

Malta - Country Profile



Ever since joining the European Union ('EU') and adopting the Euro as a currency, Malta has enjoyed a strong and consistent growth in its financial services industry and is fast becoming the jurisdiction of choice for a number of multinational companies seeking to relocate their business interests or looking for an ideal market within the EU. An efficient work force, English as a business language and a strong legal and fiscal framework have all contributed to this growth.

Introduction to Malta

Malta is an ideal location for multinationals seeking cost- and tax-efficient jurisdictions within the EU. The legal, regulatory and fiscal framework in Malta, the use of English as the business language, being accustomed to both civil and common law concepts, its qualified work force including professionals in the legal, tax and financial services field, and the relatively low operating costs are some of the ingredients that have contributed to Malta being ranked among the top five emerging financial centres in the world in the City of London's Global Financial Index.

A focused regulatory regime is complimented by the fiscal environment which provides taxpayers with certainty through rulings and confirmations of the tax treatment of complex transactions mainly based on the International Financial Reporting Standards ("IFRS") accounting treatment. This ensures that in most cases the reported accounting profit of financial transactions in futures, derivatives, swaps and hedging instruments is equal to the tax base.

An increasing number of multinationals are choosing Malta as their preferred location for holding company, group finance and treasury activities. These benefit from the fact that Malta does not levy any withholding taxes on dividends, interest and royalties as well as from EU directives such as the Parent-Subsidiary and the Interest and Royalty directives which eliminate or reduce outbound withholding taxes between EU countries.

Other activities include holding and developing intellectual property, general trading, back office, call centre, research, development and design and where appropriate even manufacturing activities, notably in the pharmaceutical, electronics and machinery sectors.

Companies incorporated in Malta are free to choose the currency in which their share capital is denominated and prepare their financial statements in their functional currency in compliance with IFRS. Tax returns, assessments and refunds are also made in that same currency.

Tax system

Maltese tax law finds its origins in the UK tax system and is based on UK tax principles. The Income Tax Act levied a tax on income and not on capital, and the distinction between items of income and capital is fundamental in Maltese tax law. Certain gains are now subject to tax, however, unless specifically taxable, capital receipts are not subject to income tax.

Malta has a full imputation tax system which completely eliminates the economic double taxation of company profits. Shareholders in receipt of dividends are entitled to a tax credit equal to the tax borne on the profits out of which the dividends are paid.

Since the tax rate of 35% applicable to companies is also the highest tax rate in Malta, shareholders will not suffer any additional tax on the receipt of dividends. Where the shareholder's tax on the dividend is lower than 35%, the amount by which the tax credit exceeds the tax on the dividend will be refunded to the shareholder if the shareholder includes the dividend in his tax return.

The imputation tax system has always applied to resident and non-residents alike. Therefore, non-residents may also claim a refund of the underlying tax paid by companies operating in Malta.

In support of Malta's drive to eliminate economic double taxation, ever since 1994 Malta has adopted a system of tax refunds to shareholders, upon a distribution of dividends. As will be explained further on, various refunds are available which may reduce the effective tax rate on profits distributed by Maltese resident companies to between nil and 6.25 %.

Basis of taxation

A person's liability to tax in Malta hinges on the twin concepts of residence and domicile. Persons that are both ordinarily resident and domiciled in Malta are subject to income tax on their worldwide income and certain capital gains.

The tax refund system, which has been vetted by the EU Commission, extends to both resident and non-resident shareholders, and applies to all profits derived from local and foreign sources with the exclusion of profits derived directly or indirectly from immovable property situated in Malta.

Companies incorporated in Malta are both resident and domiciled in Malta, irrespective of where the control and management of the business is exercised.

Companies that are not incorporated in Malta are considered to be resident in Malta only when the control and management of their business is exercised in Malta, in which case they would be taxed as a resident non-domiciled company.

Companies not resident in Malta

A company not resident in Malta but deriving income which arises in Malta as a consequence of an activity carried out in Malta is subject to the same tax rules as are applicable to companies resident in Malta. Such companies are therefore subject to tax at 35% and no further tax is levied when profits are remitted to head office. When the non-resident company distributes its profits to its shareholders, the tax refunds, as explained hereunder, will apply.

“Effective tax rate of between nil and 6.25%”

Persons either not ordinarily resident or not domiciled in Malta are taxable on any income and certain capital gains arising in Malta and on income arising outside Malta that is received in Malta. Such persons are not taxable on any capital gains arising outside Malta, whether received in Malta or not.

Double taxation relief

Maltese tax law provides for three main forms of double taxation relief ('DTR') of foreign-source income. These are available in the following order:

- Treaty relief;
- Unilateral relief; and
- Flat rate foreign tax credit (FRFTC).



