Morison KSi

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Doing Business Guide
Malta

About This Guide

This guide has been produced by the Morison KSi Maltese member firm for the benefit of its clients and associate offices worldwide who are interested in doing business in Malta.

Its main purpose is to provide a broad overview of the various issues that should be considered by organisations when setting-up business in Malta.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in Malta, or looking to Malta as an opportunity for expansion, should seek professional advice before making any business or investment decision.

While every effort has been made to ensure the accuracy of the information contained in this guide, no responsibility is accepted for its accuracy or completeness.

The information in this guide is up to date as at the edition date.

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Contents

Introduction

Why Malta?

Malta has been described as one of the best places in the world to live, and an ideal choice for investment. In a survey carried out by Expat Insider and published at InterNations.org (2016), Malta ranked in second place as the best country for expats to live in,[1] based on its pleasant climate, geographical position, low crime rate, reliable banking system, and – last but not least – its tax planning incentives and opportunities.

The economy

- **Currency:** Malta is a full member of the European Union (EU), with the Euro as its official currency.
- **Capital:** The capital city of Malta is Valletta (named after the French nobleman, Jean Parisot de la Valette, who led resistance against the Ottomans at the Great Siege of Malta in 1565).
- **Language:** Despite being such a small country, Malta has retained its own language, Maltese. Most of its population also speak English and Italian.
- **Climate:** Malta's bathing water is among the EU's best, which is an additional bonus to the Island's 300 days of sunshine.
- **Accessibility:** There are directs flights to/from all major cities in Europe and North Africa.
- **History:** Malta is proud of its ancient temples, which date back earlier in human history than any other structure in the world – even the pyramids of Egypt.
- **Infrastructure:** Malta is known as a 'smart island' because of its excellent information technology (IT) infrastructure.
- **Safety:** The UN World Risk Report Malta has consecutively rated Malta as the second safest country in the world, based on its exposure to and ability to cope with natural disasters.[2]
- **Skills:** As indicated in the Education and Training Monitor 2013 (issued by the European Commissioner for Education, Culture, Multilingualism and Youth) Malta has amongst the highest rates of graduates among the 27 EU member states.
- **Labour:** When it comes to recruitment and human resources, Malta guarantees value for money, as wages are highly competitive notwithstanding the remarkable quality of Maltese workers.

1. See: www.internations.org/expat-insider/2016/the-best-and-worst-places-for-expats
2. See, for example: www.unu.edu/media-relations/media-coverage/malta-worlds-second-safest-country-again-%E2%88%92-world-risk-report-2013.html

Business Structures

While business activities could be carried out on a personal basis as self-employment, for additional protection (in some cases) and formality one could consider the following types of structure.

Limited liability company

Any person, resident or not, may set up a private limited liability company (LLC) in Malta with a minimum paid-up share capital of €233. By default, any LLC incorporated in Malta obtains Maltese fiscal residence and domicile, and is thus taxable on worldwide income.

A Maltese LLC would generally have the following characteristics:

- At any time, must have at least one director and one secretary (this could be the same person)
- Shareholders' liability is limited to their capital contribution
- By default, shares cannot be sold to third-party shareholders unless previously offered to other existent shareholders (although different pre-emption rights could be set)
- Must have its financial statements audited and submitted annually at the Registry of Companies.

How long does it take to form a limited liability company?

Once all documents and signatures are in place, and the necessary due diligence testing successfully completed, a company is generally set up within 3 business days.

Establishment procedure of a limited liability company

Once the company and all involved parties have been duly vetted for due diligence purposes, a corporate service provider (CSP) would submit on behalf of the prospective company the memorandum and articles of association, mainly highlighting the name (a name reservation facility in advance is available), registered address, main objectives (usually including a number of secondary objectives that entitle the company to perform its legal business, aside from the specified principal objectives), share capital composition and structure, board composition and the company's expected fixed duration, if any.

Compliance obligations of limited liability companies

LLCs registered in Malta must prepare and submit an annual return on the date of the company's annual anniversary together with settlement of the annual fee, which ranges from €100 to €1,400. In addition, the company's annual audited accounts would must be submitted at the Registry of Companies within 10 months after financial year-end (reduced to 7 months in case of public companies).

Redomiciliation of limited liability companies

Malta allows for the redomiciliation in and out of LLCs in terms of 'continuation of companies' regulations. Any profits accruing to a company to be redomiciled into Malta shall not be subject to any taxation in Malta.

Branches in Malta

Presence through branches in Malta must be registered as overseas companies (OC) with the Registry of Companies. A branch is merely the extension of the actual foreign company and would have no separate legal entity.

How long does it take to form an overseas company (branch)?

Once all documents and signatures are in place and the necessary due diligence testing successfully completed, an OC to act as a branch in Malta is generally set within 3 business days.

Establishment procedure of an overseas company (branch)

Once the company and all involved parties are duly vetted for due diligence purposes, a CSP would submit on behalf of the prospective branch an authentic copy of the instrument of constitution, details of directors and secretaries, and a return outlining the key details of the prospective branch such as name, registered address and the activities to be carried out.

