



QUBE SERVICES LIMITED

## The Tax System in Malta

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These notes are based on the provisions of Maltese law in force on 30 September 2007 and are not intended to be a definitive, comprehensive or exhaustive analysis of the subject.

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### General

The main provisions regulating income tax in Malta are included in the Maltese Income Tax Act and the Maltese Income Tax Management Act.

The total income from all sources, including capital gains, is aggregated into one amount for the purpose of the income tax, and charged to tax in the hands of the tax payer.

Persons (including companies, other bodies of persons and individuals) who are both ordinarily resident and domiciled in Malta are liable to tax in Malta on their worldwide income.

Persons who are either not ordinarily resident or not domiciled in Malta are liable to tax on any income and capital gains arising in Malta and on any foreign income, but excluding capital gains, received in Malta.

Persons who are not resident and not domiciled in Malta may be liable to tax on income and capital gains arising in Malta.

A company is considered resident in Malta if it is incorporated in Malta, or (in the case of a non-Maltese body of persons) if its control and management are exercised in Malta.

The tax accounting and refund system described below is available to Maltese companies (including partnerships *en commandite* whose capital is divided into shares) and to non-resident companies carrying on activity in Malta through a branch.

The Maltese company tax rate is 35%.

Malta is currently the only EU member that operates a full imputation system of taxation, whereby the tax charged to the company is imputed to the shareholder in the event of a dividend distribution by the company.

This effectively means that a shareholder will not be charged to tax twice on any dividends received and could even receive a refund of tax if such income falls to be taxed at a lower rate of tax in the hands of the shareholder, than the rate of tax incurred by the company.

The Maltese full imputation system has recently been approved by the EU Commission.



## **Tax Accounts**

The income of a Maltese company is divided into 5 different tax accounts. These are the Final Tax Account (FTA), the Immovable Property Account (IPA), the Foreign Income Account (FIA), the Maltese Taxed Account (MTA) and the Untaxed account.

### *Final Taxed Account*

The FTA includes distributable profits that have suffered tax, including income taxed under the investment income provisions, profits from sale of immovable property situated in Malta taxed at the final 12% rate, profits where tax has been relieved under various tax incentive legislation, etc.

### *Immovable Property Account*

The IPA includes distributable profits that have suffered tax, including profits derived – directly or indirectly – from immovable property situated in Malta (that has not been allocated to the FTA), profits from rents and premiums, profits derived from providing accommodation, profits deemed to constitute an economic rent, etc.

### *Foreign Income Account*

The FIA includes distributable profits that have suffered tax, including profits resulting from royalties and similar income arising outside Malta and from dividends, capital gains, interest, rents and any other income derived from investment situated outside Malta including income from an overseas branch, agency or permanent establishment of a Maltese company.

### *Maltese Taxed Account*

The MTA includes distributable profits that have suffered tax and has not been allocated to the FTA, IPA or FIA.

### *Untaxed Account*

The Untaxed Account is made up of the difference between the company's accounting profits and the amounts allocated to the FTA, IPA, FIA and MTA.

The refund provisions are applicable to tax charged on income allocated to the FIA and MTA, whilst the Flat Rate Foreign Tax Credit (FRFTC) only applies to income allocated to the FIA (please see further below).

## **Participation Exemption**

Where a holding of shares by a Maltese company (including a Maltese partnership *en commandite* with its capital divided into shares) in a non-Maltese entity (including companies and limited liability partnerships) qualifies as a participating holding, the Maltese company may claim a participating exemption from Maltese tax on income and (capital) gains derived from such participating holding.

The participation exemption is subject to some anti-abuse rules and is available for income where the non-Maltese entity is either (i) resident or incorporated in a EU country, or (ii) is subject to foreign tax of at least 15%, or (iii) does not have 50% or more of its income from passive interest and royalties.



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However, if none of the above is satisfied, but the income from a non-Maltese entity (or its passive interest and royalties) has been subject to foreign tax of at least 5% and the investment in the non-Maltese entity does not constitute a portfolio investment, the participation exemption should be available to the Maltese company.

Gains derived from a participating holding are not subject to the above anti-abuse rules, and the Maltese company may claim a participation exemption without having regard to the above.

