund does not operate as a licensed CIS but only as a recognized fund, it does not fall within the definition of a collective investment scheme for income tax purposes and is therefore taxed at normal rates applicable to taxable persons.

### Advance rulings

Advance revenue rulings are not necessary because certainty of treatment is provided by the law, but they are nevertheless available from the Maltese tax authorities who are aware of the importance of certainty, stability, and support to the fund industry. Rulings would express that specified anti-avoidance provisions do not apply to a given transaction made for bona fide commercial reasons, or the tax treatment of any transaction covering financial instruments or other securities, or the tax treatment of transactions forming part of an international business activity.

## 3.2 Access to double tax treaties

From a Maltese perspective, Maltese non-transparent funds are persons who are liable to tax, and thus they have full access to Malta's double tax treaty network, at present consisting of 51 treaties, and others awaiting signature or ratification.

From the perspective of foreign authorities, Maltese treaties generally do not contain express provisions referring to CIS.

If a foreign fund is transparent and the unitholders/investors are resident for tax purposes, they should be able to benefit from the double tax treaty between the country of investment and the country of residence of the unitholders/investors.

## 3.3 Taxation of investors

Payments - dividends, interest, and liquidation proceeds - to non-resident investors do not attract withholding tax.

Any chargeable distributions by a scheme are subject to tax when these are distributed to the investor.

The right to income is governed by the prospectus, contract, or trust deed setting up the fund.

Maltese funds are not subject to a mandatory distribution of income.

### Taxation of resident investors in a resident or non-resident fund

#### *Resident investor in prescribed funds*

Resident investors are exempt from tax on payment of distributable profits arising from Maltese assets which would have been subject to tax at source either at the fund level or at the distributing company's level. Capital gains arising on the disposal of shares or units held in a prescribed fund listed on a stock exchange recognized by the Financial Markets Act are tax-exempt, whereas capital gains on units held in a fund not so listed are subject to tax at the standard corporate and individual rates. Profits of both listed and non-listed funds arising out of foreign sources or out of untaxed dividends distributed to the fund by Maltese companies, and distributed to individuals are taxed at 15 percent whilst companies receiving such distributions are exempt.

#### *Resident investor non-prescribed funds*

Profits arising from foreign-sourced income or out of untaxed dividends distributed to the resident fund by Maltese companies are taxed at 15 percent if

received by individuals, and are exempt from tax if received by companies. Profits arising from Malta-sourced income which would have been taxed at source at the distributing company level are not subject to further tax in the hands of investors.

Resident investors in non-prescribed funds have the option to be taxed at a final rate of 15 percent on any capital gains accruing thereto from the transfer of units in funds by way of redemption, liquidation, or cancellation. Alternatively, they may opt to receive such capital gains without deduction, in which case they would be obliged to declare the capital gains in their personal income tax returns and would be subject to tax at the normal progressive rates of tax. Such tax at progressive rates would apply to all capital gains on transfers of units to third parties.

### *Resident investing in non-resident funds*

Profits distributed by a non-resident CIS (UCITS) and capital gains arising on the disposal of units therein are subject to a 15-percent withholding tax if paid to the resident unitholder through the services of an authorized financial intermediary (AFI). If the profits or capital gains are not paid through an AFI, the ordinary personal progressive tax rates up to a maximum of 35 percent apply.

### **Taxation of non-resident investors in a resident fund**

Non-residents are not subject to further tax on income or capital gains in Malta, by withholding or otherwise, and irrespective of whether the fund is prescribed or non-prescribed. In this sense, there is no tax imposed, by withholding or otherwise, and irrespective of whether the dividend distributed is reinvested or otherwise.

### **Switching of sub-funds**

Upon switching of units by an investor from one sub-fund to another sub-fund of the same CIS, no gain or loss will be deemed to arise to such investor.

Upon disposal of the final securities in a prescribed fund, the capital gains accruing to a Maltese resident investor shall be computed by aggregating the chargeable gains and deducting the allowable capital losses which would have arisen during the chain of consecutive switches. If the securities which are being disposed of are held in a non-prescribed fund, and provided that the chain of consecutive switches did not include a prescribed fund, such capital gains may be calculated by deducting the cost of acquisition of the initial securities from the proceeds arising on disposal.

### 3.4 Transfer taxes, stamp duty, capital duty, and net wealth tax

Issues of units or shares do not attract any stamp duty.

Transfers of share/units in a CIS licensed under the ISA are exempt from duty on transfers or stamp duty. Furthermore any transfer of marketable securities by CISs is also exempt from duty on transfers or stamp duty.

Malta does not have capital duty.

No tax is imposed on the fund's net asset value.

### 3.5 Value-added tax (VAT)

Malta has a value-added tax (VAT) system which is modeled on the EU Sixth VAT Directive and the new VAT Directive 2006/112/EEC. Under Maltese VAT law supplies made by CISs and their managers are deemed exempt without credit. This means that any VAT charged to the fund by other service providers (such as accountants, auditors, lawyers) will be absorbed thereby. It is possible to recover that portion of VAT attributable to customers established outside the EU.

### 3.6 Taxation of fund managers/advisors

#### Tax applicable to fund managers/advisors

Subject to regulatory requirements, fund managers and administrators providing services to Maltese-based funds may be located outside Malta.

Where they are established in Malta, fund managers and advisors can be set up as a limited liability company. Following tax refunds to such company's shareholders on dividend distributions, tax would when considering the combined company-shareholder imputation tax system, would amount to 5 percent. The fund manager or advisor company would pay tax at 35 percent, subject to relief for international double tax, if any. However, its shareholders would be entitled to a partial tax refund, generally of six-sevenths or 30 percent, upon a dividend distribution. No withholding tax is imposed on dividends paid to non-residents.

Transfers of shares in a Maltese fund manager are exempt from tax on capital gains in the hands of non-resident shareholders, and there is no tax on transfers of such shares or stamp duty.

Licensed investment services companies may be used by fund managers or investment advisors who wish to provide services to foreign registered funds from Malta.

### Anti-avoidance rules governing profits of an overseas fund

The taxation of funds established outside Malta depends on where the management and control of the fund are located. The mere existence of a fund manager or advisor in Malta should not be in itself conclusive that the fund's management and control are in Malta. Malta does not have CFC rules.

### Value-added tax (VAT)

Where a Maltese fund manager provides a fund situated outside Malta with investment management services, the place of supply is where the fund is located.

Where a Maltese fund manager provides a fund in Malta with investment management services, the place of supply is Malta. Such supply is exempt without credit.

It is possible to recover that portion of VAT attributable to customers established outside the EU.

## 3.7 Other tax-favored vehicles

Malta's tax system offers opportunities to promoters intending to set up investment companies.

Maltese domestic law provides for an exemption from tax for dividends, liquidation proceeds, and capital gains arising from a participating holding in non-resident companies (participation exemption) and imminently also in resident companies (provided certain conditions are met).

## 3.8 Miscellaneous

### Redomiciliation of funds

It is possible for a fund constituted outside Malta to be continued in Malta without losing its legal personality. It is also possible for Maltese funds to be continued outside Malta. In both scenarios, the other jurisdiction must have domestic legislation which recognizes continuity of legal seat in another country. Redomiciliation in itself does not trigger tax in Malta.

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