Compliance obligations of an overseas company (branch)

Overseas companies generally have to submit financial statements consistent with those required for LLCs to the Registry of Companies. Where the accounting requirements of the place of origination differ from those of Malta, the Registry of Companies may still accept such accounts, subject to full and clear details about the activities in Malta being included.

Partnerships in Malta

Partnerships in Malta could be official setup under any of two forms:

- Partnership en nom collectif in which all partners would have unlimited, joint and several liability which could go beyond the initial capital contribution invested therein.
- Partnership en commandite in which at least one of the partners would have unlimited (general) liability. The capital of such partnerships may be divided into shares.

Unless a partnership *en commandite* has its capital divided into shares (in which case, is to be treated as a company for tax purposes) all partnerships, by default, are to be considered 'transparent entities' for tax purposes, although they could elect to be treated as normal companies.

How long does it take to form a partnership?

Once all documents and signatures are in place and the necessary due diligence testing successfully completed, a partnership in Malta is generally set within 3–5 business days.

Establishment procedure of a partnership

A partnership *en nom collectif* is formed by drawing up a deed of partnership to be registered at the Registry of Companies and to include: (i) the name and residence of each partner; (ii) the partnership's name (ii) registered office; (iii) objectives; and the (iv) contribution of each partner.

A partnership *en commandite* is formed by drawing up a deed of partnership to be registered at the Registry of Companies and includes details of who will be the general and the limited partners.

Trusts in Malta

The Maltese legal system offers any person the possibility to open a trust under Maltese law. The law allows for great flexibility in the creation of a trust and thus allows all the main kinds of trusts to be established – including discretionary, accumulation and maintenance, fixed interest, spendthrift, charitable and unit trusts.

How long does it take to form a trust?

A trust need not be registered with any authority for its creation and can be legally set up unilaterally or bilaterally, by oral declaration, or in writing. When dealing with a written trust, the settlor must set up the trust with a licensed trustee. An exception to this rule exists when dealing with private and family trusts, where the law provides the possibility for the trust to be set up either by (i) a notarial deed with a close family friend or relative acting as the trustee, or (ii) establishment of a private trust company – that is, a private trust services provider without a licence, providing trust services only to family members.

Establishment procedure of a trust

When establishing a written trust, the settlor simply needs to decide how they would like their trust to operate, and ensure that the trust deed is drafted properly for the beneficiaries. In this regard, the settlor can also be a beneficiary. The settlor can also opt for the creation of an office of the protector to supervise the trustee in the management of the trust. Once a trust is set up, ownership of all the trust property passes on to the trustee and not to the trust, since a trust does not have legal personality. Unless dealing with a charitable trust, a trust cannot last more than 125 years.

Associations in Malta

An association is created by persons for the purpose of either (i) promoting private interests, (ii) promoting a trade or profession, (iii) achievement of a social purpose, or (iv) any other lawful activity on a non-profit-making basis. An association is thus the typical body utilised for trade unions and organisations.

How long does it take to form an association?

Although an association need not be registered to be validly constituted, an unregistered association has limited legal personality. By comparison, registered associations have full legal personality.

Establishment procedure of an association

No special requirement exists in the establishment of an association. The persons involved simply need to create a statute that suits their purpose.

Foundation in Malta

A foundation in Malta can be established for a private interest or for a public purpose. Private interest foundations act in a similar way to a trust, and also act as a wealth management tool. Public purpose foundations, however, serve as charitable institutions or as bodies intended to promote a specific purpose.

How long does it take to form a foundation?

Foundations are set up by public deed and are registered; despite this, the contents of private interest foundations are confidential. The timeframe for the establishment of a foundation essentially depends on the founding members. The minimum capital requirements are €1,165 for a private interest foundation and €233 for a purpose foundation.

Foundations are set up by public deed and are registered; despite this, the contents of private interest foundations are confidential.

Establishment procedure of a foundation

Establishing a private interest foundation requires a licensed entity to act as administrators to the foundation assets, similar to a trust. The founders would thus need to establish a foundation deed for the beneficiaries. A public purpose foundation on the other hand, does not require a licensed entity to administer the funds of the foundation. Unlike a trust, a foundation will have legal personality upon registration and thus all foundation assets will be owned by the foundation. Both kinds of foundation can also opt for an office of the protector to supervise the management of foundation assets. Private interest foundations cannot last more than 100 years, while public purpose foundations can last indefinitely.

Labour and Personnel

Labour laws and regulations

All employee–employer relations are regulated by the Employment and Industrial Relations Act (2002), which deals with a number of issues such as (i) conditions of employment; (ii) protection of wages; (iii) termination of contracts and (iv) discrimination.

The typical probation period of an employment contract is 6 months (although this could be agreed differently). During the probationary period, employment can be terminated with no reason, as long as 1 week's notice is given if the employee has already worked for at least 1 month. Outside the probationary period, termination of employment induced by either the employee or the employer would require advance notice to be given, depending on how long the employee has been employed. For example, an employee who has been in employment for between 6 months and 2 years would require an advance notice period of 2 weeks.