Treaty relief takes the form of a tax credit granted for foreign tax paid on income received from a country with which Malta has signed a tax treaty. The amount of the credit is the lower of Maltese tax on the foreign income and the foreign tax paid.

Unilateral relief operates in a similar way to treaty relief, but it only applies where treaty relief is not available.

The rationale of the full imputation tax system is also extended in relation to foreign companies by extending the unilateral relief to the underlying tax borne by the foreign company on the profits out of which dividends are paid to a Maltese resident. Relief for such underlying tax is available to both individuals and companies and is available in respect of dividends received from any shareholding in a foreign company and also in respect of the underlying tax paid by any subsidiaries in which the foreign company holds, directly or indirectly, at least 10% of the voting rights.

The effect of the application of treaty relief and unilateral relief is that where the foreign taxes are equal to or exceed the 35% Malta tax, no tax is payable in Malta. In the case of dividends, no tax in Malta will be suffered when the foreign dividend withholding tax and the underlying taxes are equal to or exceed the Malta tax at 35%.

The FRFTC is another form of unilateral relief which is however only available to companies. It takes the form of a notional tax credit for foreign taxes deemed to have been suffered on qualifying income. The FRFTC is equal to 25% of the net amount received and is to be added to such amount. Attributable expenses are deducted from this aggregate amount to arrive at the taxable income.

Taxable income is subject to tax at the 35% rate and the amount of the FRFTC is deducted from the tax charge. The credit is limited to 85% of the Maltese tax due before deducting the credit itself. By way of example:

	Euro
Net foreign income received	1,000
FRFTC (25% of 1,000)	<u>250</u>
	1,250
Less: Expenses	<u>(350)</u>
Taxable income	<u>900</u>
Tax thereon at 35%	315
Less: FRFTC (lower of: 250 and 85% of 315)	<u>(250)</u>
Net Maltese tax payable	<u><u>65</u></u>

Tax Refund System

Upon a distribution of profits by a company registered in Malta (i.e. a company resident in Malta or a non-resident company with a branch in Malta), its shareholders may claim the following tax refunds of the Malta tax charge of the distributing company:

- The most common tax refund is of 6/7ths, i.e. 30% (6/7ths of 35%) of the taxable profits. Where no double taxation relief has been claimed, the effective tax suffered in Malta on distributed profits will be 5%. On the other hand, provided the income is not allocated to the Foreign Income Account ('FIA'), where the Malta tax charge has been reduced by DTR, the tax refund will still be computed by reference to the Malta tax charge before DTR, but cannot exceed the amount of the Malta tax paid. Therefore where the foreign taxes are 5% or more, the effective Malta tax after the tax refunds will be nil.
- Where the income is allocated to the FIA and DTR has been claimed, the tax refund is 2/3rds of the Malta tax charge after deducting FRFTC but before deducting other types of DTR. The Malta tax suffered on FIA income after the tax refunds will generally be as follows:
 - * Where the FRFTC has been claimed, the effective Malta tax suffered will be between 2.49% and 6.25%;
 - * Where another DTR is claimed the Malta tax incidence will depend on the extent of the foreign taxes suffered and where these are 11.67% or more, the Malta tax suffered is nil.

- Where the distributed profits are derived from passive interest and royalties, the tax refund is reduced to 5/7ths of the Malta tax charge. Interest and royalties are considered to be of a passive nature when they are not derived from a trade or business and have suffered a foreign tax of less than 5%. In such cases the Malta tax suffered after the tax refunds will generally be 10%, reduced by any foreign taxes suffered below the 5% threshold. The 5/7ths tax refund is also applicable when the distributed profits consist of dividends received from a participating holding (see definition below) and the participation exemption, or 100% tax refund, is not applicable.

The tax refunds are applicable to both resident and non-resident shareholders in respect of the tax borne on profits derived from both domestic and international activities, with the exception of profits derived, directly or indirectly, from immovable property situated in Malta. Such profits include a notional amount for the use of property for business purposes. The effect of this on any particular structure involving the significant use of immovable property situated in Malta will need to be assessed individually. Applications for tax refunds should be made within four years from the date of the distribution of profits. With proper planning tax refunds are normally payable within period of 14 to 21 days of the date on which the tax is paid by the distributing company.

Tax is paid in the currency in which the share capital of the distributing company is denominated and tax refunds are paid in the same currency.

"The lowest effective tax rate in the EU"



Participation exemption and 100% tax refund

Malta adopts a 100% participation exemption with respect to profits (namely dividends) derived from a participating holding or from the transfer thereof (namely gains on transfer).

Where the participating holding is a holding in a non-resident company, an alternative to the participation exemption is the full (100%) refund. The relative dividends and capital gains will be taxed in Malta (subject to DTR), however, upon a dividend distribution, the shareholders are entitled to a full refund (100%) of the tax paid by the distributing company.