#### *Participating Holding*

A participating holding arises where:

- a Maltese company holds directly at least 10% (including right to at least 10% of the voting rights, the dividend rights and the rights to assets on a winding up) of the equity shares of a non-Maltese entity; or
- where a Maltese company is an equity shareholder in a non-Maltese entity and is entitled to either sit on the Board or appoint a person to sit on the Board of the non-Maltese entity; or
- where a Maltese company is an equity shareholder investing at least Lm500,000 (approx €1,165,000) for at least 183 days in a non-Maltese entity; or
- where a Maltese company is an equity shareholder in non-Maltese entity and is entitled to, at its option, call for and acquire the entire balance of the equity shares not held by it; or
- where a Maltese company is an equity shareholder in non-Maltese entity and is entitled to first refusal in the event of a proposed disposal, redemption or cancellation of all the equity shares in the non-Maltese entity not held by the Maltese company; or
- where a Maltese company is an equity shareholder in a non-Maltese entity where the holding of such shares is for the furtherance of the business of the Maltese company and is not held as trading stock for the purpose of a trade.

#### **Double taxation relief**

The Maltese tax regime governing double taxation relief includes treaty relief, unilateral relief and the flat rate foreign tax credit (FRFTC).

Malta has entered into double taxation treaties with forty-seven countries including most of the major European trading nations and is currently in the process of negotiating others. These treaties are in the main based on the OECD model. Malta grants relief from double taxation under the credit method on the source by source and country by country basis.

Malta allows relief from double taxation on a unilateral basis where overseas tax is suffered on income received from a country with which Malta does not have a treaty.



The overseas tax suffered may be allowed as a credit against tax chargeable in Malta on the gross amount, limited to the total tax liability in Malta on the particular income. Unilateral relief for underlying tax suffered is also available under these provisions where the taxpayer holding shares in the foreign company is a Maltese resident company.

Malta is a full member of the EU since 2004 and the protection against double taxation afforded by the EU Parent Subsidiary Directive and the EU Interest and Royalties Directive may be availed of by Maltese companies.

The flat rate foreign tax credit (FRFTC) is available to a Maltese resident company, which receives income or capital gains from overseas which are allocated to its Foreign Income Account. This credit is calculated at 25% of the amount of the overseas income or gains received by the company before deductions and it provides double taxation relief for foreign tax suffered on income received from a country with which Malta does not have a treaty and where unilateral relief is not available, e.g. where evidence of foreign tax on the overseas income is not available or is not presented. In practice the flat rate foreign tax credit also acts as a means of unilateral tax sparing relief in respect of foreign tax suffered at lower rates

**Refunds of Malta tax paid**

Shareholders of Maltese companies are entitled to claim refunds of tax paid in Malta by the company on income allocated to the FIA and MTA, when such income is distributed as a dividend.

**6/7 refund**

Shareholders are normally entitled to claim a refund of 6/7 of the tax charged to the Maltese company, subject to a maximum of the tax actually paid to the Maltese tax authorities.

*This can be illustrated as follows:*

	<b><i>No foreign tax suffered</i></b>	<b><i>Foreign tax @ 5% (MTA)*</i></b>	<b><i>Foreign tax @ 15% (MTA)*</i></b>
Income	100.00	100.00	100.00
Foreign tax suffered	-	5.00	15.00
Net received in Malta	100.00	95.00	85.00
Chargeable income	100.00	100.00	100.00
Malta tax @ 35%	35.00	35.00	35.00
Credit for foreign tax	-	5.00	15.00
Malta tax paid	35.00	30.00	20.00
Tax refund (6/7 subject to maximum)	30.00	30.00	20.00
Maltese tax leakage	5.00	-	-

\* If income is allocated to FIA, a 2/3 refund (see explanation below) is available to shareholders in situations where the Malta company has claimed relief for foreign tax



**5/7 refund**

Where the income in question is made up of passive interest and royalties, the shareholders may claim a refund of 5/7 of the tax charged to the Maltese company, subject to a maximum of the tax actually paid to the Maltese tax authorities.

*This can be illustrated as follows:*

	<b>No foreign tax suffered</b>
Income allocated to FIA	100.00
Foreign tax suffered	-
Net received in Malta	100.00
Chargeable income	100.00
Malta tax @ 35%	35.00
Credit for foreign tax	-
Malta tax paid	35.00
Tax refund (5/7 subject to maximum)	25.00
Maltese tax leakage	10.00

Where interest and royalties have been subject to foreign tax at a rate of 5% or more, it will automatically no longer be considered passive, and therefore qualify for the 6/7 refund.