Minimum wage

The labour market in Malta is completely free, with minimal pre-set wage ranges and guidelines. However, in 2019 the national minimum wage per normal working week for employees aged ≥18 years will be set at €175.84.

Working hours and leave entitlement

Generally, the normal hours of work are 40 hours per week, but specific working-time patterns and arrangements may be negotiated between the employees and employers.

Employees are entitled to 25 days paid annual leave as from 1 January 2018 and would also be eligible for special time-off hours for reasons such as maternity, paternity or family emergency. Pregnant women are entitled to an uninterrupted maternity leave of 14 weeks at full pay, with the right to have this extended by a further 4 weeks paid at the minimum wage. There are also 14 days of public holiday each year, with no obligation to compensate for these falling on a weekend.

How are employee taxes handled in Malta?

Employers in Malta are required to withhold tax from employees' salaries under the final settlement system (FSS). FSS works by averaging the effective rate of tax chargeable on the employee and applying that rate to the monthly salary. The amount so deducted should be equal to the actual tax chargeable on the individual. For more information about FSS taxes, please refer to the section on individual taxation.

Employers must, by the last working day of the month following that during which the salary would have been earned, pay over to the Commissioner the total amount of tax deducted or which should have been deducted therefrom.

Social security and similar obligations of employment in Malta

Employees and employers in Malta make contributions with the aim of being provided with medical care, pension, maternity benefits and other social benefits. These are categorised into (i) social security contributions and (ii) maternity fund contributions (see Table 1).

Table 1: Social security contributions in Malta, 2019

Employed persons		
	Paid by	
Type of contribution	**Employer**	**Employee**
Social security contributions	10%	10%
	Min €6.62	Min €6.62
	Max €46.53	Max €46.53
Maternity fund contribution	Min €0.53 per week	N/A
	Max 0.3%	
Self-employed persons		
Type of insurance		
Social security contributions	15%	Min €30.25
		Max €69.79

International mobility

Does Malta offer any specific tax residence programmes?

Although it is possible to obtain Maltese residence on the basis of ordinary residence, as discussed below, Malta offers a number of programmes through which one's fiscal residence is officially recognised and subject to certain beneficial treatments.

Global residence programme

This applies to non-EU/EEA/Swiss nationals and enables them to enjoy a flat tax rate of 15% on foreign income remitted to Malta rather than the progressive tax rates outlined above, while foreign capital gains would not be subject to any taxes. This notwithstanding, a minimum tax of €15,000 is due annually covering the main applicant and also any family members so registered. Qualifying criteria include investment in (or rental of) in real estate, health insurance and payment of a government set application fee. The programme is a recognised basis for being provided with a Maltese EU Schengen visa and a right to live and study in the EU/EEA.

Residence programme

Based on the global residence programme (above), but applies to EU/EEA/Swiss nationals and enables them to enjoy a flat tax rate of 15% on foreign income remitted to Malta rather than the progressive tax rates outlined above, while foreign capital gains would not be subject to any taxes. This notwithstanding, a minimum tax of €15,000 is due annually covering the main applicant and also any family members so registered. Qualifying criteria include investment in (or rental of) in real estate, health insurance and payment of a government set application fee.

Malta retirement programme

This applies to EU/EEA/Swiss nationals wishing to retire in Malta and enables them to enjoy a flat tax rate of 15% on foreign income remitted to Malta (including pension income, which must constitute at least 75% of the applicant's taxable income) rather than the progressive tax rates outlined above, while foreign capital gains would not be subject to any taxes. This notwithstanding, a minimum tax of €7,500 is due annually and several requirements, including investment in (or rental of) real estate, must be satisfied.

United Nations pension programme

Those receiving a UN pension or a widow's/widower's benefit who remitting 40% of this to Malta are not subject to any Malta taxes on any UN pension received in Malta; they are also charged a flat tax rate of 15% on other foreign income brought into Malta. A minimum tax of €10,000 is due annually and various requirements must be satisfied, such as investment in (or rental of) real estate.

Qualifying Employment in Innovation and Creativity

Taking employment in Malta consisting of a senior position within entities directly engaged in industrial/product research and experimental development may benefit on a 15% flat tax rate subject that the minimum annual salary is of €45,000. No tax would be paid on income exceeding €5,000,000.

Highly Qualified Persons

Taking employment in Malta consisting of a senior position within entities directly engaged in Aviation/iGaming/Financial Services/IVF Services may benefit on a 15% flat tax rate subject that the minimum annual salary is of €84,000. No tax would be paid on income exceeding €5,000,000.

Maritime Activities and the Servicing of Offshore Oil and Gas Industry Activities

Taking employment in Malta consisting of a senior position within entities directly engaged in Maritime and Oil and Gas Services may benefit on a 15% flat tax rate subject that the minimum annual salary is of €65,000. No tax would be paid on income exceeding €5,000,000

Does Malta offer any citizenship by investment programmes?

