



QUBE SERVICES LIMITED

The exercise of Management and Control in Malta

In terms of the Maltese Income Tax Act "*resident in Malta*" when applied to a body of persons, means "*any body of persons the control and management of whose business are exercised in Malta, provided that a company incorporated in Malta on or after 1st July 1994 shall be resident in Malta and any other company incorporated in Malta shall be resident in Malta from 1st January 1995 where the management and control of the business of the company is exercised outside Malta*".

Consequently, the Maltese Commissioner of Inland Revenue has the right to charge the income of a non-Malta body of persons (including a company) to tax insofar as the control and management of whose business is effectively exercised in Malta.

The place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made. One can buttress an argument that a company is effectively managed and controlled in Malta by making sure that all board meetings and general meetings are held in Malta and that management decisions are taken in Malta (and not anywhere else) and also that the company's records are maintained in Malta in order to reflect the fact that the company is effectively managed in Malta.

Appointing Maltese resident directors may sometimes facilitate such argument. Other pointers may include having an operating office with employees in Malta, etc.

Registering an oversea company in terms of the Companies Act is also usually required (please see our separate write-up on Branches).

A company which is resident in Malta (by virtue of its management and control effectively being exercised in Malta), but not domiciled (i.e. not incorporated) in Malta, is charged to tax in Malta only on income arising in Malta and on income arising outside Malta, but received in Malta. Passive income arising outside Malta, which is not remitted to Malta, would normally not be subject to tax in Malta.

Non-resident shareholders of companies resident in Malta (by virtue of its management and control effectively being exercised in Malta) may qualify for refunds of tax, provided that the relevant conditions are satisfied.

Subject to any particular conditions in a particular double tax treaty, companies resident in Malta may use the provisions of a relevant Malta double tax treaty with another jurisdiction.

for more information regarding the above, please contact
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