

# Malta

## Legal overview

### Executive Summary

Malta is a small, yet strategically located, island forming part of the European Union. The country's economy is based mainly on professional and technological services, such as online gaming, tourism, shipping and banking. The process to set up a company, subsidiary or branch in Malta is relatively straightforward.

### Registered companies and partnerships

The Companies Act, Chapter 386 of the laws of Malta (the "Act"), governs the corporate law framework in Malta establishes two types of limited liability companies, being:

1. private limited liability companies; and
2. public limited liability companies.

A limited liability company is a one in which the shareholders' liability is limited to the amount unpaid on their share capital, through the creation of a distinct legal personality.

All companies registered in Malta must have a memorandum and articles of association that need to be submitted to the Registry of Companies. This document will provide all the basic information necessary regarding the company, such as the shareholder/s of the Company, share capital and directors.

### Memorandum

The Memorandum of Association of a private company must contain the following information:

- Name of the company;
- Indication as to whether the company is a public or private company;
- Personal details of each of the shareholders;

- Objects of the company;
- Registered office in Malta of the company;
- Authorised and issued share capital of the company, divided into shares of a fixed nominal value;
- Number of shares taken up by each shareholder, and the amount paid up in respect of each share, and where the share capital is divided into different classes of shares, the rights attaching to the shares of each class;
- The number of directors and their details;
- Manner in which the legal and judicial representation of the company is to be exercised and the name of the first person/s vested with such representation;
- Indication of the first company secretary;
- Any period fixed for the duration of the company.

### **Private Limited Liability Company**

The Memorandum and Articles of Association of a private limited company restrict a shareholders' right to transfer their shares, limits the number of the company's members to fifty; and prohibits any shares or debentures of the company being offered to the public.

A private limited liability company must be incorporated by at least two members, save for a single member company, which may have one member only. The appointment of at least one director and one company secretary is necessary to ensure the management of the company. The minimum share capital for the private limited liability company is the equivalent of €1,165. When a company is formed, twenty percent of the share capital must be deposited in a bank account, in Malta, at the time of formation.

### **Public Limited Liability Company**

Unlike a private limited liability company, a public company may offer to the public any shares in or debentures of the company, for cash or other consideration. The Act defines an "offer made to the public" as:

- an offer made to the public generally; and
- an offer made to more than fifty people.

For a public company, the minimum share capital is approximately €46,600, or its equivalent in another currency, of which 25% must be deposited in a bank account prior to registration.

Public companies in Malta have certain requirements for corporate management and annual financial reporting. A minimum of two directors, together with a company secretary, are required to manage the company and the shares of the public company may be traded on the stock exchange, unlike a private company. Its articles of association contain information about the right to transfer shares (which, contrary to the private limited liability company, should not be restricted) and the manner in which the public can subscribe for company shares. The shareholders of both types of company will have limited liability with respect to the companies' debts and obligations.

It is worth noting that private companies can be converted into public ones by virtue of amendments to the memorandum and articles of association. The resolution to make these changes must be submitted for registration with the Registrar of Companies together with other supporting documentation.

## **Branch**

A foreign company may opt to establish a branch in Malta, rather than a separate and distinct company with its own legal personality in Malta. An overseas company, which is considered to be a foreign based entity incorporated outside of Malta, may set up a branch in Malta by registering the branch with the Maltese Registrar of Companies within one month from establishing a branch or a place of business in Malta. It is worth noting that a branch does not constitute as a separate legal entity in Malta and therefore this is seen as a short-term option in Malta and not commonly used by entities desirous to establish a long-term project in Malta.

## **Partnerships**

Other businesses may prefer to trade as a partnership either in the form of a partnership en commandite or a partnership en nom collectif. A Maltese partnership has its own separate legal personality distinct from that of its partners and is capable of owning and holding property (under any legal title) or being sued. Partners to the partnership may be either an individual or a legal persons.

A partnership en commandite (more commonly referred to as a limited partnership) has both general and limited partners. The general partners' obligation is unlimited, joint and several, while the limited partners' obligation is limited to the amount unpaid on their contribution.