Malta offers the Individual Investor Programme (IIP), recognised and approved by the EU, through which Malta offers citizenship by means of a certificate of naturalisation to individuals and their families in return for contributions to the country's economic and social development. The programme offers unrestricted visa travel to over 166 countries including the EU, United States and Canada, as well as the right to live and study in the EU/EEA.

From a tax point of view, the IIP would typically not result in the individual acquiring Maltese domicile (as explained above, domicile remains tied to the country of birth or the country of intended permanent residence), unlike residence which is a fundamental requirement of the programme itself. As a result, IIP applicants are taxed on Malta-sourced income and foreign income received in Malta, at the progressive rates outlined below, while foreign capital gains received in Malta will not be taxed.

Malta offers the Individual Investor Programme (IIP), recognised and approved by the EU, through which Malta offers citizenship by means of a certificate of naturalisation to individuals and their families in return for contributions to the country's economic and social development.

Taxation System

The Maltese general tax system follows a three-based principle under which Malta taxes:

- Income and capital gains sourced within Maltese territory
- Foreign income and capital gains derived by persons who are both ordinary resident and domiciled in Malta
- Foreign income remitted into Malta by persons who are either ordinary resident but not domiciled in Malta, or are domiciled but not ordinary resident in Malta.

Taxation of companies

Companies incorporated in Malta are taxable on their worldwide income and capital gains at an initial corporate tax rate of 35% on taxable profit. Taxable profit is arrived at after allowing for a deduction of all expenses that are wholly and exclusively incurred in the production of income.

Reduced rates of tax for companies

The initial 35% corporate tax rate could be lowered significantly to an effective tax rate ranging from 0% to 6.25% following a distribution of dividends (or issue of bonus shares) from the taxed company to its shareholders (see section on dividends). In this case, the shareholders would request and receive a tax refund from the Maltese Government of the initial 35% paid by the Maltese company, depending on the underlying profits earned. The following are the possible rates of refund that could be claimed:

- 6/7ths of the initial 35% paid by the company for an effective tax rate of only 5%. Where additional double tax relief in respect of foreign taxes of 5% or more could be claimed, the overall Maltese taxes would generally be nil
- 2/3rds of the initial 35% paid by the company in case of certain foreign source income where double taxation relief would have been claimed
- 5/7ths of the initial 35% paid by the company where the underlying profits involve passive interest or royalties
- 100% of the initial 35% paid by the company where underlying profits involve dividends and capital gains, subject to the conditions of the participation exemption (see section on dividends).
- Branches of an overseas company are also subject to this treatment, but could avoid paying any taxes on foreign capital gains or foreign capital gains not remitted to Malta.

Notional Interest Deduction (NID)

As from 1st January 2017, Malta has introduced thea Notional Interest Deduction regime. The purpose of such regulation is to reduce any tax disadvantages that entities may have when undertaking equity financing rather than debt financing. NID provides for a framework whereby entities may opt (on an annual basis) to deduct an amount of interest that is determined with reference to the value of the Company's risk capital, which is made up primarily of its equity.

The way the mechanism works is such that the shareholder/(s) of the Company must unanimously agree to the application thereof given that in turn they would be deemed to have earned an equivalent amount of notional interest income. Such income would not be chargeable to tax in Malta in the hands of non-residents, allowing for tax savings. A company having a considerable amount of risk capital may significantly reduce its tax charge for the year especially when the mechanism is applied in conjunction with the local tax refund mechanism aforementioned in the previous point.

Losses and group of companies

Losses from the trading activities of a company may be carried forward indefinitely for relief against future profits (capital or trading), or can be transferred to other companies within the same group. Capital losses may be carried forward indefinitely for relief against future capital gains arising in the same company only.

In addition, besides exchanging losses, companies forming part of the same group can transfer capital assets between them without incurring any taxes. This exemption could be clawed back should two companies no longer remain part of a group following an initial exempt transfer of asset.

Taxation of dividends

Malta operates a full-imputation system regarding the distribution of dividends or issue of bonus shares (seen as equivalent to dividends). This entails that when dividends are distributed from Maltese companies, notwithstanding whether or not the shareholder is a company or resident in Malta, no further tax is withheld on the said dividends and the initial corporate tax paid is imputed to the shareholder as a credit of the tax paid.

The only instance whereby dividends distributed by a Maltese company could be subject to further withholding taxes is if these are paid from a company's particular tax reserve (an 'untaxed account') to Maltese resident individual shareholders. In this case, the dividend would be subject to a withholding tax of 15%.

Notwithstanding any applicable double tax agreements or EU directives, dividends distributed out of Maltese companies to non-resident shareholders would never be subject to any further taxation.

Dividend income received by Maltese companies from outside Malta could be subject to an outright exemption ('participation exemption'). In general, for dividends received from a foreign participating company, a holding of at least 5% of the equity (although other parameters are possible) would be subject to exemption from Maltese taxes. This exemption could also apply to gains on disposal of shares in such foreign participating companies.