With respect to dividends, the participation exemption is applicable if the company or non-resident body of persons in which the participating holding is held:

- is resident or incorporated in a country or territory which forms part of the European Union; or
- is subject to tax at a rate of at least 15%; or
- has 50% or less of its income derived from passive interest or royalties; or
- is not held as a portfolio investment and it, or any of its passive interest or royalties, has been subject to tax at a rate of at least 5%.

The conditions for the application of the participation exemption with respect to dividends do not apply in the case of gains derived from the transfer of a participating holding.

Participation holding

A participating holding is the holding of equity shares by a company resident in Malta in another company (or a non-resident body of persons as described below) where the former:

- a. Holds directly at least 10% of the equity shares in the company, which holding confers an entitlement to at least 10% to any two of the following rights:
 - i. Right to vote;
 - ii. Right to profits available for distribution;
 - iii. Right to assets available for distribution on a winding up; or
- b. Is an equity shareholder in the company and is entitled to purchase the balance of the equity shares of the company, or has the right of first refusal to purchase such shares, or is entitled to appoint a director on the Board of that company; or
- c. Is an equity shareholder which holds an investment, having a value at time of acquisition, of at least €1.164 million (or the equivalent sum in another currency) in the company and such investment is held for an uninterrupted period of at least 183 days; or
- d. Holds the shares in the company for the furtherance of its own business and the holding is not held as trading stock for the purpose of a trade.

As indicated above, a participating holding may also be held in a non-resident body of persons which is not a company. This applies when such body of persons is similar to a Maltese partnership en commandite (a limited partnership) the capital of which is not divided into shares, and entitles the holder to any two of the three rights in (a) above.

“Malta is one of the fastest growing fund domiciles in the EU”

For a holding in a company to be a participating holding, such holding must be an equity holding, i.e. a holding in a company, not being a property company (a company having, directly or indirectly, any rights over immovable property situated in Malta – subject to some exclusions), that confers any two of the three rights in (a) above.

Intellectual Property ('IP')

IP holding companies may benefit from Malta's tax refund system as well as an exemption on income derived from qualifying patents, irrespective of the jurisdiction in which the patent was developed or in which it is registered.

IP holding companies operating in Malta may also benefit from Malta's extensive tax treaty network and tax depreciation on IP over 3 to 6 years, depending on IP in question.

Investment Funds

Malta is increasingly becoming an attractive jurisdiction for setting up investment funds, be they retail funds or professional investor funds (including hedge funds). Besides the fact that funds invested overseas are completely exempt from tax, Malta does not impose any tax on the net asset value of the fund. In addition, the licensing procedure which is based on EU norms is mindful and reactive to clients' needs.

For tax purposes, investment funds (a.k.a. collective investment schemes), including sub-funds, are classified as either prescribed or non-prescribed funds. A prescribed fund is defined as a fund resident in Malta, which has declared that the value of its assets situated in Malta amount to at least 85% of the value of its total assets. If a fund does not satisfy this latter requirement, it falls to be classified as non-prescribed.

A non-prescribed fund is exempt from tax on both its income and capital gains in Malta.

Furthermore the Malta tax that will be suffered by the fund manager on his fees may benefit from the refund system as described above.

The distribution of income of a fund to foreign investors is not taxed in Malta. There are also no Maltese capital gains taxes imposed on the disposal of units in both prescribed and non-prescribed funds.

Financial Services Expatriates

Expatriates are generally taxed at progressive rates of tax up to 35%. However, expatriates employed in the senior-most positions with companies licensed or recognised by the Malta Financial Services Authority and in receipt of a minimum annual salary of €75,000, may benefit from a flat rate of tax of 15% for a determined number of years, subject to the fulfilment of certain conditions.

In addition, investment services expatriates and insurance expatriates who do not qualify for, or opt not to benefit from, the 15% flat rate of tax, may benefit from an exemption from tax on certain fringe benefits, including a monthly subvention of €600, accommodation and vehicle expenses.

Trusts

Having ratified The Hague Convention on the law applicable to trusts and on their recognition, in 2004 Malta proceeded to introduce specific legislation regulating trusts. Although Malta is a civil law country, the English model was adopted allowing for a smooth functioning of trusts and full protection of the parties involved. The law envisages both licensed professional trust companies and private trustees. Trusts may be set up by non-domiciled persons, who can choose that the trust be governed by Maltese law or by foreign law. From a tax perspective, tax liability arises where one of the trustees is tax resident in Malta.

Tax is computed on the income attributable to a trust to the extent that such income is not allocated to beneficiaries.

Nevertheless where the income attributable to a trust consists of (i) income arising outside Malta, interest, royalties or gains on shares exempt from Malta tax in the hands of non-residents; or (ii) dividends paid by a company registered in Malta; and the beneficiaries are persons not ordinarily resident in Malta or not domiciled in Malta, such income is deemed to have been derived directly by the non-resident beneficiaries.