The partnership en nom collectif, more commonly referred to as a

general partnership, has its general obligations guaranteed by the unlimited, joint and several liability of all its partners.

Under the Maltese Income Tax Act, Chapter 123 of the laws of Malta, a partnership is treated as transparent for tax purposes, unless it elects to be treated as a company for the purposes of the Income Tax Management Act, Chapter 372 of the laws of Malta. The profits and gains of a tax transparent partnership are, therefore, taxed in the hands of the partners at their applicable personal tax rate. Although the computation of the taxable income is calculated according to the level of the partnership, each of the partners would need to declare their share of profits in their own personal tax returns.

In cases where a limited partnership has elected to be treated as a company for income tax purposes, all relevant provisions of the income tax law would be applicable to such a partnership in an identical manner.

## **Company Re-domiciliation**

The Act provides an option for a company registered in a foreign jurisdiction to re-domicile and continue operating in Malta. Under the Continuation of Companies Regulations 2002 (Legal Notice 344 of 2002 as amended by Legal Notice 352 of 2003), companies may, (through re-domiciliation) continue with their activities rather than winding up the operation/business and starting afresh in another jurisdiction. The regulations are divided into two parts; the first part is dedicated to companies registered in another jurisdiction coming to Malta to continue their business and the second part is dedicated to companies already registered in Malta continuing their business in other jurisdictions. It is worth highlighting that the Registry of Companies will not accept the re-domiciliation of a company that is black listed by the Financial Action Task Force (FATF).

## **Winding up of companies**

A company may either be wound up by the court or dissolved on a voluntary basis.

There are two forms of voluntary liquidation – either a members' voluntary winding up (which is only possible where a company is solvent), or a creditors' voluntary liquidation.

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# Tax overview

## Taxation in Malta

### Persons subject to taxation

Tax is a compulsory contribution to state revenue, charged on the income and capital gains of individuals, companies and any other body of persons.

### Year of Assessment

Tax is payable every calendar year (year of assessment) and is payable in relation to the income generated from the preceding calendar year.

### Basis of taxation

A company incorporated in Malta is treated as domiciled in, and resident in Malta and is consequently subject to tax on its worldwide income and capital gains. A company that is not incorporated in Malta can still be classed as a resident in Malta if its management and control is exercised in Malta.

A company that is resident, but not domiciled, in Malta is subject to tax on chargeable income and capital gains arising in Malta, and on chargeable income arising outside of Malta, but not capital gains arising outside Malta, received in Malta. It is worth highlighting that a foreign company having a branch in Malta does not, in itself, constitute residency. A company that is not resident in Malta is taxed on chargeable income and capital gains arising in Malta (unless such income/gains are subject to a specific exemption).

Tax is charged on the total of the taxable income and capital gains after excluding exemptions and allowing for deductions. The general rule is that tax deductions are allowed only with respect to expenses incurred wholly and exclusively in the production of the income. Adjustments would typically include the write-back of depreciation and a deduction for statutory capital allowances, the write-back of provisions and of expenses that do not satisfy the tax deduction rules, and the application of other special income tax rules such as those relative to the determination of income from the letting of immovable property and of capital gains.

## **Tax Administration**

The government departments responsible for the administration of the main tax laws are:

- The Inland Revenue Department (for income tax and stamp duty);
- The Value Added Tax Department (for value added tax (“VAT”) and eco contributions);
- The Customs Department (for import duty and excise tax).

These departments are headed by the Commissioner for Revenue. The collection of VAT on importations is administered by the Comptroller of Customs acting on behalf of the Commissioner for Revenue. The Commissioner for Revenue collects social security contributions on behalf of the Director of Social Security.

## **Income tax registration and deregistration**

A company earning income that is subject to Maltese tax is required to register with the Inland Revenue Department. The registration process is relatively simple and usually only requires basic information regarding the company concerned. Taxpayers who no longer receive income that is subject to Maltese tax may request to be deregistered. The department will only cancel a registration when they are satisfied that all outstanding tax returns have been filed (with all tax due settled). Before de-registration occurs, a taxpayer is required to continue filing tax returns, even in the absence of a taxable income.