Relief from double taxation

Malta offers various means to avoid double taxation; the main mechanisms are outlined below.

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 that makes provision for double taxation relief. The amount of credit is the lower of Maltese tax on the foreign income and the foreign tax paid. Malta currently benefits from a network of double tax treaties with over 70 countries, which facilitates business between the countries involved.

The Commonwealth relief is a limited form of double taxation relief granted for taxes paid to British Commonwealth countries in respect of income received from such countries that provide a similar relief to Maltese-source income.

Unilateral relief works very much in the same way as treaty relief, except that it applies only where treaty relief is unavailable. With effect from 1 January 2007, this relief has been widened to allow individuals in receipt of inbound foreign dividends to claim relief not only for the withholding tax and other direct taxes imposed on them as shareholders, but also for the corporate income tax (underlying tax) paid by the non-resident distributing company on the profits from which the dividend is paid.

Companies are also eligible for an additional mechanism of double tax relief, known as the flat rate foreign tax credit system (FRFTC). This offers double tax relief by taking the form of a notional tax credit of 25% of foreign taxes deemed to have been paid on qualifying income.

Liquidation proceeds, payment of interest, royalties, discounts and premiums

Notwithstanding any applicable double tax agreements or EU directives, any payments from Malta in the form of liquidation proceeds, interest, royalties, discounts and premiums will not be subject to any withholding taxes.

Taxation of partnerships

By default, partnerships other than partnerships en commandite of which capital is divided into shares are subject to 'look-through' taxation. This means that all profits or income earned by the partnership are divided in the profit-sharing ratio and brought to charge in the hands of the partners by including it as part of their taxable income, taxed at their respective tax rates.

Nevertheless, partnerships en commandite of which capital is divided into shares or 'look-through' partnerships, which specifically elect to be treated as companies for tax purposes, would be treated as companies for income tax purposes without the application

Table 2: Personal tax rates for resident individuals (irrespective of domicile status)

Married		Single		Parent	
Taxable income	Tax rate (%)	Taxable income	Tax rate (%)	Taxable income	Tax rate (%)
0–12,700	0%	0–9,100	0%	0–10,500	0%
12,701–21,200	15%	9,101–14,500	15%	10,501–15,800	15%
21,201–60,000	25%	14,501–60,000	25%	15,801–60,000	25%
Over 60,001	35%	Over 60,001	35%	Over 60,001	35%

Table 3: Personal tax rates for non-resident individuals (irrespective of domicile status)

Taxable income	Tax rate (%)
0–700	0%
701–3,100	20%
3,101–7,800	30%
Over 7,800	35%

of the look-through approach. Such partnerships would still be subject to the 35% initial corporate tax rate, but with the possibility of tax refunds.

Individuals, expatriates and residence schemes

How is an individual defined as tax resident of Malta?

Generally, anyone who resides in Malta for at least 6 months in a year is considered a resident; but for taxation purposes, Maltese tax law looks at the notion of ordinary residence regardless of whether an individual has spent 6 months in Malta or not. For an individual to be considered ordinarily resident of Malta, Malta must be part of the individual's regular order of life. Maltese tax authorities tend to follow UK jurisprudence and practice in this matter.

In addition to residence and ordinary residence, Malta also relies on the concept of domicile. Typically, persons who are not of Maltese origin and who do not intend to permanently establish themselves in Malta are not considered to be domiciled in Malta for tax purposes.

How does the status of residence and domicile affect individuals' taxation?

Maltese resident and domiciled individuals are subject to Maltese taxation on their worldwide income, including capital gains. Alternatively, Maltese resident but not domiciled (or vice versa) individuals who are neither permanent residents nor long-term residents would be subject to Maltese tax only on foreign income that they remit into Malta. Henceforth, capital gains would not be subject to any Maltese taxation even if received in Malta.

With effect from 1 January 2018, non-domiciled persons will be subject to a minimum tax of €5,000 annually 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, Global Residence Programme, 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.

Maltese resident and domiciled individuals are subject to Maltese taxation on their worldwide income, including capital gains.

As regards to capital gains arising outside Malta, the rules did not change, that is, no tax would be payable on capital gains arising outside Malta irrespective of whether these are brought into Malta or not.

What are the applicable personal tax rates?

Income tax for individuals is calculated by applying a progressive tax rate schedule to taxable income (see Tables 2 and 3). These apply to any type of income derived by individuals including employment income, self-employment business income, dividends, interest and royalties as long as such income would have not been subject to separate final withholding taxes.

Are any concessions made for assignees/expatriates in Malta?

Expatriates who render investment or insurance services are generally exempt for 10 years from income tax on specified fringe benefits.

In addition, individuals who are not domiciled in Malta and who are in receipt of emoluments payable under a contract of employment for an activity carried out in Malta as an eligible office with companies licensed/recognised in the Maltese gaming, aircraft and financial services sector may be subject to tax on such income at a flat rate of 15% (instead of the progressive rates up to 35% as set out above).