Moreover, a trust may elect to be treated as a company for tax purposes. Consequently the benefits of the Maltese system described above may be combined with a trust.

Revenue Confirmations and Rulings

It is common practice that the tax treatment of transactions and structures be confirmed in writing by the Maltese tax authorities. Though tax principles are well founded on UK tax principles, this practice is especially useful for structures involving somewhat complex transactions and structures since it provides certainty of the tax treatment that will be adopted.

Where necessary it may also be possible to secure rulings which are binding on the Maltese tax authorities for a period of two years from the time of any relevant change in legislation subsequent to such ruling, or for a period of five years from the time of such ruling, whichever is the lesser.

Transfer duties

A duty on documents and transfers applies on certain transactions where the document is executed in Malta or a document executed outside Malta is made use of in Malta. The most significant of these is a duty of 5% on the transfer of immovable property. The duty of the transfer of company shares holding principally immovable property is also of 5%. In other cases the transfer of company shares is dutiable at 2%, but numerous exemptions apply making such duty applicable only in specific circumstances.

Capital taxes

Malta has no net worth tax or similar taxes on capital.

Controlled foreign company (CFC)

There is no CFC legislation in Malta.

Thin Capitalisation

There is no thin capitalisation legislation in Malta.

Withholding taxes

Malta does not impose any withholding taxes on interest, royalties, dividends and proceeds from liquidation.

Transfer Pricing

There is no transfer pricing legislation in Malta. However, anti-avoidance provisions do exist, including provisions relating to transactions concluded between related parties, one of whom is resident and the other non-resident.

Company formation and re-domiciliation

Incorporation of Maltese companies

The incorporation process is relatively swift provided that all the necessary information and documentation is in place.

The minimum issued share capital is of Euro1,165 or equivalent in foreign currency. 20% of the share capital has to be paid up on incorporation. The number of shareholders is normally two; however, a "single member company" may also be registered.

Re-domiciliation

Maltese company law provides for the re-domiciliation of foreign companies to Malta and of Malta companies to foreign jurisdictions without the need to dissolve the entity and set up a new company. Re-domiciliation is currently permitted to and from all jurisdictions, other than those on the Financial Action Task Force (FATF) black list. For a company registered in Malta to be continued outside Malta, the laws of the approved jurisdiction must also allow this procedure.

Step-up in income tax basis

Persons transferring their residence and/or domicile to Malta may claim a step-up in the tax basis of assets situated outside Malta which were acquired prior to their transfer of residence and / or domicile.

The taxpayer may therefore elect that, for Maltese tax purposes, the cost of acquisition of the assets held outside Malta prior to their transfer of residence and / or domicile be the market value of such assets at the time of the transfer, as proved to the satisfaction of the Commissioner of Inland Revenue.

This implies that the appreciation in value of assets arising prior to the transfer of residence and / or domicile is not subject to tax in Malta.

This election may also be made by a company registered in Malta which consequent to a cross-border merger in terms of the EC Merger Directive comes to own assets previously owned by a merging company which was not domiciled and / or resident in Malta prior to the merger.

Such election must be made within the year of assessment following the basis year in which the transfer of residence and / or domicile occurs

“Where the foreign taxes are 5% or more, the effective Malta Tax after the tax refunds will be nil”



Tax treaties

Successive Maltese governments have sought to conclude double taxation treaties with important trading partners as well as with emerging countries. This policy is expected to continue in the future. To date, treaties are in force with the following 57 countries:

Albania	Hungary	Norway
Australia	Iceland	Pakistan
Austria	India	Poland
Barbados	Ireland	Portugal
Belgium	Isle of Man	Qatar
Bulgaria	Italy	Romania
Canada	Jersey	San Marino
China	Jordan	Serbia
Croatia	Korea	Singapore
Cyprus	Kuwait	Slovakia
Czech Republic	Latvia	Slovenia
Denmark	Lebanon	South Africa
Egypt	Libya	Spain
Estonia	Lithuania	Sweden
Finland	Luxembourg	Syria
France	Malaysia	Tunisia
Georgia	Montenegro	UAE
Germany	Morocco	UK
Greece	Netherlands	US

Contact us

André Zarb

Tax

Head of Tax

T: + 356 2563 1134

E: andrezarb@kpmg.com.mt

Anthony Pace

Tax

Partner

T: + 356 2563 1134

E: anthonypace@kpmg.com.mt

Pierre Portelli

Tax

Partner

T: + 356 2563 1134

E: pierreportelli@kpmg.com.mt

Juanita Brockdorff

Tax

Partner

T: + 356 2563 1134

E: juanitabrockdorff@kpmg.com.mt

Doreen Fenech

Tax

Director

T: + 356 2563 1134

E: doreenfenech@kpmg.com.mt

www.kpmg.com.mt

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