**2/3 refund**

Where passive income and royalties have been subject to a claim for double taxation relief, including the FRFTC, a refund of 2/3 of the Malta tax charged may be applicable.

*This may be illustrated as follows:*

	<b>Claiming FRFTC</b>	<b>Foreign tax at 10%**</b>	<b>Foreign tax at 20%</b>	<b>Foreign tax at 25%</b>
Income allocated to FIA	100.00	100.00	100.00	100.00
Foreign tax suffered	-	10.00	20.00	25.00
Grossing up for FRFTC	25.00	-	-	-
Chargeable income	125.00	100.00	100.00	100.00
Malta tax @ 35%	43.75	35.00	35.00	35.00
Credit for foreign tax	-	10.00	20.00	25.00
FRFTC	25.00	-	-	-
Malta tax paid	18.75	25.00	15.00	10.00
Tax refund (2/3)	12.50	16.66	10.00	6.66
Maltese tax leakage	6.25	8.34	5.00	3.34

\*\* It may be more beneficial in some situations to claim FRFTC where other forms of tax relief are available to a Malta company.

**100% refund**

Income and gains from participating holdings, where the participation exemption is not availed of, may qualify for a full refund of Malta tax paid.

*This may be illustrated as follows:*

	<i>Not claiming FRFTC</i>	<i>Claiming FRFTC</i>
Income allocated to FIA	100.00	100.00
Grossing up for FRFTC	-	25.00
Chargeable income	100.00	125.00
Malta tax @ 35% FRFTC	35.00	43.75
Malta tax paid	35.00	18.75
Tax refund (100%)	35.00	18.75
Maltese tax leakage	-	-

**No outbound withholding taxes**

No Maltese withholding tax is imposed on dividends distributed to non-residents. No tax is imposed on interest and royalties derived by non-residents as long as the statutory conditions are complied with, particularly that the relevant income is not effectively connected with a permanent establishment through which the non-resident carried on business in Malta.

No Maltese tax is imposed on gains realised inter alia from transfers of corporate securities by non-residents as long as the statutory conditions are complied with, particularly that the sole or main assets of the company whose securities are being transferred do not consist of Maltese immovable property.

**Group taxation provisions**

Where assets (including shares, other securities and immovable property) are transferred between companies being members of the same group, or companies controlled and beneficially owned directly or indirectly to the extent of more than 50% by the same shareholders, it shall be deemed that no loss or gain has arisen from the transfer.

Maltese resident companies being members of the same group of companies may surrender and claim tax losses between them. Such losses may only be surrendered by a company in the year in which they are incurred, but may be utilised by the claiming company in the same year, or carried forward against future profits.



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### **Payment of tax and refunds**

A company is assessed and pays tax in the currency in which its share capital is denominated. All or any refunds of tax are made in the same currency. For companies with more than 90% of business interests outside Malta, tax is payable on the earlier of the date of distribution of profits or eighteen months after the end of the relevant accounting period of the company.

The tax legislation binds the Revenue to issue refunds not later than the fourteenth day of the month following that in which the tax has been paid and a valid claim for the refund is submitted.

### **Other**

Maltese companies require an annual audit, and the accounts must be IFRS compliant. For companies with more than 90% of business interests outside Malta, such accounts may be laid before the company in general meeting up to eighteen months after the end of the relevant accounting period of the company.

### **Advance Revenue Rulings**

The International Tax Unit within the Inland Revenue Department deals with all international tax matters and provides advance rulings in areas where there might otherwise be uncertainty or fear of infringing Maltese legislation.

In this way, the fiscal implications of investing in or through Malta, or of setting up a base in Malta, or of any particular international transaction may be made clear up front.

Rulings are available to confirm the tax position issues such as:

- the position regarding general anti-avoidance provisions
- whether a shareholding is in the course or furtherance of the shareholder's business for the purposes of a participating holding
- the tax treatment of any particular financial instrument
- the tax treatment of any transaction which involves international business

The rulings guarantee the tax position for a period of five years and may be renewed for a further five-year period. They will also survive any changes of legislation for a period of two years after the entry into force of such new law.

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for more information regarding the above, please contact  
us on +356 21227553 or [info@qubeservices.com](mailto:info@qubeservices.com)

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