Malta's taxation system applied in specific circumstances

Malta's taxation system is usually applied as outlined above, but this section outlines certain circumstances or bodies of persons that involve different tax treatment.

Investment income

Certain investment income, such as interest from Maltese banks or other payers and other type of income, could be subject to a final withholding tax of 15% should it be so opted by the Maltese resident recipient.

Rental income

Rental income could be subject to a final withholding tax of 15% payable by 30 April of the year of assessment – that is, the year following the calendar year in which income arises. This option would not allow any deduction of expenses, even if directly related to the said rental income.

A person deriving rental income may also opt not to be taxed at the 15% withholding tax, but rather be taxed on the rental profit margin at the progressive rates in case of an individual or at 35% in case of companies.

Taxes withheld in Malta on behalf of non-residents

Although Malta does not withhold any taxes on dividends, interest, royalties, premiums, discounts and liquidation proceeds payable to non-residents, in terms of Article 73 of the Income Tax Act (1948), where a person pays to a non-resident person any income chargeable to tax in Malta, the payer must withhold tax. The withholding tax rate is 35% in case of a non-resident company and 25% in case of other non-resident persons. This is not a final tax, and the non-residents can choose to file a tax return in Malta and be taxed according to the non-resident progressive rates as outlined above. If the income-earning activities are definitely conducted outside Malta and the said non-resident does not have a permanent establishment in Malta to which the income is connected, there should be no withholding tax.

Further points of interest in Malta's taxation system

Advanced revenue rulings

For extra convenience and clarity, Maltese tax authorities provide formal confirmations in the form of advanced revenue rulings that remain binding for 5 years. With the Maltese tax authorities being particularly approachable, informal non-binding yet still reassuring confirmations are also very common.

EU ATAD implemented into Maltese domestic law

The regulations shall apply to companies as well as to other entities, trusts and similar arrangements that are subject to tax in Malta in the same manner as companies. The said regulations shall also apply to entities that are not resident in Malta but have a permanent establishment in Malta, provided that they are subject to tax in Malta as companies.

The regulations have introduced the following anti-avoidance measures:

- Interest deductibility limitation rule – came into force on 1 January 2019;
- Exit taxation rule – shall come into force on 1 January 2020;
- General anti-abuse rule (GAAR) – came into force on 1 January 2019, and;
- Controlled foreign company (CFC) rule – came into force on 1 January 2019.

Interest deductibility limitation rule

The regulations limit the deductibility of taxpayers' exceeding borrowing costs (i.e. the amount by which the deductible borrowing costs of a taxpayer, were it not for the provisions of these regulations, exceed taxable interest revenues and other economically equivalent taxable revenues that the taxpayer receives) to only up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortization (EBITDA).

As a result, any exceeding borrowing costs that exceed the 30% EBITDA threshold would be considered to be non-deductible in the tax period in which they are incurred, with a possibility to carry forward the excess, without time limitation, and with a possibility to carry forward, for a maximum of 5 years, unused interest capacity.

However, the regulations provide for several exclusions from, and derogations to, the general rule.

Exit taxation rule

A change of residence of a company, or the movement of its assets or of its business to another territory will be treated as a taxable exit event. In such a case, the company will become subject to tax in the same manner as if it has disposed of its assets. The accrued gains will be calculated by reference to the market value of the asset at the time of the exit.

Depending on the destination of the assets which may be subject to exit taxation on the basis of this regulation and the recipient of those assets, taxpayers may have the right to defer the payment of the amount of tax by paying it in installments over 5 years, although this would be subject to the payment of interest and, potentially, the provision of a guarantee.

No exit tax will be chargeable in the case of a temporary movement of assets that is linked to certain financial transactions as long as the assets are returned within 12 months.

General anti-abuse rule (GAAR)

This measure will accordingly apply to arrangements which are not genuine, meaning that they are not put into place for valid commercial reasons that reflect economic reality, and which have been put in place with a main purpose of obtaining a tax advantage that defeats the object or purpose of tax law.

Controlled foreign company (CFC) rule

An entity will be considered a CFC where it is subject to more than 50% control by a parent company that is tax resident in Malta and its associated enterprises and the tax paid on its profits is less than half the tax that would have been paid had the income been subject to tax in Malta.

The measure will not apply:

- To a CFC with accounting profits of no more than €750,000 and non-trading income of no more than €75,000; or
- To a CFC whose accounting profits amount to no more than 10% of its operating costs for the tax period.

Indirect taxes

The most common types of indirect taxes in Malta are the following:

Value added tax (VAT)

VAT is a tax incurred on consumption the burden of which ultimately falls on the end customer. As far as VAT is concerned, Malta follows the EU's directive and as such VAT law is very consistent with that of other EU countries except in certain applicable rates or specific matters. The standard rate is 18% but other reduced rates such as 7%, 5% or 0% could apply.

Customs duty

Goods imported into Malta from outside the EU would typically be subject to VAT and would also be subject to customs duty, depending on their type and place of origin. Should the imported goods have originated from the EU, customs duty does not apply.