## **Tax return**

Every registered taxpayer is required to file an annual income tax return. Companies whose financial year ends on the 31 December must file their return by 30 September of the following year.

Other companies must file their tax return by the end of the ninth month after their accounting date, or by the 31 March of the calendar year following the accounting date, whichever is the later.

## **Anti-tax avoidance rules**

Transactions between a foreign company and a Maltese company

should be made at arm's length. There are no other specific transfer pricing rules, however inter-company pricing may be scrutinised under the general anti-tax avoidance powers of the Inland Revenue Department. Malta does not have thin capitalisation rules nor any anti-controlled foreign company legislation.

Maltese tax legislation contains relatively wide anti-avoidance measures. For income tax purposes, the tax authorities are able to disregard artificial and fictitious transactions and any scheme whose sole or main purpose is to avoid, reduce or postpone the tax liability that would otherwise arise.

### **Rate of tax**

The chargeable income of a company (which includes its taxable income and capital gains) is taxed at 35%.

### **Corporations and shareholders**

A dividend includes any distribution made by a company to its shareholders and any amount credited to them in their capacity as shareholders. Distributions to shareholders in the course of winding up are deemed to be dividends paid, to the extent that the distribution is made out of income a company's income.

### **Tax accounts**

Companies that are resident in Malta are required to allocate their distributable profits to the following accounts:

- Final Tax;
- Immovable Property;
- Foreign Income;
- Maltese Taxed or
- Untaxed.

The Final Tax account would include income which has been subject to a final tax. The distribution of such income is not subject to further tax and no tax credit is available upon its distribution.

The Immovable Property account includes gains or profits derived directly or indirectly from immovable property situated in Malta.

The Final Tax account and the Immovable Property account take priority over the other taxed accounts, with respect to both allocations and distributions of profits.



To the extent that they result from taxable income, the profits that are to be allocated to the Foreign Income account are:

Dividends, interest, royalties and capital gains arising outside Malta, including income earned from a participating holding or from a disposal of such holding;

Rents and any other income from investments situated outside of Malta;

Trading profits attributable to a permanent establishment situated outside of Malta;

Dividends paid out of the foreign income account of another company resident in Malta.

Distributable profits that are; subject to tax, not allocated to the Final Tax account, Immovable Property account and the Foreign Income account are to be allocated to the Maltese taxed account.

Profits that are not allocated to the other taxed accounts (including negative balances) are to be allocated to the Untaxed account. In most cases, the Untaxed account is a balancing figure representing the difference between a company's accounting profits and its profits which would have been subject to tax in Malta. The profits of a cooperative society are allocated to its Untaxed Account.

### **Refund mechanism upon profit distributions**

Distributions out of a Foreign Income account and out of the Maltese taxed account to shareholders may trigger refunds to the shareholders in relation to tax paid on the distributed profits. The extent of tax refunded depends, inter alia, on the nature and source of income received by the Maltese company.

### **Participation Exemption**

Dividend income or capital gains obtained from a participating holding or from the disposal of such a holding, are exempt from tax in Malta. Alternatively, this may be taxed at 35% and the shareholder may, upon a subsequent distribution of the corresponding profits, claim a full refund of the Malta tax paid by the company. This exemption is applicable in relation to any dividend, income or capital gains arising on the holding and eventual disposal of a participating holding of equity shares in a non-Maltese company or partnership.

The holding must satisfy a number of alternative criteria, including a minimum ten percent holding, or a minimum investment of one million, one hundred and sixty-four thousand Euro, or its equivalent in another currency, in the non-Maltese entity. There is also an anti-abuse test which is to be satisfied for qualification, and safe harbours include the holding of shares (or interests in entities which are incorporated or resident in the European Union) or the holding of shares or interests in entities which have less than 50% of their income being derived from passive interest or passive royalties.

Pursuant through an amendment to Maltese tax laws, the participation exemption would only apply to the extent that such profits are not deductible by the relevant subsidiary distributing the dividend in that other EU Member State. The same applies to a permanent establishment situated in Malta of a parent that is established in another EU Member State.

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