Excise duty

Products such as tobacco, alcohol, fuel oils and mobile telephone services are also liable to excise duty in Malta.

Stamp duty

Certain transactions are subject to stamp duty instead of VAT – such as transfers of immovable property, marketable securities, insurance policies or interest in partnerships.

Banking and Finance

Maltese banking system

Malta's banking sector has rapidly evolved from retail banks serving the local population to a reputable international financial hub. This has added dynamism to Malta's financial services industry, and the expectation is that many other banking institutions will follow this lead.

Setting up a Maltese bank account

Opening a bank account in Malta is usually a simple process if you meet the terms and conditions. Bank accounts are not opened solely to Maltese residents: non-residents and foreign companies can also open an account in Malta.

Foreign nationals wishing to set up a bank account in Malta must have a connection with Malta and supply documentation for the relevant qualifying criteria, such as:

- **Renting a property in Malta** – a valid rental agreement of at least 6 months
- **Buying a property in Malta** – preliminary agreement
- **Working** – contract of work, which must bear the employer's name and address
- **Owning a property** – contract of purchase

Foreign companies can also open a bank account in Malta by supplying the necessary documentation, such as:

- A reference from a bank you currently hold an account with (for each beneficiary of the business)
- Copy of passport (for each beneficiary, shareholder, director, etc.)
- Copy of company's incorporation documents
- Certificate of good standing for company
- Utility bill (for each beneficiary, shareholder, director etc.)

Accounts can be opened in all major currencies, including Euros (EUR), British pound (GBP) and US dollars (US$).

Maltese financing sources

Domestic small and medium enterprises (SMEs) are more dependent than their European counterparts on bank overdrafts, credit lines or credit card facilities, according to a survey carried out by the Central Bank of Malta in conjunction with the European Commission and the European Central Bank[1]). In 2014, more than 70% of Maltese SMEs used these types of financing, compared with around 37% in the EU – an inefficient strategy, the survey suggests, given that banks typically charge higher interest rates on these forms of financing, compared with bank loans.

1. Download: www.centralbankmalta.org/file.aspx?f=31397

Reporting Requirements

Every Maltese registered company is required to submit an annual return to the Registrar of Companies, accompanied by the appropriate registration fee, upon each anniversary of the company's registration. The return should be signed by at least one director or by the company secretary and should be submitted to the Registrar no later than 42 days from the anniversary date. Annual accounts need to be submitted to the Registrar no later than 10 months and 42 days (in the case of a private company) or 7 months and 42 days (in the case of a public company) from the financial year end. The statutory accounts of a Maltese company are required either to meet the requirements of International Financial Reporting Standards (IFRS) or General Accounting Principles for Small Medium Enterprises (GAPSME). It is important to note that penalties are incurred for late filing of accounts; the size of the charge depends on the number of months late.

Tax

- **Filing of income tax returns by individuals:** The tax year-end will always be 31 December and the deadline for the filing of tax returns is 30 June of the year of assessment (the year following the calendar year in which income arises).
- **Filing of income tax returns by companies is made in the year of assessment** – that is, the year following the calendar year in which income arises, as follows:
- **Filing of income tax returns by partnerships that have not elected to be treated as companies:** The tax year-end will always be 31 December and the deadline for the filing of tax returns is 30 June of the year of assessment (the year following the calendar year in which income arises).

Audit

Although thresholds exist in terms of the Companies Act (1995), Maltese income tax law prescribes that all companies, regardless of size and/or turnover, are subject to full audits.

Table 4: Deadlines for filing tax return

Financial year-end	Deadline for filing of tax return
30th June or earlier	31st March of the following year
31st July	30th April of the following year
31st August	31st May of the following year
30th September	30th June of the following year
31st October	31st July of the following year
30th November	31st August of the following year
31st December	31st September of the following year

Grants and incentives

Agencies providing assistance

Through a business-friendly agency, the Maltese Government offers a number of additional fiscal and non-fiscal incentives to start-ups and businesses in general. Some of the currently available incentives are described briefly here.

Investment tax credits (2014–2020)

This is a tax incentive primarily aimed at manufacturing industries, although it may also apply to certain other sectors. It typically consists of credits that can be deducted from taxes due on chargeable income. Two types of investment tax credits (ITCRs) are available:

- ITCRs calculated as a percentage of a company's expenditure on qualifying tangible and intangible assets in relation to an initial investment project
- ITCRs calculated on the value of wage costs for jobs directly created by the initial investment project.

The percentage at which the ITCRs are calculated varies depending on the size of the business and the amount of qualifying expenditure.

Tax credits for small and medium enterprises (2014–2020)

SMEs may also be eligible for tax credits in respect of investment seeking to innovate, expand or develop operations. The tax credit is calculated as a percentage of wages, furbishing and refurbishing, investment and/or motor vehicle costs. The maximum eligible tax credit is capped at €50,000, which can increase to €70,000 for SMEs established in Gozo, female-owned undertakings and those registered as a family business.

Tax credits for qualifying certifications (2018-2020)

Undertakings looking to continuously improve the quality of their products, services and processes through the attainment of industry-recognised certifications and quality marks may also be supported through a tax credit up to €25,000 by recovering the costs of achieving approved certifications, quality marks, or licences. This incentive should make it easier for undertakings to carry out investments that lead to superior products, services of higher value and more efficient processes.

Tax credits for assistance for research and development and innovation (2014–2020)

Expenditure on industrial research or experimental developments carried out for the acquisition of knowledge leading to the development of innovative products and solutions may also qualify for tax credits and/or cash grants calculated on the basis of qualifying R&D expenditure, subject to conditions.

Business start (valid until 30 October 2020)

Small start-up enterprises that have a viable business concept and are in the early stages of development may be supported through a grant of up to €25,000.

Start-Up Finance (2017-2020)

The aim of this measure is to finance innovative undertakings in their early stages of development by supporting Small Start-up Undertakings that demonstrate a viable business concept in the setting-up and initial growth phases.

Support is linked to private equity, crowd funding and the procurement of machinery and equipment. Depending on the type of support provided, assistance may be up to Euro 100,000 if linked to crowd funding campaigns and up to Euro 200,000 when the support is linked to private equity or required to fund the procurement of machinery and equipment.

Micro Guarantee Scheme (2017-2020)

This Micro Guarantee Scheme shall provide eligible undertakings with a guarantee of up to 70% on loans required to finance business enhancement, growth and development.

Rent subsidy (1 March 2016 to 31 December 2019)

Small undertakings engaged in manufacturing activities that require industrial space as a temporary or permanent solution to implement growth plans, handle an increase in orders, and/or carry out process innovations required to increase efficiency may be supported through a grant of up to €20,000.

Finance to SMEs

Attractive financing packages are available to SMEs seeking to support their growth through capital investment. Though subject to normal banking criteria, these facilities offer advantageous interest rates and considerably reduced collateral obligations.

Start-up investment grant scheme (valid until 2020)

This grant offers a reimbursement of up to 50% of the investment cost, up to a maximum of €300,000.

SME growth grant scheme (valid until 2020)

This grant offers a reimbursement of up to 30% (20% for medium-sized enterprises) of the investment cost, up to a maximum of €500,000.

Specific sectors with favourable business opportunities

iGaming and iBetting

Besides experiencing an effective corporate tax rate of only 5% or lower, Maltese iGaming and iBetting companies also enjoy very low gaming taxes and licence fees. International statistics continuously show that Malta remains the leading iGaming jurisdiction in Europe – a status acquired by offering the right blend of low-cost incentives while also guaranteeing high EU-standard regulation.

Aviation

The following are among the various fiscal incentives available in this sector:

- income derived by non-Maltese resident operators from the ownership, leasing or operation of aircrafts or aircraft engines used in international aviation business, such as transport of passengers or goods, will not be taxed in Malta unless such income is actually received in a Maltese bank account. This will apply despite the fact that the aircraft may be registered and/or is operated in/from Malta
- Should any Maltese tax be incurred eventually, through Malta's tax refund system, this may be lowered to an effective tax rate of 5% or lower
- A considerable cash flow advantage by enjoying an accelerated tax depreciation rates: 6 years for the aircraft and engines, and 4 years for the interiors.

Yachting and shipping

The commercial shipping sector offers a number of incentives, primarily a highly reputable flag at reasonable costs. Income derived from commercial yachting and shipping activities would still enjoy low rates of income taxes as per the usual refund system.

As of 1 April 2018, Malta finally re-introduced the Tonnage Tax Scheme, strengthening our tonnage tax principles, whilst also promoting the registration of ships in Malta and Europe. The scheme provides that:

- Any income, profits or gains which derive from shipping activities carried out by a licensed shipping organisation may be exempt from tax under the Income Tax Act, provided that the registration fees and tonnage taxes are duly paid;
- Instead of calculating the tax due according to income, profit or gains deriving from shipping activity, a flat rate will be paid in accordance with the net tons, where the regime specifies the standard rates applicable;
- The inapplicability of the Social Security Act, provided those involved are operating as officers of employees within a licenced shipping organisation, and are not resident in Malta;
- The Duty on Documents will also be exempt in relation to the tonnage tax ship.

Movies and filming

Besides Malta's natural beauty and multicultural surroundings, which over the years have attracted a number of blockbuster Hollywood movies, several financial and fiscal incentives are offered in this sector. Of particular relevance is the opportunity for producers filming in Malta to enjoy a cash rebate of up to 25% on eligible costs incurred while in Malta.

Investment funds

Malta is gaining a strong reputation for being an efficient and reputable fund jurisdiction, with a number of world-renowned specialised parties ancillary to this sector already established. In addition to offering clear and practical licensing procedures, Malta offers a number of fiscal incentives such as the absence of any taxes withheld on the net asset value of the fund.

Morison KSi

The Next Step

To discuss your needs, please contact:

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